

**JOINT PLANNING BOARD OF THE
BOROUGH OF DEMAREST**

RESOLUTION JPB-011-25

MINOR SUBDIVISION WITH VARIANCE APPROVAL

In the Matter of the Application of
BF Development LLC
44 Pine Terrace
Block 84, Lot 3.07

WHEREAS, BF Development LLC (the “Applicant”) is the contract purchaser of the property located at 44 Pine Terrace and designated as Lot 3.07 in Block 84 on the Tax Maps of the Borough of Demarest (the “Property”); and

WHEREAS, Susan R. Rokeach is the owner of the Property and authorized the Applicant to submit the proposed application; and

WHEREAS, the Applicant filed an Application with the Joint Planning Board of the Borough of Demarest (the “Board”) for Minor Subdivision and “C” Variance approval to subdivide the Property into two (2) lots (Proposed Lot 3.08 and Proposed Lot 3.09), modify the existing attached garage and construct a new driveway and paver walkway on Proposed Lot 3.08 and remove all of the existing improvements, including the existing tennis court and pergola, and construct a new single-family dwelling, driveway, patio, and in-ground pool on Proposed Lot 3.09 (the “Application”); and

WHEREAS, the following plans, reports and correspondence were submitted by the Applicant and considered by the Board:

- A. Variance Application and Variance Application Rider with Subdivision Information (the “Application”);
- B. Affidavit of Representation executed April 11, 2025;

- C. Certification of Ownership and Authorization to Make Application executed April 4, 2025;
- D. Certification of Payment of Taxes from the Borough of Demarest Tax Collector dated February 18, 2025;
- E. Minor Subdivision Plans prepared by Costa Engineering Corporation dated December 3, 2024, last revised April 10, 2025, and consisting of four (4) sheets;
- F. Architectural Plans prepared by Axis Architectural Group dated February 24, 2025 and consisting of three (3) sheets;
- G. Boundary and Topographic Survey prepared by Costa Engineering Corporation dated December 3, 2024 and consisting of one (1) sheet;
- H. Minor Subdivision Plans prepared by Costa Engineering Corporation dated December 3, 2024, last revised May 14, 2025, and consisting of five (5) sheets;
- I. Minor Subdivision Plans prepared by Costa Engineering Corporation dated December 3, 2024, last revised June 20, 2025, and consisting of six (6) sheets;
- J. Soil Permeability Test Results prepared by Johnson Soils Company dated June 18, 2025;
- K. Drainage Calculations prepared by Costa Engineering Corporation dated June 20, 2025;
- L. Affidavit of Service prepared by Capizzi Law Offices; and
- M. Affidavit of Publication prepared by The Record and Herald News; and

WHEREAS, public hearings were held by the Board on June 4, 2025 and July 2, 2025 in accordance with the Open Public Meetings Act and the Municipal Land Use Law (the “MLUL”), at which time the Applicant, represented by Matthew Capizzi, Esq. of Capizzi Law Offices:

(a) presented proof of notice and publication as required by law; and (b) submitted the following evidence to the Board in support of Applicant's Application including:

- A. Colorized Minor Subdivision Plan Sheet 2 prepared by Costa Engineering Corporation dated December 3, 2024, last revised July 1, 2025, and consisting of one (1) sheet, marked as Exhibit A-1;
- B. Average Front Yard Setback Study, marked as Exhibit A-2;
- C. Planning Exhibit prepared by MJP Land Use Planning LLC and consisting of six (6) sheets, marked as Exhibit A-3;
- D. Drainage Calculation Results, last revised June 27, 2025, marked as Exhibit A-4;
- E. Minor Subdivision Plan Sheet 5 of 7 titled "Soil Testing Location and Result Plan" prepared by Costa Engineering Corporation dated December 3, 2024, last revised July 1, 2025, marked as Exhibit A-5;
- F. Minor Subdivision Plan (full set) prepared by Costa Engineering Corporation dated December 3, 2024, last revised July 1, 2025, and consisting of seven (7) sheets, marked as Exhibit A-6;
- G. Testimony of the Applicant's civil engineer, Robert Costa of Costa Engineering Corporation, whose testimony can be summarized as follows:
 - a. The Property is located in the Single-Family Residence BB District (the "R-BB Zone");
 - b. The Property is oversized in lot area (30,000 square feet required; 49,815 square feet existing) and lot width (150 feet required; 289.79 feet is existing) and contains a single-family residential dwelling;
 - c. Wetlands exist in the rear of the Property, where water collects;

