

May 2, 2025

PLANNING REPORT

Joint Planning Board
Borough of Demarest
118 Serpentine Road
Demarest, NJ 07627

RE: Tomer Edry

17 Duck Pond Road
Block 120.01, Lot 3.01
Review Letter #1
Project No. DEP-0228

Dear Board Members,

Thomer Edry, the Applicant, is in the process of constructing a new single-family dwelling on the subject property. Other site improvements include an in-ground pool and surrounding patio, a lower patio, a 6,050 square-foot sports court, 180 square-foot storage building, a pool equipment area, driveway, grading, stormwater management facilities, and retaining walls and fences are shown on the Site Plan. It should be noted that the Applicant has received a soil movement permit for the dwelling only and construction has commenced as shown by the aerial on page 2). The Applicant received a Denial of Application letter from the Borough Zoning Officer for the proposed in-ground pool, patio, and sports court due to their encroachment into the side yard, which is not permitted.

According to the Variance Application, the Applicant is appealing the Zoning Officer's Denial of Application letter. And, according to Mr. Capizzi's letter of April 16, 2025, in the alternative, seeking variance relief to construct the pool, patio and sports court. Section B discusses the appeal/interpretation, while Section C details the applicable variances.

The following documents, which were submitted in support of the Application, have been reviewed:

1. Plans entitled "Proposed Dwelling", prepared by Robert J. Mueller, PLS and Michael J. Hubschman, PE, PP of Hubschman Engineering, PA, dated July 24, 2024, revised through April 15, 2025, consisting of 5 sheets.
2. Variance Application, no date.
3. Application Contact Sheet, no date.
4. Deed, dated December 21, 2023, recorded on January 18, 2024.

5. Denial of Application, prepared by the Borough Zoning Officer, dated April 16, 2025, consisting of 2 pages.
6. Letter entitled "Notice of Appeal", prepared by Matthew G. Capizzi, Esq. of Capizzi Law Offices, dated April 16, 2025, consisting of 1 page.

A. Existing Zoning and Surrounding Land Use

The subject property is in the Residential R-A District along the south side of Duck Pond Road and north side of Academy Lane. The property is surrounded by single-family dwellings to the north, east, and west, and the Academy of the Holy Angels to the south. See the image below for the approximate location of the subject property shown in red.¹



Yard and bulk requirements in the R-A District are:

- Minimum Lot Frontage – 200 feet
- Minimum Lot Depth – 200 feet
- Minimum Lot Area – 40,000 square feet
- Minimum Front Yard Setback – 50 feet²
- Minimum Side Yard Setback (abutting a street) – 50 feet
- Minimum Side Yard Setback (abutting a lot) – 25 feet
- Minimum Rear Yard Setback – 50 feet³
- Maximum Number of Families per Building – 1
- Maximum Building Coverage – 15%

Maximum Building Height – 33 feet⁴
Maximum Livable Floor Area – 22.5%⁵
Maximum Improved Lot Coverage – 30%⁶
Maximum Residential and Parking Coverage – 25%

B. Appeal / Zoning Interpretation

The Applicant is appealing the Zoning Officer's decision that the proposed in-ground pool, patio, and sports court encroach into the side yard pursuant to NJSA 40:55D-70a. Additionally, the Accessory Structure Zoning Notes information on Sheet 4021.1-1 of the Site Plans indicates the Applicant is requesting a zoning interpretation because the "Zoning Ordinance does not address thru lots" (NJSA 40:55-D-70b). The Board should note the Ordinance provides the following definitions relating to front, side, and rear yard property lines and yards:

