

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

**RESOLUTION JPB-007-25**

**APPEAL OF ZONING OFFICER'S DENIAL OF APPLICANT'S ZONING PERMIT  
AND VARIANCE APPLICATION**

**N.J.S.A. 40:55d-70(a) & N.J.S.A. 40:55d-70(c)**

In the Matter of the Appeal and Variance Application of  
Ilan Cohen

**WHEREAS**, Ilan Cohen (the "Applicant") is the owner of the property located at 17 Laurel Road and designated as Lot 20 in Block 1.02 on the Tax Maps of the Borough of Demarest (the "Property"); and

**WHEREAS**, the Property is located at the corner of Laurel Road and S. Prescott Street and is presently developed with a single-family home facing the intersection; and

**WHEREAS**, the Property is located in the Residential D District (the "R-D Zone") and has pre-existing non-conformities with respect to lot area, minimum front yard setback (Laurel Road) and minimum rear yard setback; and

**WHEREAS**, the Applicant's request for a Zoning Permit to construct a new single-family dwelling and other associated improvements at the Property was denied by the Zoning Officer of the Borough of Demarest on April 2, 2025 (the "Zoning Permit Denial"), stating:

Improved lot coverage 32.1% when 30% is allowed  
Pool, Pool equipment, AC units and pads, generators and pads, covered patio not permitted in side yard  
Window wells do not meet required 10 foot set back  
Wall along driveway not permitted in the front yard  
Address of property is 17 Laurel Road and is a corner lot, the approving authority must determine if the rear yard is opposite Laurel Road or opposite S. Prescott Street.  
Applicant is proposing the rear yard as opposite S. Prescott Street; and

**WHEREAS**, on April 23, 2025, the Applicant, through counsel, Matthew Capizzi, Esq., filed a Notice of Appeal with the Planning Board (the “Board”) pursuant to N.J.S.A. 40:55D-70(a) (the “Notice of Appeal”) to appeal the denial of the Zoning Permit; and

**WHEREAS**, the Board is empowered pursuant to N.J.S.A. 40:55D-70(a) to “[h]ear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision or refusal made by an administrative officer based on or made in the enforcement of the zoning ordinance;” and

**WHEREAS**, such appeal determinations must be based upon the facts presented, credibility findings which the Board is entrusted to make and legal determinations which the Board is statutorily obligated to make; and

**Whereas**, the Board is further empowered pursuant to N.J.S.A. 40:55D-70(c) to grant variance relief;

**WHEREAS**, the Board conducted a public hearing on May 7, 2025 in accordance with the Municipal Land Use Law (“MLUL”) and the Open Public Meetings Act, at which time the Applicant, represented by counsel, Matthew Capizzi, Esq. of Capizzi Law Offices, presented proof of notice as required by law by the MLUL; and

**WHEREAS**, the Board has reviewed and considered evidence submitted at the public hearing, as well as the following items submitted by the Applicant:

- 1) Zoning Permit Denial dated April 2, 2025;
- 2) Notice of Appeal from Mr. Capizzi dated April 23, 2025;
- 3) Variance application;
- 4) Application contact sheet;
- 5) Affidavit authorizing representative;
- 6) Site visit consent form;

- 7) Abutting property correspondence with stamped certified mail receipt from Mr. Capizzi;
- 8) Certificated of payment of taxes;
- 9) Topographic Survey prepared by Lantelme, Kurens & Associates PC dated December 18, 2024 and consisting of one (1) sheet;
- 10) Property Deed dated January 9, 2025 and recorded with the Bergen County Clerk's Office on February 7, 2025;
- 11) Site Plan prepared by McClellan Engineering dated February 11, 2024, last revised April 9, 2025, and consisting of one (1) sheet; and
- 12) Architectural Plan prepared by Rapaport & Assoc., Inc. dated December 30, 2024, last revised April 9, 2025, and consisting of four (4) sheets; and

**WHEREAS**, at the public hearing, the Applicant provided testimony, as set forth below, and submitted the following evidence to the Board:

