

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

RESOLUTION JPB-013-25

VARIANCE APPROVAL

In the Matter of the Application of
29 John Demarest LLC
29 John Street
Block 154, Lot 11

WHEREAS, 29 John Demarest LLC (the “Applicant”) is the applicant and owner of the property located at 29 John Street and designated as Lot 11 in Block 154 on the Tax Maps of the Borough of Demarest (the “Property”); and

WHEREAS, the Applicant’s request for a Zoning Permit to construct a second-floor addition and attached garage addition at the Property was denied by the Zoning Officer of the Borough of Demarest on July 28, 2025 (the “Denial Letter”), stating:

Your zoning permit has been denied.
C Variances required
(1) 2nd floor addition 29.1 feet front lot line where 35 feet is required.
(2) Attached garage addition 29.1 feet from front lot line where 35 feet is required; and

WHEREAS, thereafter, the Applicant filed an Application with the Joint Planning Board of the Borough of Demarest (the “Board”) for “C” Variance approval to construct an addition and renovations to the existing single-family dwelling on the Property, including a new driveway, walkways, rear deck, drainage improvements and related improvements (the “Application”); and

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

- A. Variance Application along with the Application Contact Sheet and attachment from Axis Architectural Group with calculations of the improved lot coverage, building coverage and floor area ratio/livable floor area (the “Application”);
- B. Affidavit of Representation executed July 5, 2025;
- C. Correspondence from Capizzi Law Offices regarding the Application submission dated August 6, 2025;
- D. Denial Letter dated July 28, 2025;
- E. Architectural Plans prepared by Axis Architectural Group dated April 30, 2025, last revised July 23, 2025, and consisting of two (2) sheets;
- F. Boundary Survey prepared by Schmidt Surveying dated March 31, 2025 and consisting of one (1) sheet;
- G. Affidavit of Service for notices mailed on August 22, 2025 prepared by Capizzi Law Offices; and
- H. Affidavit of Publication on August 24, 2025 prepared by The Record and Herald News; and

WHEREAS, a public hearing was held by the Board on September 3, 2025 in accordance with the Open Public Meetings Act and the Municipal Land Use Law (the “MLUL”), at which time the Applicant, who was present at the hearing and 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. Revised Architectural Plans prepared by Axis Architectural Group dated April 30, 2025, last revised September 3, 2025, and consisting of two (2) sheets, marked as Exhibit A-1;
- B. Google Photo of Property, marked as Exhibit A-2;
- C. Schematic Landscape Plan prepared by Christopher L. Karach dated August 26, 2025, marked as Exhibit A-3;
- D. Planning Exhibit prepared by MJP Land Use Planning LLC dated September 2025 and consisting of five (5) sheets;
- E. Testimony of the Applicant's architect, Piero Gabucci of Axis Architectural Group, whose testimony can be summarized as follows:
 - a. The Property is located at 29 John Street and contains a 1.5 story single-family dwelling;
 - b. The Property is a corner lot and, therefore, has 2 front yards (John Street and Demarest Avenue);
 - c. The dwelling fronts on John Street and has a 1-story garage located towards Demarest Avenue;
 - d. The existing garage is connected to the dwelling via an enclosed former breezeway;
 - e. The Applicant is proposing to expand the 1-car garage into a 2-car garage with a small infill addition in the front and approximately 230 square foot addition on the back;
 - f. The Applicant intends to minimize the impact of the proposed addition by keeping the addition on the second floor, prominently to the western

portion of the existing house, and by maintaining the 1-story over the existing garage and setback from Demarest Avenue;