- d. The Property has a pre-existing non-conforming pergola, tennis court and pool deck, which will all be removed by the proposed Application;
- e. Applicant is also proposing to remove the existing circular driveway on the Property, eliminating a curb cut on Pine Terrace;
- f. Applicant is proposing to reduce the width of the garage on the existing single-family dwelling to comply with the side yard setback requirements;
- g. Removal of these existing improvements will result in a net decrease of 6,083 square feet of impervious coverage and eliminates the pre-existing non-conformity with respect to improved lot coverage (30% permitted; 40.22% existing);
- h. Applicant is proposing to subdivide the Property into two (2) lots (Proposed Lot 3.08 and Proposed Lot 3.09);
- i. Both lots will be slightly undersized in lot area and lot frontage;
- j. Proposed Lot 3.08 will contain a new single-family residential dwelling, in-ground pool and patio;
- k. Proposed Lot 3.09 will contain the existing single-family residential dwelling, existing in-ground pool and related improvements;
- l. Both lots comply with all building coverage, impervious coverage, floor area ratio, height and all setback requirements;
- m. Proposed Lot 3.08 and Proposed Lot 3.09 both need "C" variances with respect to minimum lot area and minimum lot frontage;
- n. The existing dwelling does not have any on-site stormwater improvements;
- o. Three (3) trees are proposed to be removed;

- p. Applicant will maintain the existing grade of the Property;
 - q. Applicant is proposing pervious pavers;
 - r. Applicant will not be raising the existing groundwater;
 - s. The proposed drainage system is oversized (3 – 1,000 gallon seepage pits were originally proposed on each lot and were further increased by revised plans);
 - t. In response to the Board's and the public's concerns, the Applicant performed soil testing and revised the locations of the proposed seepage pits;
 - u. Applicant revised their plans to show one (1) seepage pit in the front yard area of Proposed Lot 3.08 and two (2) seepage pits in the rear yard area of Proposed Lot 3.08 and three (3) seepage pits in the front yard area of Proposed Lot 3.09;
 - v. Applicant also revised their plans to install a trench drain to collect water from the driveway on Proposed Lot 3.08 before it enters the street (Pine Terrace);
and
 - w. Applicant will work with the Board Engineer regarding adding an additional seepage pit(s) and/or trench drain(s) in the back corner near the pool and patio of Proposed Lot 3.09; and
- H. Testimony of the Applicant's architect, Piero Gabucci of Axis Architectural Group, whose testimony can be summarized as follows:
- a. Applicant is proposing to maintain the existing Dutch colonial style, single-family dwelling on Proposed Lot 3.08, except that the garage will be modified and the existing wood deck will be removed;

- b. Both dwellings comply with the floor area ratio requirements;
 - c. The new single-family dwelling on Proposed Lot 3.09 will have an estate-style design, consisting of approximately 5,400 square feet and contain 5 bedrooms, 5 bathrooms, a guest room, an office and a three-car garage;
 - d. The proposed dwelling is in-scale with surrounding dwellings in the neighborhood; and
 - e. The proposed dwelling will use traditional materials (stone, clapboard siding and shingles) and blend with other homes in the neighborhood; and
- I. Testimony of Applicant's professional planner, Michael Pessolano of MJP Land Use Planning LLC, who testified as to the justification for the "C" variances for lot frontage and lot area. Mr. Pessolano testified that the Application is an improvement in the use of the land and that the proposed dwelling on Proposed Lot 3.09 will not be inconsistent with other homes on the street. Mr. Pessolano spoke regarding the lot area variance and testified that the properties surrounding the Property are mostly undersized in the same way that the Applicant is requesting for Proposed Lot 3.08 and Proposed Lot 3.09. Mr. Pessolano presented the required positive and negative statutory criteria. He testified that the Application meets the required criteria and the application warrants approval from the Board; and

WHEREAS, at the public hearings, the Board also took testimony from the Board Engineer, Nick Chelius, and Board Planners, Darlene Green and Austin Bejin, and the Borough Zoning Officer, Michael Greco, and considered the following items submitted by the Board's professionals:

- A. Completeness Review Board Report prepared by Colliers Engineering and Design dated May 8, 2025;
- B. Completeness Letter from Michael Greco dated May 9, 2025;
- C. Board Planner Report prepared by Colliers Engineering and Design dated May 26, 2025 and Revised Board Planner Report dated June 30, 2025 (collectively, the “Board Planner Reports”); and
- D. Board Engineer Report prepared by Colliers Engineering and Design dated May 21, 2025 and Revised Board Engineer Report prepared by Colliers Engineering and Design dated June 27, 2025 (collectively, the “Board Engineer Reports”); and

WHEREAS, two (2) adjacent property owners were present at the public hearing on June 4, 2025 and asked questions of the Applicant’s professionals regarding the proposed impervious coverage and expressed concerns regarding stormwater runoff and flooding near the Property; and

WHEREAS, the Board having heard and considered the testimony, arguments and documents referenced above.

