

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

RESOLUTION JPB-008-25

**APPEAL OF ZONING OFFICER'S DENIAL OF APPLICANT'S ZONING PERMIT
N.J.S.A. 40:55d-70(a)**

In the Matter of the Appeal of
Tomar Edry

WHEREAS, Tomar Edry (the "Applicant") is a member of ZManny LLC, which is the owner of the property located at 17 Duck Pond Road and designated as Lot 3.01 in Block 120.01 on the Tax Maps of the Borough of Demarest (the "Property"); and

WHEREAS, the Applicant's request for a Zoning Permit to construct an in-ground pool, patio, and sports court at the Property was denied by the Zoning Officer of the Borough of Demarest on April 16, 2025 (the "Zoning Permit Denial"), stating:

Accessory structure side yard encroachments.
Inground swimming pool
Patio
Sports court
Whereas accessory structures are not permitted to encroach
into the side yard in any residence district; and

WHEREAS, on April 16, 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 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, requested the Board determine the following:

(a) does the Property front on two (2) roads (Duck Pond Road and Academy Lane) or does the Property only front on Duck Pond Road (meaning that Academy Lane faces the rear yard of the Property)?; and

(b) are the proposed in-ground pool, patio and sports court located entirely in the rear yard, which does not require a variance, or do they encroach into the side yard of the Property, requiring a variance?; and

WHEREAS, Mr. Capizzi submitted the following Exhibits in support of the Applicant’s appeal:

1. A-1 Aerial dated May 7, 2025;
2. A-2 Colorized Site Plan, last revised April 15, 2025 (a copy of which is attached hereto); and
3. A-3 Site plan dated April 24, 2024, last revised April 15, 2025; and

WHEREAS, at the public hearing, the Applicant provided testimony by Michael Hubschman of Hubschman Engineering, P.A., a licensed professional engineer, whose credentials were accepted by the Board and whose testimony can be summarized as follows: the Property fronts on Duck Pond Road; there is a maintenance easement between the Property and the street line of Academy Lane; there is no access from the Property to Academy Lane; further,

the easement and other agreements with Academy Lane prohibit any access from the Property to Academy Lane; there is at least a 5 foot grade change from the southerly lot line of the Property to Academy Lane; the location where the house being constructed could be located was limited by New Jersey Department of Environmental Protection permits; the Borough Ordinance does not define how yards are to be measured; calculating the side yard and rear yard based on the definitions found in the Moskowitz Book (defined below) result in the proposed in-ground pool, patio and sports court being located entirely in the rear yard, which does not require a variance; and

WHEREAS, at the public hearing, the Board also considered the following:

1. Zoning Permit Denial dated April 16, 2025;
2. Notice of Appeal dated April 16, 2025;
3. Planning Report from Darlene Green, PP, AICP of Colliers Engineering & Design, dated May 2, 2025; and
4. Testimony from Austin Bejin, PP of Colliers Engineering & Design (the “Board Planner”), which can be summarized as follows: the Property only fronts on Duck Pond Road; there is not access to Academy Lane from the Property; since there is no access to Academy Lane from the Property, Academy Lane is a rear lot line for the Property; the Borough Ordinance defines front yard, side yard and rear yard, but is silent regarding how yards are to be measured, whether parallel or perpendicular from a building to a lot line; based on his measurements, the proposed in-ground pool, patio and sports court are located entirely in the rear yard of the Property and do not encroach into the side yard of the Property; and

Whereas, the Board, during the course of the hearing, considered the following definition of Front Yard from Section 175-27B. of the Borough Code:

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; and

Whereas, the Board, during the course of the hearing, considered the following definition of Side Yard from Section 175-27B. of the Borough Code:

A yard situated between the building and the side line of the lot and extending from the front yard to the rear yard; and

Whereas, the Board, during the course of the hearing, also considered the definition of Rear Yard in Section 175-27B. of the Borough Code, which is:

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; and

Whereas, the definitions of Front Yard, Rear Yard and Side Yard in the Borough Code are silent regarding how yards are to be measured, whether parallel or perpendicular from a building to a lot line, and is open to interpretation; and

