

**BOROUGH OF DEMAREST**  
**BERGEN COUNTY, NEW JERSEY**

**ORDINANCE # 1025-15**

**AMENDING CHAPTER 175-ZONING SO AS TO:**

**REVISE LIMITING SCHEDULE, IMPROVED LOT COVERAGE;**

**REVISE LIMITING SCHEDULE, HEIGHT OF RESIDENTIAL DWELLINGS;**

**DEFINE DEMOLITION / NEW CONSTRUCTION;**

**REGULATE FENCES THAT BORDER PUBLIC STREETS;**

**AMEND THE DEFINITION OF IMPERVIOUS SURFACES; and AMEND THE FEE SCHEDULE FOR  
VARIANCE AND CONDITIONAL USE APPLICATIONS**

**WHEREAS**, it appears that Borough of Demarest Zoning Board of Adjustment has petitioned the Mayor and Council of the Borough to amend Section 175-Zoning of the Municipal Code of the Borough of Demarest to: (1) add a limitation on Improved Lot Coverage, (2) increase the allowable roof height of homes in the Residence A, BB and B zones, (3) modify the ordinance relating to fences to address yards that border public streets and to define certain related terms, (4) add a definition of Demolition/New Construction, and (5) amend and clarify the definition of Impervious Surface;

**WHEREAS**, the Zoning Board of Adjustment has indicated that certain proposed improvements which do not fall within the definitions of Building Coverage or Impervious Surface may nonetheless affect or impair the intent and purposes of the Municipal Land Use Act and/or the Borough's Master Plan, and has requested that the Borough regulate such improvements by adopting a limitation on Improved Lot Coverage; and

**WHEREAS**, the current restrictions on roof height were adopted by way of Ordinance 662 on April 17, 1989, and modified by Ordinance 774 on April 15, 1996 to impose a 30-foot maximum dwelling height throughout the Borough; the demands of current architectural and engineering design require that residential dwellings in the larger A, BB and B zones be taller to improve construction quality and aesthetic appeal; and the Zoning Board of Adjustment has indicated that it has been required to consider many applications seeking variance solely for bulk building height, imposing unnecessary economic hardship upon property owners seeking to make improvements;

**WHEREAS**, the Zoning Board of Adjustment has indicated that the ordinance regulating fences neglects to specifically address fences on yards that border public streets, and certain relevant terms are not defined, resulting in inconsistent and unpredictable enforcement relating to newly-installed fences on residential properties;

**WHEREAS**, the Zoning Board of Adjustment has indicated that the ordinance fails to address when an application for a building permit to renovate an existing structure should be treated as a permit for demolition and new construction, resulting in inconsistent and unpredictable treatment of certain applications for building permits; and

**WHEREAS**, the Governing Body now seeks to amend Chapter 175-Zoning of the Municipal Code of the Borough of Demarest to adopt the aforesaid recommendations of the Zoning Board of Adjustment,

**NOW THEREFORE, BE IT HEREBY ORDAINED** by the Mayor and Council of the Borough of Demarest, County of Bergen and State of New Jersey, that the following amendments be made to the Municipal Code of the Borough of Demarest:

Section 1: Amendment of Zoning Ordinance.

A. The Limiting Schedule shall be amended to add the following limitation on Improved Lot Coverage:

District	Bulk
	Maximum Improved Lot Coverage
Residence (A)	30%
Residence (BB)	30%
Residence (B)	30%
Residence (C)	30%
Residence (D)	30%

The following definition shall be added to Section 175-27:

**IMPROVED LOT COVERAGE:** The part of the site that is covered by Buildings, Accessory Buildings or Swimming Pools; impervious or pervious tennis courts, basketball courts, decks, patios, fire pits, 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.

The Limiting Schedule shall be further amended to change the permitted Average Building Height in certain zones as follows:

District	Bulk	
	Average Height of Building	
	Stories	Feet
Residence (A)	--	33
Residence (BB)	--	30
Residence (B)	--	30

This section expressly prohibits more than fifty percent (50%) of the roof area exceeding the specified Average Height, and it expressly prohibits flat roofs above 30 feet in all zones.

In all other respects, the limiting schedule of the Municipal Code of the Borough of Demarest shall remain unchanged.