NOW, THEREFORE, BE IT RESOLVED that the Joint Planning Board of the Borough of Demarest makes the following findings of fact and conclusions of law with respect to the within Application:

1. All of the “**WHEREAS**” clauses set forth above are incorporated by reference. All of the testimony, documents and exhibits produced by the Applicant, including those produced at the public hearings on June 4, 2025 and July 2, 2025 are incorporated herein by reference.

2. The Property is located at 44 Pine Terrace and designated as Lot 3.07 in Block 84 on the Tax Maps of the Borough of Demarest and is a rectangularly shaped, oversized, interior lot.

3. The Property is located along the north side of Pine Terrace in the R-BB Zone and consists of 1.14 acres (49,814.8 square feet).

4. The Property is currently occupied by a single-family dwelling with associated gravel driveway, wooden rear deck, pergola, in-ground pool, wooden pool deck, tennis court and related improvements.

5. The Property has pre-existing non-conformities with respect to improved lot coverage (30% permitted; 40.22% existing), accessory uses in the side yard (prohibited; existing tennis court is partially located in the eastern side yard) and rear yard setback - accessory structures (10 feet required; the existing pergola is 4.67 feet from the rear lot line, the existing tennis court is 4.25 feet from the rear lot line, the existing wood deck near the pool is 1.58 feet from the rear lot line and the existing pool equipment extends beyond the rear lot line by 1.33 feet). The Application eliminates all of these pre-existing non-conformities by removing the existing pergola, tennis court and wood deck from the Property and relocating the existing pool equipment 10 feet from the rear lot line.

6. The Property is oversized with respect to lot area (30,000 square feet required; 49,814.8 square feet existing).

7. By this Application, the Applicant is seeking to subdivide the Property into two (2) lots. Proposed Lot 3.08 will consist of 25,047 square feet (30,000 square feet required) and will contain the existing single-family dwelling, modified driveway, new paver walkway and the existing in-ground pool and associated paver patio. The garage of the existing dwelling will be

modified to convert the existing garage from side-loading to front loading. Proposed Lot 3.09 will consist of 24,768 square feet (30,000 square feet required) and will contain a new single-family dwelling, driveway, in-ground pool and associated patio and related improvements. As noted above, the Applicant is also proposing to remove the existing pergola, wood deck and tennis court from the Property and relocate the existing pool equipment to a compliant 10 feet from the rear lot line of Proposed Lot 3.08.

8. The proposed subdivision is classified as a Minor Subdivision under the Borough Code and the MLUL.

9. The Applicant is seeking variance relief from the Board pursuant to N.J.S.A. 40:55D-70(c)(2) for lot size (the Ordinance does not permit any lot to be reduced so that it does not meet the area requirements and 30,000 square feet is required in the R-BB Zone; Proposed Lot 3.08 and Proposed Lot 3.09 do not meet the lot size requirements), minimum lot area for Proposed Lot 3.08 (30,000 square feet required; 25,047 square feet proposed), minimum lot frontage for Proposed Lot 3.08 (150 feet required; 144.90 feet proposed), minimum lot area for Proposed Lot 3.09 (30,000 square feet required; 24,768 square feet proposed) and minimum lot frontage for Proposed Lot 3.09 (150 feet required; 144.89 feet proposed).

10. Single-family residential dwellings are permitted uses in the R-BB Zone.

11. The Board finds that the proposed subdivision complies with the purposes set forth in the MLUL by promoting appropriate uses in proper locations with appropriate density, promoting the general welfare by continuing the existing single-family nature of the existing neighborhood, promoting appropriate population densities, promoting open space and prevents urban sprawl and degradation of natural resources.

12. The Board finds that adequate light air and open space are provided, as both lots comply with all setback, impervious coverage, building coverage, floor area ratio and height requirements.

13. The Board finds that the Application improves the existing conditions of the Property by removing 6,083 square feet of impervious coverage and eliminating the pre-existing non-conformity with respect to improved lot coverage.

14. The Board further finds that the Application improves the existing conditions of the Property by removing pre-existing non-conformities with respect to the rear yard - accessory structures and by moving existing encroaching accessory structures (the pool equipment) into compliance.

15. The Board finds that the single-family dwelling on Proposed Lot 3.09, which is a permitted use in the R-BB Zone and consistent with the surrounding neighborhood, provides an aesthetic improvement to the Property, as opposed to the existing non-conforming tennis court.

16. The Board finds that the "C" variances requested by the Applicant for lot frontage are de minimis in nature and off-set by the deeper side yards proposed on both lots.

17. The Board finds that the "C" variances requested by the Applicant for lot area are also de minimis in nature and consistent with other lot areas in the immediate neighborhood.

18. The Board finds that the Application also provides significant benefits by providing an oversized stormwater management system to collect stormwater not only from the proposed dwelling and improvements on Proposed Lot 3.09, but from existing improvements on Proposed Lot 3.08, where none exist today.