- 1) Rear (eastern) elevation and northern elevation dated December 30, 2024, last revised February 28, 2025, and consisting of one (1) sheet;
- 2) Planning Exhibits dated May 2025 and consisting of five (5) sheets;
- 3) Testimony of Uri Rapaport of Rapaport & Assoc. Inc., a licensed professional architect, whose credentials were accepted by the Board and whose testimony can be summarized as follows: the proposed development is a modest, 4- bedroom, single-family home; the house itself meets all zoning requirements, including all bulk, floor area ratio (FAR) and coverage requirements; the proposed single-family dwelling also complies with all height requirements; the Property slopes from S. Prescott Street to Laurel Lane; the Applicant is proposing to have the dwelling face S. Prescott Street, which is consistent with other adjacent

properties; the Applicant is proposing to have the driveway remain on Laurel Road, sloping away from the proposed dwelling, which is the better engineering design to avoid stormwater damage to the dwelling; the Applicant is proposing a two-car garage with a single door; the window wells are 7.1 feet from the Property line and do not encroach into the setbacks; the only variance needed is for the proposed dwelling is with respect to maximum improved lot coverage (30% / 2,974 square feet is permitted and 31.4% / 3,116 square feet is proposed); there is a balcony proposed in the rear of the dwelling which is accessed from the second floor master bedroom; the proposed balcony conforms with all setback and height requirements in the R-D Zone;

- 4) Testimony of Sean McClellan of McClellan Engineering, a licensed professional engineer, whose credentials were accepted by the Board and whose testimony can be summarized as follows: the Property has a pre-existing non-conforming lot area (10,000 square feet is required and 9,914 square feet is existing and proposed); the existing single-family dwelling also has non-conformities with respect to the minimum front yard setback (Laurel Lane) (as 27.6 feet is required and 27.3 feet is existing) and minimum rear yard setback (as 30 feet is required and 17.9 feet is existing); the non-conformities with respect to the front yard setback and rear yard setback will be eliminated by the proposed development; additionally, there is an existing shed that is 2 feet from the Property line, which will be removed by the proposed development; the Property slopes from 104 feet at S. Prescott Lane down to 96 feet towards Laurel Lane; the proposed single-family dwelling will face S. Prescott Street and meets all bulk and height requirements in the R-D Zone; the proposed development significantly improves

the drainage on the Property; the existing dwelling does not have any stormwater drainage and currently all flows to Lot 19; the Applicant is proposed to contain all roof drainage in seepage pits which exceed the minimum capacity requirements for the proposed development by 1,400 gallons; the proposed pool is 12 feet by 22 feet, which is modest in size; there is an existing encroachment from Lot 19, which adds 14 square feet to the impervious coverage on the Applicant's Property; in total, the proposed development exceeds the impervious coverage requirement by 142 square feet;

- 5) Testimony of Michael Pessolano, a licensed professional planner, whose credentials were accepted by the Board and whose testimony can be summarized as follows: the proposed dwelling is relatively modest and conforms with the bulk requirements in the R-D Zone; the orientation towards S. Prescott Street is based on practicality due to the drop in elevation and need to have the driveway drain away from the dwelling; the orientation of the proposed dwelling on S. Prescott Street is harmonious with the property to the north; there is no planning or zoning purpose served if the dwelling was oriented on Laurel Lane; a modification to the garage driveway, which would reduce the total impervious coverage, will detract from the function of the driveway; the overcapacity provided by the stormwater management system provides a significant benefit compared to the existing dwelling, which does not provide any stormwater management; the elimination of the pre-existing non-conformities with respect to the front yard and rear yard is another substantial benefit offered by the proposed development; the granting of the requested impervious coverage variance will not impact the zone plan and will not cause any substantial detriment; and

**WHEREAS**, at the public hearing Board also took testimony from its own professionals;  
and

**WHEREAS**, the Board also heard testimony from Dean Stamos, Esq., on behalf of his clients, Ms. Marian Hayden and Ms. Dorothy Hayden, who reside at 6 Prescott Street. Mr. Stamos and his client stipulated that the proposed development should face S. Prescott Street. Mr. Stamos and his clients, however, objected to the proposed development and voiced concerns regarding the impacts of the proposed rear balcony on their privacy. The Board also heard testimony directly from Ms. Marian Hayden and Ms. Dorothy Hayden regarding their concerns that the proposed development will impact their privacy; and

**WHEREAS**, the Board also heard testimony from a member of the public on Laurel Lane, who stated that the proposed development was a substantial improvement to the existing dwelling, but who believed that the proposed development comply with all zoning requirements;  
and

**WHEREAS**, the Board, having heard and considered the testimony, arguments and documents referenced above, makes the following findings of fact:

1. The Property is located at 17 Laurel Lane and is a slightly undersized, corner lot comprised of approximately 9,914 square feet (whereas 10,000 square feet is required).
2. The Property is located in the R-D District.
3. The existing dwelling on the Property has pre-existing non-conformities with respect to minimum lot area, minimum front yard setback and minimum rear yard setback.