- g. There is an existing fence on the Property, which will be removed and replaced with a 6 foot high decorative metal fence in the rear of the Property and a 4 foot high decorative metal fence in the Demarest Avenue front yard setback area; the proposed fence will comply with the requirements of the Borough Code, including compliance with the minimum 50% open requirement;
- h. The Applicant is proposing to maintain the traditional, colonial style of the single-family dwelling, which is consistent with other houses in the neighborhood;
- i. The proposed dwelling will comply with the height requirements of the Borough Code, as it will be 29.5 feet in height, whereas 30 feet is permitted;
- j. The Applicant is going to maintain the existing grade of the Property;
- k. The proposed dwelling is relatively modest and will have a livable area of 3,500 square feet (it currently has a livable area of 2,700 square feet);
- l. The floor plan of the existing dwelling is relatively narrow and the proposed rear addition will expand the existing mud room, laundry space and kitchen area. The remaining area is existing and will be reconfigured to fit modern standards of development;
- m. In total, the dwelling will have 5 bedrooms and 3 bathrooms;

- n. The proposed dwelling will use traditional materials (predominately siding with some stone accents) and blend with other homes in the neighborhood;
- o. With regard to the elevations, the Applicant revised the plans to ease the slope of the roof line from the main 2-story portion of the dwelling toward the 1-story garage and enhanced the aesthetics of the Demarest Avenue façade with a dormer and windows in order to minimize any impact of the second floor addition on the Demarest Avenue neighbors;
- p. The Applicant is proposing a variety of new plantings and will work with the Board Engineer to his satisfaction and make any revisions necessary, including relocating any plantings along the Demarest Avenue inside the Property line;
- q. The Applicant is proposing to collect all stormwater from the roof of the structure, including the roof of the existing garage, in a Stormtech Chamber so that there is zero runoff, which exceeds the requirements;
- r. With regard to the John Street setback, the Applicant's average setback survey determined the average setback of the dwellings on John Street is 20 feet; the existing dwelling and proposed second floor addition, which are both located 29.6 feet from John Street, comply with this setback requirement;
- s. The proposed second floor addition will be placed directly over the first floor of the existing dwelling;
- t. If the Board determines that the minimum front yard setback along John Street is 35 feet, the existing dwelling is a pre-existing non-conforming

condition and a variance would be required for the second story addition expansion. To comply without a variance, the Applicant would need to shift the proposed second floor addition 6 feet, toward the rear of the Property. However, this alternative would be difficult to construct and be visually unappealing, as it would result in a cantilever at the back of the dwelling and create an irregular roof condition and at the front of the dwelling;

- u. The existing deck in the rear of the Property will be removed and replaced with a new deck;
- v. The Applicant will comply with all requirements of the Borough Code with respect to building coverage (19.94% is proposed) and residential and parking coverage (24.74% is proposed); and

F. Testimony of Applicant's professional planner, Michael Pessolano of MJP Land Use Planning LLC, whose testimony can be summarized as follows:

- a. The Property is located in a neighborhood of various sizes, designs and massing;
- b. The Property is an undersized, corner lot, which presents challenging development conditions which make strict compliance with the zoning ordinance difficult;
- c. Acquiring additional land to bring the lot size into greater conformance is unrealistic given the lot sizes of the two (2) lots that directly abut the Property;
- d. To the extent the Board determines the Applicant requires a variance with respect to the minimum front yard setback from John Street (if the Board

determines a 35 foot setback is required as opposed to the alternative average front yard setback of 20 feet), this is a longstanding setback condition and qualifies for c(1) hardship approval due to the undersized condition of the lot and position of the existing dwelling on the Property;

- e. The proposed second floor addition, which will be building upward on the Property, instead of outward, is a better alternative than creating additional impervious coverage;
- f. With respect to the “C” variance for minimum side yard abutting a street (Demarest Avenue) – where 35 feet required - the setback of the existing 1-story garage is 12.5 feet and the proposed new rear yard addition, which will be further in from the garage, will be setback 26.67 feet. This represents a longstanding setback condition and qualifies for c(1) hardship variance relief due to the skewed orientation of the existing dwelling on the Property, which results in the existing structure being positioned closer toward Demarest Avenue and further from the side yard to the South (15 feet is permitted; 24.2 feet is existing and permitted). Nevertheless, adequate yard area remains on the Property and any potential perception of an encroachment into the side yard abutting Demarest Avenue will be effectively mitigated by a curtain of green giant arborvitae around the rear of the Property, which will adequately screen the proposed rear yard addition from the neighbors;
- g. To the extent the Board deems a rear yard setback variance necessary for the new rear yard deck, the variance can also be granted based on c(1) variance relief due to the existing shallow depth of the Property or c(2) variance relief

