

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

**RESOLUTION JPB-012-26**

**APPEAL OF ZONING OFFICER'S DETERMINATION THAT APPELLANT'S  
APPEAL OF THE BUILDING PERMIT ISSUED FOR 3 CENTRAL AVENUE IS  
UNTIMELY**

In the Matter of the Appeal of  
Scott Lavin

**WHEREAS**, Scott Lavin is the appellant and owner (the "Appellant") of the property located at 40 Lincoln Street, which is adjacent to the property that is the subject of the appeal located at 3 Central Avenue and designated as Lot 140 in Block 65 on the Tax Maps of the Borough of Demarest (the "Property"); and

**WHEREAS**, on October 16, 2025, the Appellant, through counsel, John Lamb of the law firm Beattie Padovano LLC, submitted correspondence to the Zoning Officer of the Borough of Demarest (the "Zoning Officer") and the Construction Official of the Borough of Demarest (the "Construction Official") questioning the height of the residence being constructed and requesting that the Zoning Officer and Construction Official "...immediately revoke the permits and issue a stop work order until this matter can be properly evaluated" (the "October 16, 2025 Letter"); and

**WHEREAS**, on November 4, 2025, the Appellant, through counsel, John Lamb of the law firm Beattie Padovano LLC ("Appellant's Counsel"), submitted correspondence to the Zoning Officer enclosing an application to appeal the zoning decision and requesting an interpretation of maximum height in the R-D Zone where the Property is located (the "Appeal"); and

**WHEREAS**, on November 5, 2026, Appellant’s Counsel was notified of and attended an interpretation request regarding building heights in the Borough Zoning Ordinance which was already pending before the Borough of Demarest Planning Board (the “Board”); and

**WHEREAS**, on November 13, 2025, Appellant’s Counsel submitted correspondence to the Board “...continu[ing] to request a stay of our Appeal while further investigation is made by submissions of the information the Zoning Officer has requested;” and

**WHEREAS**, the Appellant’s appeal concerning the issuance of a building permit for the Property was denied by the Zoning Officer on December 15, 2025 (the “Denial Letter”), stating:

After considering your correspondence, the application and issued permit, as well as conferring with the Borough’s engineer and obtaining an as built survey from the developer, we’ve determined that (i) your appeal is untimely and (ii) even if timely, the structure has been built in accordance with the submitted plans and building permit.

Your letter requesting the building permit be revoked due to alleged building height elevation and grade violations was dated October 16, 2025. However, we’ve confirmed that the roof was constructed as early as mid-August making your October 16, 2025 letter objecting to the issuance of the building permit untimely.

Notwithstanding, we have confirmed that the roof elevation was built in compliance with the building permit. Additionally, please see attached survey submitted with the building permit application and as-built survey evidencing the grades are also compliant, along with the Borough engineer’s comparison of same; and

**WHEREAS**, thereafter, on December 24, 2025, Appellant’s Counsel advised they would be proceeding with the Appeal to the Board pursuant to N.J.S.A. 40:55D-70(a) concerning the Zoning Officer’s determination that Appellant’s appeal of the building permit issued for the Property is untimely; 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 [A]ppellant 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 public hearings on May 6, 2026 and June 3, 2026 in accordance with the Municipal Land Use Law (“MLUL”) and the Open Public Meetings Act, at which time the Appellant requested the Board determine whether his appeal of the building permit issued for the Property is untimely; and

**WHEREAS**, at the public hearings the Appellant: (a) presented proof of notice and publication as required by law; and (b) submitted the following evidence to the Board in support of Appellant’s Appeal including:

- A. Cover letter from Appellant to Zoning Officer dated April 15, 2026, including the following exhibits:
  - a. As-Built Survey of the Property prepared by Lantelme, Kurens & Associates, PC dated November 13, 2025;
  - b. Letter to the Borough Building Department prepared by Lantelme, Kurens & Associates, PC dated November 6, 2025 regarding the measured elevation of the structure built on the Property;
  - c. Email correspondence from Nick Chelius, PE of Colliers Engineering & Design (the “Board Engineer”) to the Zoning Officer regarding his review of the height of the principal building and cabana on the Property; and

- d. Notice of Appeal prepared by Appellant to all Property Owners within 200 feet of the Property dated April 20, 2026; and
- e. Testimony from Appellant with can be summarized as follows:
  - i. The Appeal relates to the height of the dwelling constructed on the Property.
  - ii. The building permit was issued on or around May 15, 2025.
  - iii. The relevant issue is when the alleged height condition was reasonably noticeable or reasonably discoverable.
  - iv. At the time the building permit was issued, there was no clear or meaningful notice of the alleged height condition from ground-level observations.
  - v. Once the dwelling was constructed, Appellant acted diligently, including speaking with neighbors and retaining counsel.
  - vi. The October 16, 2025 Letter was the first time Appellant, through counsel, contacted the Zoning Officer regarding their complaint regarding the height of the dwelling on the Property.
  - vii. The height of the structure affects the scale of the neighborhood.
  - viii. Appellant seeks a determination from the Board that the Appeal is timely and requests that the Board hear the Appeal on the merits, including the issue of roof height.
  - ix. Strict application of the 20-day appeal period from when the permit was first issued would be inappropriate because the nature and extent of the alleged height issue were not known earlier.