19. The Board finds that the benefits of granting the Application outweigh any detriments.

20. The Board further finds that the granting of the variances will not substantially impair the intent and purpose of the Borough's Zoning Ordinance or Master Plan and is in the furtherance of the purposes set forth in N.J.S.A. 40:55D-2, e.g. adequate light, air and open space is provided.

21. The Board finds that the Applicant has proven its entitlement to variance approval under N.J.S.A. 40:55D-70(c)(2).

NOW, THEREFORE, BE IT FURTHER RESOLVED by the Board of the Borough of Demarest, based upon the above findings of fact and conclusions of law, that the within application for Variance Approval is hereby granted, subject to the following conditions:

- a) Applicant shall work with the Board Engineer and add an additional seepage pit and/or trench drain in the back corner near the pool and patio on Proposed Lot 3.09 and revise their plans accordingly to the satisfaction of the Board Engineer;
- b) Applicant shall work with the Board Engineer regarding soil permeability testing and regarding the number, sizing and location of the proposed stormwater management facilities on both lots. Applicant shall relocate, increase the number and/or enlarge the proposed stormwater management facilities proposed on either lot in the sole discretion of the Board Engineer.
- c) Applicant shall file Deed Restrictions requiring the owners of Proposed Lot 3.08 and Proposed Lot 3.09 to maintain the proposed stormwater management systems for the life of the improvements, which Deed Restrictions shall be subject to the review and approval of the Board Attorney and the Board Engineer prior to being recorded.

- d) Applicant shall relocate the proposed seepage pit on Proposed Lot 3.08 so that it is 10-15 feet from the property line.
- e) Applicant shall comply with the Borough's Tree Removal and Protection Ordinance with respect to the removal and replacement of any trees on the Property.
- f) Unless otherwise addressed herein or at the public hearing before the Board, the Applicant shall comply with the recommendations of the Board, including but not limited to the Board Planner Reports and the Board Engineer Reports, and shall further comply with the recommendations of all other officials having jurisdiction with respect to the use of the subject Property.
- g) Notwithstanding the approval granted herein, the Applicant shall comply with all of the ordinances of the Borough of Demarest and all applicable county, state, and federal statutes, ordinances, rules and regulations. The Property shall be kept neat during all construction.
- h) The Applicant shall obtain the approval (or waiver thereof) of any and all other governmental agencies having jurisdiction over the proposed development.
- i) The Applicant shall be required to obtain all necessary permits and approvals from the Construction Official and such other municipal departments as may be necessary.
- j) The Applicant shall post all fees and deposits as required by applicable ordinances of the Borough of Demarest which shall include payment to the Borough's professionals for the review of the within Application and the inspection of work to be performed incidental thereto.

- k) The Applicant shall correct and make safe any dangerous or unsafe condition caused by the Applicant or those acting for it, affecting public safety or general welfare, if any such condition develops.
- l) The Applicant shall be and remain liable for any and all damages or money loss occasioned by the Borough of Demarest or its officers or agents by any neglect, wrongdoing, omissions or commissions by the Applicant or its agents arising from the making of improvements and shall save, indemnify, hold harmless the Borough of Demarest or Board, its officers, agents, employees and all charges, judgments, costs or counsel fees arising from such damages or loss. The Applicant agrees not to commit any public or private nuisance by reason of dirt, dust, debris, air-pollution, noise pollution, gas, smoke, or other occurrences resulting from the construction or installation authorized by the approval of this plan or any building permit issued in pursuit thereof.
- m) The Applicant's failure to comply with conditions set forth with this Resolution shall constitute a failure of the conditions and may be the cause for the revocation of either a Building Permit and/or Certificate of Occupancy issued in respect of the contemplated improvements, subject to reasonable notice and the opportunity to cure.

IT IS HEREBY CERTIFIED that this is a true and correct copy of a Resolution adopted by the Planning Board of the Borough of Demarest upon a roll call vote at a meeting held on August 6, 2025.

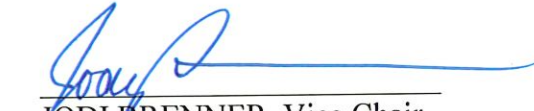
A copy of this Resolution shall be given to the Tax Assessor, Applicants, Borough Clerk, Building Department, Zoning Officer and Borough Engineer.

ATTEST:

SO APPROVED:



MICHAEL GRECO, Secretary



JODI BRENNER, Vice Chair

BOROUGH OF DEMAREST JOINT PLANNING BOARD

VOTING

BOARD MEMBER	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT
Mr. Adelman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vice Chair Brenner	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ms. Chin	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ms. DiSclafani	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Councilwoman Fox	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Mayor Bernstein	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chair Woods	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Date of Adoption: August 6, 2025