- Lot Line, Rear - Any lot line which is opposite and/or does not intersect a front lot line, except in the case of a triangular corner lot or otherwise irregularly shaped lots.
- Lot Line, Side - Any lot line not a front lot line or a rear lot line.
- Lot, Corner - A lot or parcel of land abutting upon two or more streets at their intersection or upon two parts of the same street, forming an interior angle of less than 135°. The minimum frontage is to be maintained on all streets. The approving authority is to designate the front of the building, and then the yard opposite the designated front of the building shall meet rear yard minimum requirements.
- Yard - The space on a lot extending along a lot line between such lot line and a principal building or buildings or a nonbuilding use occupying such lot.
- Yard, Front - A yard extending the full width of the lot and situated between the street line and the front line of the building projected to the side lines of the lot. The depth of the "front yard" shall be between the front line of the building and the street line.
- Yard, Rear - A yard extending the full width of the lot and situated between the rear line of the building and the rear line of the lot.
- Yard, Side - A yard situated between the building and the side line of the lot and extending from the front yard to the rear yard.

It should be noted that the Ordinance does not define a "front lot line".

Additionally, the Ordinance does not provide a definition for the situation of the subject property, a lot that abuts two non-intersecting streets. However, the definition of "Lot, Corner" does indicate the approving authority designates the front of the building and the opposite yard of the designation would be the rear yard.

It should be noted that no survey was submitted with the Application and the Site Plan does not note if Academy Lane is a right-of-way, easement, etc. It is unclear if Academy Lane is situated on a block and lot. **Testimony** shall be provided to clarify.

Based on the above definitions and that the Site Plan indicates the property is a through lot (meaning it fronts two streets), the subject property would have two front yards, one between the Duck Pond Road street line and the future dwelling and a second between the Academy Lane street line and the future dwelling. The property also appears to have two side yards, along the eastern property line and along the western property line. However, it should be noted that the definitions do not clearly translate to the subject property as the Ordinance does not contain a definition of front lot line, which guides the side and rear lot line definitions.

The depth of the Duck Pond Road front yard is 169.66 feet, while the depth of the Academy Lane front yard is 135.31 feet. The depth of the eastern side yard is 50.48 feet, while the depth of the western side yard is 75.19 feet. Based on these dimensions, we offer the following:

- The proposed in-ground pool is 106.25 feet from the eastern side lot line, 124.63 feet from the Academy Lane street line, and approximately 150 feet from the western side lot line. Based on these setbacks, the proposed in-ground pool **does not** encroach into the side yard. However, the pool **does** encroach into the Academy Street front yard.
- The proposed pool patio is approximately 77 feet from the eastern side lot line, the lower patio is approximately 107 feet from the Academy Lane street line, and the pool patio is approximately 128 feet from the western side lot line. Based on these setbacks, the proposed patio **does not** encroach into the side yard. However, the patio **does** encroach into the Academy Street front yard.
- The proposed sports court is 140.38 feet from the eastern side lot line, ten feet from the Academy Lane street line, and 25 feet from the western side lot line. Based on these setbacks, the sports court **does** encroach into the western side yard. Additionally, the sports court **does** encroach into the Academy Street front yard.
- Additionally, the proposed 180 square foot storage building and pool equipment area, which are not mentioned in the Denial of Application letter or the Variance Application, **do not** encroach into either side yard but **do** encroach into the Academy Lane front yard.

Based on the information above, an appeal as to the Zoning Officer's denial of the in-ground pool and patio as side yard encroachments could be made. The proposed sports court is within the western side yard area. However, these proposed improvements do encroach into the Academy Lane front yard, which is not permitted under Section 175-19A.(2)(b).

However, the Applicant has requested a zoning interpretation for the applicable setbacks on the subject property as the Ordinance does not address "thru lots". Due to the limited information provided by the Applicant regarding the interpretation, it is unclear what the Applicant is seeking the Board to interpret. The Applicant shall provide testimony regarding the requested zoning interpretation.

C. Variances

Based on the information provided, the Application requires the following variances. However, it should be noted that depending on the Applicant's clarification of the zoning interpretation request and decision made by the Board, these variances may change.

1. Section 175-19A.(2)(b) – Variance for front yard encroachment. The Ordinance does not permit accessory uses, buildings, and structures to encroach into the front yard.