- x. Recent caselaw, Lema v. Borough of Garwood, supports the expansion of the 20-day appeal period beyond when the building permit was first issued to when someone knew or should have known of the height issue regarding the dwelling.
- xi. Appellant was away on vacation in August 2025 when the roof of the dwelling on the Property was constructed and was not aware of the height issue until he returned from vacation and spoke with neighbors.
- xii. Appellant has no way of knowing the actual height of the dwelling being constructed and only had a general impression that it appeared too high.
- xiii. The peak of the dwelling on the Property does not face Appellant's house and is not easily visible from any vantage point.
- xiv. Appellant does not have the equipment to survey the height of the dwelling on the Property.
- xv. It is difficult for a layperson to estimate the height of a structure by sight; and

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

- A. Photograph of the dwelling on the Property depicting the construction of the roof taken by the developer's contractor dated August 15, 2025, marked as Board Exhibit 1; and
- B. Testimony from the Board Engineer, who confirmed that it would be difficult for the public to definitively determine the height of the dwelling constructed on the Property without elevation calculations or the as-built survey; and

**WHEREAS**, an adjoining property owner appeared at the public hearings to express concerns regarding the ability of the public to determine the height of the building when the building is framed and stated Appellant should be given more latitude with the timing of the Appeal, especially given that the Property was not fully graded in August 2025 when the roof was constructed and given that there is no practical way Appellant could have determined the height of the dwelling without elevation calculations; and

**WHEREAS**, the current owner of the Property appeared at the June 3, 2026 public hearing to express concerns regarding the timeliness and fairness of the Appeal given that he just recently moved into the dwelling and relied in good faith on the Final As-Built Survey dated May 21, 2026 and Certificate of Occupancy issued for the Property dated May 11, 2026, which was also marked as Exhibit, as confirmation that the dwelling was constructed in compliance with the Borough's Zoning Code when he purchased the Property; 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 Appeal:

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 by the Board and members of the public at the public hearings on May 6, 2026 and June 3, 2026 are incorporated herein by reference.

2. The Property that is the subject of the Appeal is located at 3 Central Avenue and designated as Lot 140 in Block 65.

3. A building permit for the construction of a new single-family dwelling was issued for the Property on May 15, 2025.

4. The roof of the dwelling on the Property was constructed by August 15, 2025.

5. The October 16, 2025 Letter was Appellant's first contact with the Borough regarding concerns regarding the height of the dwelling.

6. The only issue being considered by the Board at this time is the timeliness of Appellant's Appeal.

7. The Board carefully considered the issue regarding the builder's right to rely on permits and inequities regarding when a layperson should have been aware of the height concern regarding the dwelling.

8. The Board finds that the 20-day appeal period under N.J.S.A. 40:55D-72(a) for appealing the Zoning Officer's issuance of the building permit should not run from May 15, 2025, as Appellant did not receive direct notice of the permit and would not know or should have known that the building permit was issued.

9. The Board relies on Lema v. Borough of Garwood A-3086-23 (App. Div. Nov. 21, 2025), as well as Harz v. Borough of Spring Lake, 234 N.J. 317 (2018), and finds that the time for notice of the appeal begins to run when the interested party knew or should have known of the issuance of the building permit and height concern regarding same.

10. The Board finds that strict application of the 20-day appeal period from when the building permit was issued on May 15, 2025 would be inappropriate because the nature and extent of the alleged height issue would not be known until after the roof was constructed.

11. Further, the Board finds that it would be difficult for a layperson to estimate the height of a structure by sight, particularly where the magnitude of the alleged deviation is not readily apparent.

12. The Board finds that, once the alleged height issue became reasonably apparent to Appellant, Appellant acted diligently, including by retaining counsel, to notify the Borough of his concerns.

13. The Board finds that the merits of Appellant's Appeal should be heard in light of the difficulty in determining when the height issue was reasonably discoverable.

**NOW, THEREFORE, BE IT FURTHER RESOLVED** by the Planning Board of the Borough of Demarest, based upon the above findings of fact and conclusions of law, that the within Appeal be granted, reversing the Zoning Officer's determination that Appellant's Appeal regarding the issuance of a building permit for the Property is untimely and permitting Appellant to proceed with a public hearing on the merits regarding the issue raised by Appellant regarding the roof height of the dwelling on the Property.

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

1. Appellant shall comply with all notice requirements for the public hearing on the merits of the roof height issue; and
2. Appellant shall submit all documents it intends to rely on to the Board at least ten (10) days prior to the public hearing.

**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 July 1, 2026.

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:



KIRAN CHIN, Vice Chair

**BOROUGH OF DEMAREST JOINT PLANNING BOARD**

**VOTE THAT APPELLANT'S APPEAL REGARDING  
3 CENTRAL AVENUE IS UNTIMELY**

BOARD MEMBER	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT	N/E
Mr. Adelman				✓			
Ms. Brenner	✓		✓				
Vice Chair Chin			✓				
Ms. DiSclafani						✓	
Councilman Jiang							✓
Mr. Lerner				✓			
Dr. Mamdani		✓	✓				
Mr. Yu ( <i>Alt #1</i> )				✓			
Ms. Hamilton ( <i>Alt #2</i> )				✓			
Mr. Alevrontas ( <i>Alt #3</i> )						✓	
Mayor Bernstein							✓
Chair Woods							✓

Date of Approval: June 3, 2026

**VOTE TO APPROVE THE RESOLUTION**

<b>BOARD MEMBER</b>	<b>MOTION</b>	<b>SECOND</b>	<b>YES</b>	<b>NO</b>	<b>ABSTAIN</b>	<b>ABSENT</b>	<b>N/E</b>
Mr. Adelman	✓		✓				
Mr. Lerner		✓	✓				
Mr. Yu ( <i>Alt #1</i> )			✓				
Ms. Hamilton ( <i>Alt #2</i> )			✓				

Date of Adoption: July 1, 2026