since there are no detriments to replacing an old deck with a smaller deck, which will be virtually invisible to the neighbors given the proposed landscaping in the rear yard;

- h. The Property complies with all impervious coverage, building coverage, residential and parking coverage and height requirements;
- i. There is virtually no detriment of the proposed rear yard addition, which will nestle between the existing garage and the existing dwelling and adequately screened by the proposed landscaping;
- j. There is no substantial detriment caused by the proposed second floor addition, which will comply with all height requirements in the Borough Code and be consistent in size and scale with other homes in the neighborhood;
- k. All of the proposed improvements will be adequately screened by the proposed landscaping and not have any substantial impact on the adjacent properties, the zoning ordinance or the Borough's master plan;
- l. The Applicant will be maintaining the front and side yards in harmony with the existing development pattern, which is consistent with the Borough's plan and vision;
- m. The Application meets the required criteria positive and negative criteria for c(1) or c(2) variance approval and that the Application warrants approval from the Board; and

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

- A. Completeness Letter from the Borough Zoning Officer, Michael Greco (the “Zoning Officer”), dated August 8, 2025, along with testimony from the Zoning Officer;
- B. Board Engineer Report prepared by Colliers Engineering and Design dated August 22, 2025 (the “Board Engineer Report”), along with testimony from Nick Chelius, PE of Colliers Engineering & Design (the “Board Engineer”); and

WHEREAS, the Board, during the course of the hearing, considered the following definition of Front Yard Setback from the Limiting Schedule, District of the Borough Code, Footnote B:

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; and

WHEREAS, the Board and the Board Engineer had extensive questions for the Applicant and the Applicant’s professionals regarding the second-floor addition and the Applicant’s average setback study;

WHEREAS, several property owners were present at the public hearing and asked questions of the Applicant’s professionals regarding the proposed addition, the existing and proposed landscaping and the location, style and height of the proposed fence; 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 hearing on September 3, 2025 are incorporated herein by reference.

2. The Applicant was present at the September 3, 2025 hearing and represented by Matthew Capizzi, Esq. of Capizzi Law Offices.

3. The Property is located at 29 John Street and designated as Lot 11 in Block 154 on the Tax Maps of the Borough of Demarest and is an undersized, mostly regularly shaped parcel.

4. The Property is located on the corner of Demarest Avenue and John Street in the Single Family Residence C Zone (the “R-C Zone”) and consists of 11,734 square feet.

5. The Property is currently occupied by a 1.5 story single-family dwelling with associated 1-story garage, driveway, walkways and other related improvements.

6. Single-family residential dwellings are permitted uses in the R-C Zone.

7. The Property has pre-existing non-conformities with respect to lot area (15,000 square feet is required; 11,734 square feet is existing and proposed) and minimum side yard abutting a street (Demarest Avenue) (35 feet is required; 12.5 feet is existing).

8. By this Application, the Applicant is seeking to renovate and expand the existing 1.5 story dwelling by adding a full second story over the first floor of the existing dwelling and constructing a 2 story addition in the rear of the Property. The Applicant also proposes to convert the existing 1-story, single-car garage into a two-car garage with a small infill addition in the

front of the Property. Additional site improvements include a new driveway, walkways, rear wooden deck, drainage improvements, landscaping, decorative metal fence and other related improvements.

9. The Applicant's existing 1.5 story dwelling is 29.1 feet from John Street and the proposed second story vertical addition, which will be located entirely over the first floor of the existing dwelling, will also be 29.1 feet from John Street.