B. Section 175-24 (Fences) shall be amended to further clarify and regulate the installation of new fences on residential properties as follows:

- No fence may be erected in excess of 6 feet
- No fence may be erected within 10 feet of the curb line or edge of pavement of any street (whether in front, side or rear yards)
- Any fence erected within 25 feet of any street, as defined herein (whether in front, side or rear yards) may be no higher than 4 feet and must be at least 50% open
- Fence heights will be measured from the Average Natural Contour (as defined in the Zoning Ordinance), excluding berms and swales
- Fences may not be erected on walls, except that fences may be erected on retaining walls provided the combined height of the retaining wall and fence do not exceed the applicable fence height limit.

The following definitions shall be added to Section 175-27:

**FENCE:** Any substantially vertical structure, wall, or barrier, regardless of material composition, but excluding vegetation and living fences, whether supported by a foundation, footing, piling, stake, post, aboveground member, or whether self-supporting, to prevent escape or intrusion, to mark a boundary or the proximity thereof to ensure privacy, or to act as a support for vegetation.

**LIVING FENCE:** Plantings created by human effort consisting of the growth or placement of hedges, trees, bushes, or any other plants, or any combination thereof, creating a vision-impairing barrier or boundary between properties.

C. Section 175-27 shall be amended to add the following definitions:

**DEMOLITION / NEW CONSTRUCTION:** An altered structure shall be deemed new construction for all development, building and zoning purposes if: (i) the square footage of the foundation of the altered structure is increased by 50% or more when compared to the square footage of the foundation of the structure prior to alteration, or (ii) the floor area of the altered structure (meaning the livable floor area plus basements, garages and other unheated areas) is increased by more than 50% of the floor area (meaning the livable floor area plus basements, garages and other unheated areas) of the structure prior to alteration.

**IMPERVIOUS SURFACE:** A surface covered with a layer of material that is highly resistant to water infiltration. Examples of impervious surfaces include asphalt, brick, pavers, compacted surfaces, including, stone roadways, driveways, parking areas, walkways, patios' buildings, concrete, metal and most structures. ..

D. Section 175-33 shall be amended to be entitled "Fees and Escrow Deposits for Variance and Conditional Use Applications," and to read in its entirety as follows:

An applicant for a variance or conditional use shall remit to the Borough of Demarest the following nonrefundable fees to pay Borough expenses in connection with the application:

- A. Variance pursuant to N.J.S.A. 40:55D-70a or b: \$200
- B. Variance pursuant to N.J.S.A. 40:55D-70c: \$100 per variance requested, with \$200 minimum
- C. Variance pursuant to N.J.S.A. 40:55D-70d: \$500
- D. Conditional use: \$500

The application shall be accompanied by an escrow deposit in the following amount:

- E. Variance pursuant to N.J.S.A. 40:55D-70a or b: \$500
- F. Variance pursuant to N.J.S.A. 40:55D-70c: \$250 per variance requested, with \$500 minimum
- G. Variance pursuant to N.J.S.A. 40:55D-70d: \$1000
- H. Conditional use: \$1000

The escrow deposit posted hereunder shall remain on deposit with the Borough until the Attorney for the Zoning Board of Adjustment certifies that all vouchers for services rendered in connection with the preparation and publication of a resolution memorializing the action of the Zoning Board of Adjustment with respect to the application have been paid in full, after which time any balance remaining shall be refunded upon issuance of a building permit.

## Section 2. Severability.

If any section, subsection, paragraph, sentence or other part of this Ordinance is adjudged unconstitutional or invalid, such judgment shall not affect or invalidate the remainder of this Ordinance, but shall be confined in its effect to the section, subsection, paragraph, sentence or other part of this Ordinance directly involved in the controversy with respect to which said judgment shall have been rendered, and all other provisions of this Ordinance shall remain in full force and effect.

## Section 3. Inconsistent Ordinances Repealed.

All ordinances or parts of ordinances which are inconsistent with the provisions of this Ordinance are hereby repealed, but only to the extent of such inconsistencies.

Section 4. Effective Date.

This Ordinance shall take effect immediately upon final adoption and publication in the manner prescribed by law, and its provisions shall apply to all building permits applied for on or after the date of adoption and publication hereof as prescribed by law.

BOROUGH OF DEMAREST

ATTEST: By: \_\_\_\_\_  
RAYMOND J. CYWINSKI, Mayor

\_\_\_\_\_  
Susan Crosman, RMC, Borough Clerk

Introduced: \_\_\_\_\_, 2015

Adopted: \_\_\_\_\_, 2015