Whereas, the Board, during the course of the hearing, considered the following definition of Front Yard from "The Complete Illustrated Book of Development Definitions" by Harvey S. Moskowitz, Carl G. Lindbloom, David Listokin, Richard Preiss, Dwight Merriam (4th Edition 2015) (the "Moskowitz Book"):

A space extending the full width of the lot between any building and the front lot line and measured perpendicular to the building at the closest point to the front lot line; and

Whereas, the Board, during the course of the hearing, considered the following definition of Side Yard from the Moskowitz Book:

A space extending from the front yard to the rear yard between the principal building and the side lot line and measured perpendicular from the side lot line to the closest point of the principal building; and

Whereas, the Board, during the course of the hearing, considered the following definition of Rear Yard from the Moskowitz Book:

A space extending the full width of the lot between the principal building and the rear lot line and measured perpendicular to the building at the closest point to the rear lot line; 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 Duck Pond Road and is being developed with a new single-family dwelling, which is currently under construction;
2. The Property is located in the Residential R-A District;
3. The Property fronts on Duck Pond Road;
4. There is a maintenance easement located between the Property and the street line for Academy Lane;
5. There is no access from the Property to Academy Lane;
6. The Applicant is appealing the Zoning Officer's denial of their Zoning Permit to construct an in-ground pool, patio and sports court on the Property;
7. The Board has elected to exercise its jurisdiction under N.J.S.A. 40:55D-70(a);
and
8. The public was invited to speak after testimony was given and no members of the public wished to be heard or ask 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:

9. The Above "**WHEREAS**" clauses are incorporated herein as if set forth at length;

10. The Board agrees with the testimony from the Applicant and the Board Planner that the Property fronts on Duck Pond Road and that, since the Property has no access to Academy Lane, the portion of the Property facing Academy Lane is the rear yard of the Property.
11. The Board finds that the definitions for Front Yard, Rear Yard and Side Yard in the Borough Code are silent regarding how yards are to be measured, whether parallel or perpendicular from a building to a lot line.
12. The Board finds that that Moskowitz Book is a credible source for land use definitions.
13. The Board agrees with the Applicant and the Board Planner that, since the Borough Code is silent, the Moskowitz Book definition for Front Yard, Side Yard and Rear Yard should be used to determine that the respective yards should be measured perpendicular from the building to the lot line.
14. The Board agrees with the depiction of the rear yard and side yard shown on the Applicant's Exhibit A-2 and finds that the Applicant's proposed in-ground pool, patio and sports court are located entirely in the rear yard of the Property and do not encroach into the side yard of the Property.

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 Appeal be granted, reversing the Zoning Officer's Denial of the Applicant's Zoning Permit for the proposed in-ground pool, patio and sports court for the reason that they are not in the side yard.

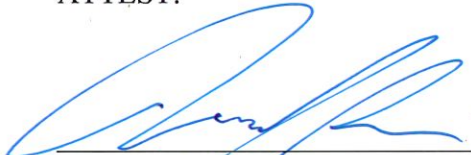
AND IT IS FURTHER RESOLVED that the above Appeal is granted subject to the following condition:

1. Applicant's Engineer shall provide the Borough Engineer and the Borough Zoning Officer with a metes and bounds legal description of the rear yard as depicted in Applicant's Exhibit A-2.

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.

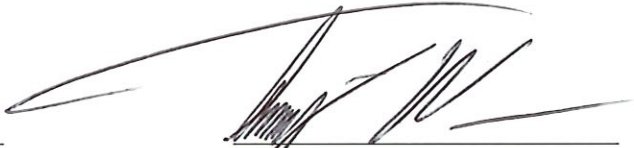
A copy of this Resolution shall be given to the Tax Assessor, Applicant, Borough Clerk, Building Department, Zoning Officer and Borough Engineer.

ATTEST:



MICHAEL GRECO, Secretary

SO APPROVED:



TIMOTHY WOODS, Chairman

BOROUGH OF DEMAREST JOINT PLANNING BOARD

VOTING

BOARD MEMBER	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT
Mr. Adelman	<input type="checkbox"/>	<input 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 type="checkbox"/>	<input checked="" 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 checked="" 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

Public Hearing Exhibit A-2

Colorized Site Plan