4. The Applicant is appealing the Zoning Officer's denial of their Zoning Permit to construct a new single-family dwelling on the Property and requesting variance approval pursuant to N.J.S.A. 40:55d-70(a) and N.J.S.A. 40:55d-70(c).
5. The public was invited to speak after testimony was given and Dean Stamos, Esq., his clients and a member of the public wished to be heard and asked questions.

### CONCLUSIONS AND DETERMINATIONS

**NOW, THEREFORE,** based on the forgoing findings of fact, Board makes the following conclusion of law with respect to the within Appeal of the Zoning Officer's Denial of the Applicant's Zoning Permit and Variance Application:

1. The Above "**WHEREAS**" clauses are incorporated herein as if set forth at length;
2. The Board finds that the rear yard of the Property is opposite S. Prescott Street and, therefore, finds that the in-ground pool, covered patio, AC units and pads, and generator and pad are not located in the side yard.
3. The Board finds that the Applicant only requires variance relief with respect to the maximum improved lot coverage (30% is permitted; 31.4% is proposed).
4. The Board finds that the Property suffers from challenges due to its nature as a corner lot and significant slope from S. Prescott Street to Laurel Lane.
5. The Board finds that orientation of the proposed dwelling facing S. Prescott Street is harmonious with the surrounding properties and 6 S. Prescott Street and a better alternative than facing Laurel Lane.
6. The Board finds that the benefits of the proposed development with respect to the improve aesthetics and overcapacity of the stormwater management system far outweigh any detriments caused by the requested variance.

7. The Board finds that the requested variance for 142 square feet over the permitted improved lot coverage is de minimis and will not be perceptible.
8. The Board finds that adequate light, air and opens space exists as do sufficient sight lines for drivers.
9. The Board finds that the variance for maximum improved lot coverage can be granted without detriment to the public good or any neighboring properties and will have a minimal impact, if any, on the neighbors.
10. The Board further finds that this approval will not substantially impair the intent and purpose of the Borough Zone Plan and Zoning Ordinance and is in the furtherance of the purposes set forth in N.J.S.A. 40:55D-2 inasmuch as it provides adequate light and air and open space and promotes the aesthetics of the neighborhood. Additionally, it has no impact on the appropriate population density and promotes the general welfare by encouraging outdoor activity in a private and secure area of the Property.
11. The Board finds that the Applicant has proven entitlement to approval for the maximum improved lot coverage variance under N.J.S.A. 40:55D-70(c)(1) and (2). There is no substantial impairment to the Borough Zone Plan or Zoning Ordinance. The benefits of deviation from the zoning ordinance substantially outweighs any detriment.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of the Borough of Demarest, based on the above findings of fact and conclusions of law, that the within Application for Variance Approval is hereby granted, subject to the following conditions set forth below:

1. The Applicant shall install a fence around the proposed pool that will comply with all requirements in the Borough Code. The pool compliance fence shall be added to the Site Plan.
2. The Applicant shall comply with all requirements in the Brough's Tree Ordinance with respect to the removal and replacement of trees on the Property.
3. The Applicant shall give consideration with the placement of any trees to the neighbor to the North at 6 S. Prescott Street.
4. 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.
5. 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.
6. The Applicant shall correct and make safe any dangerous or unsafe condition caused by the Applicant or those acting for them affecting public safety or general welfare if any such condition develops.
7. 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 their Agents arising from the making of improvements and shall save, indemnify, hold harmless the Borough of Demarest or the 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 Application or any building permit issued in pursuit thereof.

8. 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 a Building Permit 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 Joint Planning Board of the Borough of Demarest upon a roll call vote at its regular meeting held on May 7, 2025.


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

ATTEST:



MICHAEL GRECO, Secretary

SO APPROVED:



TIMOTHY WOODS, Chairman

**BOROUGH OF DEMAREST JOINT PLANNING BOARD**

**VOTING**

<b>BOARD MEMBER</b>	<b>MOTION</b>	<b>SECOND</b>	<b>YES</b>	<b>NO</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
Mr. Adelman	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mr. Alevrontas	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Bernstein	<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 type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ms. DiSclafani	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Councilwoman Fox	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ms. Mamdani	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of Adoption: June 4, 2025