The Applicant proposes an in-ground pool, patio, sports court, storage building, and pool equipment area within the Academy Lane front yard. **The Site Plan does not list this variance.**

2. Section 175-19A.(3)(b) – Variance for side yard encroachment. The Ordinance does not permit accessory uses, buildings, and structures to encroach into the side yard.

The Applicant proposes a sports court that encroaches into the western side yard. **The Site Plan does not list this variance.**

3. Section 175-19B.(6) – Variance for accessory structure location. The Ordinance requires accessory uses, buildings, or structures on lots between two parallel streets to comply with the locational regulations and restrictions relating to each street, including all front, side, and rear yard requirements for each street.

The subject property abuts two streets (based on the information on the Site Plan), Duck Pond Road to the north and Academy Lane to the south. The Applicant proposes an in-ground pool, patio, sports court, storage building, and pool equipment area within the Academy Lane front yard area. **The Site Plan does not list this variance.**

4. Section 175-19B.(7) – Variance for pool location. The Ordinance does not permit pools within any front yard.

The Applicant proposes an in-ground pool that extends into the Academy Lane front yard. **The Site Plan does not list this variance.**

5. Section 175-24Q. – Variance for fence height. The Ordinance requires fences within 25 feet of any street to be no more than four feet and at least 50% open.

The Applicant proposes the sport court perimeter fence at either six or ten feet tall. The fence is within 25 feet of the Academy Lane street line. **The Site Plan does not list this variance.**

D. Variance Proofs

"C" Variances

NJSA 40:55D-70(c) sets forth the criteria by which a variance can be granted from the bulk requirements of a zoning ordinance. The first criteria is the C(1) or hardship reasons including exceptional narrowness, shallowness or shape of a specific piece of property, or exceptional

topographic conditions or physical features uniquely affecting a specific piece of property, or extraordinary and exceptional situation uniquely affecting a specific piece of property.

The second criteria involves the C(2) or flexible "C" variance where the purposes of the MLUL would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment.

E. Waivers/Exceptions

The Application does not require any waivers/exceptions based on the information provided.

F. Comments

Based on our review of the above-referenced materials, we offer the following comments. Updates to previously issued comments and new comments are in italics.

General

1. The Applicant's professionals must provide testimony regarding the appeal of the Zoning Officer's Denial of Application letter and the interpretation request to the Board. Additionally, testimony shall be provided to support the grant of the "C" variance required by the Application, if the Applicant seeks variance relief. Testimony must address both the negative and positive criteria requirements of the MLUL.
2. Based on our review of the submitted Plans and documents, we have identified multiple variances that not been requested or identified by the Applicant. The site Plans shall be revised to list all required relief or amended to comply with the Ordinance. It should be noted that depending on the testimony provided regarding the appeal and zoning interpretation, variances may be modified and/or eliminated.
3. Sheet 4021.1-4 indicates the Applicant proposes to remove 33 existing trees. However, no tree removal application has been submitted. The Applicant shall submit a tree removal application.
4. Section 163-19C provide the mitigation requirements for removed trees. According to the Site Plans, the Applicant proposes to remove 33 trees, 24 of which require replacement. According to the replacement calculation, 26 replacement trees are required and 34 are proposed. However, the Applicant appears to have calculated the tree replacement requirement utilizing outdated standards. The Borough recently amended Chapter 163 in its entirety via Ordinance No. 1121-23 on June 26, 2023. This Ordinance modified exemptions to tree replacement as well as the tree replacement calculation. The Applicant shall revise the Tree Removal for Development and Replacement Schedule information in accordance with Ordinance No. 1121-23. Until this information is provided, it is unclear if the Applicant provides the required number of replacement trees.
5. Sheet 4021.1-4 does not illustrate the existing trees to be removed. Additionally, the Site Plans do not illustrate any proposed trees. The Applicant shall revise the Site Plans to

include this information, which is necessary to confirm compliance with the Borough's tree removal and replacement requirements.

