

JOINT PLANNING BOARD OF THE  
BOROUGH OF DEMAREST

RESOLUTION JPB-006-25

REQUEST FOR INTERPRETATION  
N.J.S.A. 40:55d-70 (b)

In the Matter of the Zoning Officer Request for Interpretation  
Livable Floor Area

**WHEREAS**, on or about March 25, 2025, Mr. Michael Greco, Zoning Officer of the Borough of Demarest (the "Zoning Officer"), filed a Request for Interpretation with the Joint Planning Board of the Borough of Demarest (the "Board") arising from reoccurring issues withing the Borough Zoning Ordinance that has resulted in inconsistent interpretations and enforcement in the Borough of Demarest (the "Borough") concerning Livable Floor Area; and

**WHEREAS**, the Board is empowered pursuant to N.J.S.A. 40:55D-70(b) to "[h]ear and decide requests for interpretation of the zoning map or ordinance or for decisions upon other special questions upon which such board is authorized to pass by any zoning or official map ordinance, in accordance with this act;" and

**WHEREAS**, the Zoning Officer requested the Board interpret the following questions: a) Should garages be included in Livable Floor Area? Does it depend on whether they are heated or finished?; b) Should basements be included in Livable Floor Area calculations? If finished or heated, does that change their

status?; and c) Should substantially above-grade basements be treated differently? Should we establish a threshold (i.e., percentage above grade) to define whether a basement qualifies for inclusion?; and

**WHEREAS**, such determination 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 April 2, 2025 in accordance with the Municipal Land Use Law ("MLUL") and the Open Public Meetings Act; and

**WHEREAS**, at the public hearing the Zoning Officer appeared and presented testimony and evidence regarding various and inconsistent interpretations and enforcement in the Borough regarding Livable Floor Area and the Board took testimony and evidence into the record as set forth herein; and

**WHEREAS**, at the public hearing the following was also considered:

- A. Correspondence submitted by the Zoning Officer dated March 25, 2025, which presented a history of inconsistent interpretations of Livable Floor Area; and
- B. Planning Memorandum from Darlene Green, PP, AICP, the Board's Planning Consultant (the "Board Planner"),

dated March 31, 2025 and consisting of one (1) sheet;  
and

- C. Testimony of the Board Planner regarding the history of Floor Area Ratio ordinances, the intent of Floor Area Ratio ordinances to regulate the scale and massing of development and the contradiction in the Borough Code between Floor Area Ratio and Livable Floor Area Ratio; and

**Whereas,** the Board, during the course of the hearing, considered the definition of Livable Floor Area in Section 175-27B. of the Borough Code, which is:

The aggregate area of all floors included within the outer walls of a building, excluding basements, garages, and other unheated areas, and including only such floor area under a sloping ceiling for which the headroom is not less than five feet six inches, and then only if at least 75% of such floor area has a ceiling height of not less than seven feet six inches and if any such floor that is situated above another story has access to the floor below by a permanent built-in stairway and has a permanent, complete floor and a means of heating to 70° F. at all times; and

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

The aggregate area of all floors within the outer surface of a building's exterior walls, excluding attics, garages and basements or cellars that

are at least 70% below average grade;  
and

**Whereas,** the definition of Livable Floor Area in the Borough Code has led to contradictory and inconsistent applications and confusion in the Borough regarding whether heated and unheated garages and basements should be included in the definition and is open to interpretation; and

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

1. The Board has elected to exercise its jurisdiction under N.J.S.A. 40:55D-70(b); and
2. 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, BE IT RESOLVED** that the Board of the Borough of Demarest makes the following conclusion of law with respect to the within Request for Interpretation:

3. The Above "**WHEREAS**" clauses are incorporated herein as if set forth at length;
4. The Board finds that the definition of Livable Floor Area in the Borough Code does not include basements that are at least 70% below average grade whether heated or unheated;

5. The Board finds that the definition of Livable Floor Area in the Borough Code does not include garage spaces whether heated or unheated; and
6. The Board finds that the definition of Livable Floor Area in the Borough Code does not include any other part of a principal or accessory structure that is not heated and not livable.

**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 April 2, 2025.

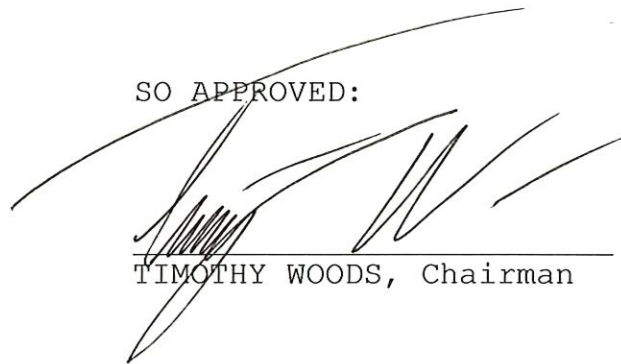
A copy of this Resolution shall be given to the Tax Assessor, Applicant, Borough Clerk, Building Department, Zoning Officer and Borough Engineer.

ATTEST:



MICHAEL GRECO, Secretary

SO APPROVED:



TIMOTHY WOODS, Chairman

BOROUGH OF DEMAREST JOINT PLANNING BOARD

VOTING

<u>BOARD MEMBER</u>	<u>MOTION</u>	<u>SECOND</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAIN</u>	<u>ABSENT</u>	<u>NOT ELIGIBLE</u>
Mr. Todd Adelman							<b>X</b>
Mr. Theodore Alevrontas			✓				
Mayor Brian Bernstein		✓	✓				
Vice Chair Jodi Brenner	✓		✓				
Ms. Kiran Chin			✓				
Ms. Camille DiSclafani			✓				
Councilwoman Daryl Fox			✓				
Ms. Fatemah Mamdani							<b>X</b>
Ms. Mary Hamilton							<b>X</b>
Mr. Timothy Woods			✓				

Date of Adoption: May 7, 2025