10. The Applicant is seeking variance relief from the requirements of the R-C Zone pursuant to N.J.S.A. 40:55D-70(c)(1) and (c)(2) with respect to the minimum side yard setback from Demarest Avenue to the rear 2-story addition (35 feet is required; 12.5 feet is existing to the existing 1-story garage and 26.67 feet is proposed to the rear 2-story addition).

11. During the course of the hearing, the Applicant amended their Application to also request variance relief, to the extent the Board deems necessary, from the requirements of the R-C Zone pursuant to N.J.S.A. 40:55D-70(c)(1) and (c)(2) with respect to minimum front yard setback from John Street. However, the Board finds that, instead of a uniform 35 foot front yard setback requirement for John Street, the Property is required to comply with the alternate average front yard setback for John Street, as set forth and as calculated in Footnote B of the Limiting Schedule, District of the Borough Code, which the Board finds will maintain a visually consistent street.

12. The Board agrees with the depiction of the front yard (John Street) shown on the Applicant's Exhibit A-1 and agrees that, based on the Applicant's representation regarding the average setback study of 20 feet, the Applicant's existing 1.5 story dwelling and proposed second story vertical addition do not require a front yard setback variance from John Street.

13. The Board further finds that the proposed second floor addition does not require a variance with respect to height, as it complies with the 30-foot height requirement.

14. During the course of the hearing, the Applicant also amended their Application to request variance relief, to the extent the Board deems necessary, from the requirements of the Borough Code pursuant to N.J.S.A. 40:55D-70(c)(1) and (c)(2) with respect to minimum rear yard setback to the replacement deck. However, the Board finds that no variance is necessary for the proposed deck, as the deck is an accessory structure and complies with the 10-foot setback requirement set forth in the Borough Code.

15. The Board finds that the proposed Application 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 preventing urban sprawl and degradation of natural resources.

16. The Board finds that adequate light air and open space are provided, as the Property complies with the impervious coverage, residential and parking coverage, building coverage, livable floor area, side yard, rear yard and height requirements.

17. The Board finds that the Applicant's undersized corner lot presents challenging development conditions which make strict compliance with the zoning ordinance extraordinarily difficult and create a hardship, which is a function of the Property itself.

18. The Board finds that the proposed addition to the existing single-family dwelling on the Property is relatively modest and that the 1-story infill addition in the rear of the Property and second floor addition over the existing dwelling is consistent with the surrounding neighborhood and provides a significant aesthetic improvement to the Property.

19. The Board finds that the benefits of granting variance for the side yard abutting a street (Demarest Avenue) far outweigh any detriment, as the proposed minor 1 story addition will be located behind the existing garage in the rear of the Property and will be entirely screened from the surrounding properties by the proposed landscaping. Additionally, the Board finds that the proposed 1 story rear addition, which will be setback 26.67 feet from Demarest Avenue, will not have any substantial impact on the surrounding properties as it will not be protruding any further than the existing garage, which is setback 12.5 feet from Demarest Avenue.

20. The Board finds that the "C" variance requested by the Applicant for setback regarding side yard abutting a street (Demarest Avenue) can be granted under the c(1) or c(2) criteria.

21. 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 addition, but from the entire roof area, where none exist today;

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

23. 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.

24. The Board finds that the Applicant has proven its entitlement to variance approval under N.J.S.A. 40:55D-70(c)(1) and (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) The Applicant shall provide the Board Engineer with the necessary proofs to substantiate, to the satisfaction of the Board Engineer, the height of the roof; neither the existing nor the proposed roof shall exceed 30 feet.
- b) The Applicant shall provide the Board Engineer with the necessary proofs to substantiate, to the full satisfaction of the Board Engineer, the minimum front yard setback of the Property, which shall be established by an average setback study of all legally existing principal houses 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 as defined in the Limiting Schedule, District of the Borough Code, Footnote B.
- c) The Applicant shall revise the architectural plans to show that the existing fence on the Property will be replaced with a decorative metal fence (instead of a white vinyl fence), which shall comply with the height requirements set forth in the Borough Code.
- d) The Applicant shall revise the landscape plan to the satisfaction of the Board Engineer.
- e) The Applicant shall provide the Board Engineer with a site plan containing a tree location and tree removal plan and shall ensure that no trees are removed from any adjacent property. The 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 Engineer Report, as well as any stipulations made during the hearing on the Application and all conditions enumerated herein.