6. Section 175-21 requires any exterior lighting to be "arranged and shielded to reflect the light downward and away from all adjoining properties and structures so that the lights and glare from lights will not become a nuisance to adjoining properties." The footcandles of the proposed sports court lighting reach a maximum of 1.8 footcandles within the Academy Lane right-of-way. Testimony shall be provided regarding the proposed lighting and compliance with the Ordinance.
7. We defer to the Board Engineer regarding the light fixture height, type of lighting, lumens, temperature, etc. for the proposed sports court lighting.
8. The Site Plans illustrate a four-foot-tall fence along Duck Pond Road and the northeast corner of the property and six-foot-tall fences extending from the east and west sides of the dwelling to the property lines. Sheet 4021.1-3 provides a Decorative Aluminum Fence detail, which has noted heights of 45 inches plus a three-inch gap (48 inches) and 69 inches plus a three-inch gap (72 inches). Testimony shall be provided to clarify if this detail applies to all proposed fencing.
9. The Site Plans indicate the proposed perimeter fence for the sports court is six feet tall. However, the Fence Detail for Sports Court indicates the height of the fence is ten feet. Testimony shall be provided to clarify the height of the fence around the sports court.
10. The Site plans illustrate a gate and piers at the front of the driveway. However, details of these improvements have not been provided. This information shall be submitted unless it was submitted with the building permits for the house.

Should you have any questions concerning the above comments, please do not hesitate to contact my office. We reserve the right to make additional comments based upon further review or submission of revised plans or new information.

Sincerely,

Colliers Engineering & Design



Darlene A. Green, PP, AICP
Borough Planner

cc: Tim Woods, Board Chair (via email timwoods12@gmail.com)
Danielle Federico, Board Attorney (via email dfederico@csglaw.com)
Nick Chelius, Board Engineer (via email nick.chelius@collierseng.com)
Tomer Edry, Applicant (via email edry.tomer@gmail.com)
Matthew G. Capizzi, Applicant's Attorney (via email matthew@capizzilaw.com)
Michael J. Hubschman, Applicant's Engineer (via email mike@hubschmanengineering.com)
David Spatz, Applicant's Planner (via email davidspatz@optonline.net)

R:\Projects\A-D\DEP\DEP0228\Correspondence\OUT\250502dag_17_Duck_Pond_Edry_r1.docx

¹ Image courtesy of <https://www.nearmap.com/us/en>, dated March 19, 2025.

² On all streets other than Knickerbocker Road, Hardenburgh Avenue, County Road, Anderson Avenue, Piermont Road, and Lenox Avenue, an alternate setback will be required, conforming to the established average setback on the street on which the lot fronts, within the same district and within 300 feet on each side of the lot along the same side of the street, but not beyond any intersecting streets, established by three or more houses.

³ For other than rectangular lots, a rear yard width is required that is equal to the frontage requirement in the district, such width to be measured between points on each side line which are distant from the frontage line the number of feet specified as the minimum lot depth requirement in the district, such side line points to be measured at right angles to the frontage line. This requirement applies to all residence districts.

⁴ Measured from the average natural grade around the perimeter of the proposed structure. No more than 50% of the roof area shall exceed the specified average height. Flat roofs above 30 feet in height are expressly prohibited in all zones.

⁵ Maximum livable floor area (as defined in §175-27) is calculated as a square foot percentage of the total square footage of the lot to be developed.

⁶ The part of the site that is covered by buildings or accessory buildings; impervious or pervious tennis courts, basketball courts, decks, swimming pool decks, patios, firepits, hot tubs, or other recreational structures or improvements; impervious or pervious parking areas, driveways, walls, walkways, pavers, or similar improvements; and any other structures or impervious surfaces. Total improved lot coverage shall not exceed 30% of the lot area. The percentage of the lot to be used for the principal residential use and all vehicle access and parking areas shall not be greater than 25%.