- 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.
- 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 Property shall be kept neat during all construction and all construction hours shall strictly adhere to the ordinances of the Borough of Demarest.
- k) The Applicant shall post all fees and deposits as required by applicable ordinances of the Borough of Demarest which shall include payment of all outstanding taxes and the payment of all fees to the Borough's professionals for the review of the within Application and the inspection of work to be performed incidental thereto. The Applicant shall pay any fees or additional escrow deposits which may be due and owing within ten (10) days of notification.
- l) All construction, use and development of the Property shall be in conformance with the plans approved by the Board. In the event the Applicant or its successors or assigns construct or attempt to construct any improvement in conflict with or in violation of the terms of this approval, the Board hereby reserves the right to withdraw, amend or replace the instant approval. The Applicant's failure to comply with this condition may be the cause for the issuance of a Stop Work Order, penalties and/or 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.

- m) 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.
- n) 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.
- o) The Applicant shall provide an as-built survey to the Board Engineer prior to the issuance of a final certificate of occupancy.
- p) The Applicant's failure to comply with any condition set forth with this Resolution shall constitute a failure of the conditions of this approval and may be the cause for the issuance of a Stop Work Order, penalties and/or 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 October 15, 2025.

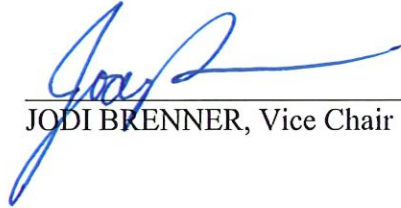
A copy of this Resolution shall be given to the Tax Assessor, Applicants, Borough Clerk, Building Department, Zoning Officer and Borough Engineer.

ATTEST:



MICHAEL GRECO, Secretary

SO APPROVED:



JODI BRENNER, Vice Chair

BOROUGH OF DEMAREST JOINT PLANNING BOARD

VOTE TO APPROVE THE APPLICATION

BOARD MEMBER	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT	NOT ELIGIBLE
Mr. Adelman	✓	☐	✓	☐	☐	☐	☐
Mr. Alevrontas	☐	☐	☐	☐	☐	✓	☐
Vice Chair Brenner	☐	☐	✓	☐	☐	☐	☐
Ms. Chin	☐	☐	✓	☐	☐	☐	☐
Ms. DiSclafani	☐	☐	✓	☐	☐	☐	☐
Councilwoman Fox	☐	✓	✓	☐	☐	☐	☐
Ms. Hamilton	☐	☐	✓	☐	☐	☐	☐
Ms. Mamdani	☐	☐	☐	☐	☐	✓	☐
Mayor Bernstein	☐	☐	✓	☐	☐	☐	☐
Chair Woods	☐	☐	☐	☐	☐	☐	✓

Date of Approval: September 3, 2025

VOTE TO APPROVE THE RESOLUTION

BOARD MEMBER	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT
Mr. Adelman	☑	☐	☑	☐	☐	☐
Vice Chair Brenner	☐	☐	☑	☐	☐	☐
Ms. Chin	☐	☑	☑	☐	☐	☐
Ms. DiSclafani	☐	☐	☑	☐	☐	☐
Councilwoman Fox	☐	☐	☑	☐	☐	☐
Ms. Hamilton	☐	☐	☑	☐	☐	☐
Mayor Bernstein	☐	☐	☑	☐	☐	☐

Date of Adoption: October 15, 2025