

**AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 205, "LAND USE"
OF THE CODE OF THE TOWNSHIP OF NORTH BRUNSWICK,**

BE IT ORDAINED, by the Township Council of the Township of North Brunswick, County of Middlesex and State of New Jersey, that Chapter 205, Land Use, be amended and supplemented as follows:

Article II Zones; Zoning Map; Schedule of District Regulations; Boundaries

§ 205-3 Establishment of Zones shall be amended as follows:

R-4 Single-Family Residential

Article III Word Usage; Definitions

§ 205-7 Definitions shall be amended to include the following revised or new definitions:

BUILDING COVERAGE

The proportion of the total lot area expressed as a percent that is covered by the horizontal area measured within the outside of the exterior walls of the ground floor of all buildings on a lot, including the area under the roof of any structure supported by columns but not having walls. In the event that any other floor of a building extends beyond the footprint of the ground floor, the floor overhang area shall be added to the square footage of the ground floor in order to compute building coverage.

BUILDING HEIGHT

The vertical distance measured from the mean elevation of the finished grade at the front of the building to the mean height of the roof. Chimneys, spires, water towers, elevator penthouses, tanks and similar projections, other than signs, shall not be included in calculating "building height." The building height of an accessory building other than a detached garage shall be measured from the mean ground level at the foundation to the top of the roof.

NONCONFORMING LOT

A lot, the area, dimension or location of which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but fails to conform to the requirements of the zoning district in which it is located by reason of such adoption, revision or amendment.

NONCONFORMING STRUCTURE

A structure, the size, dimension or location of which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption, revision or amendment.

NONCONFORMING USE

A use or activity which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption, revision or amendment.

RAISED DECK

A deck for which a guardrail is required by the Uniform Construction Code.

ROOF

A structure forming the outside top covering of a building which provides protection from animals and weather, such as rain, snow, heat, wind or sunlight, and supported by structural supports at grade, such as walls, columns, pillars or similar compression members. An elevated open deck or landing shall not be considered a roof for the purpose of this Chapter.

TREE HOUSE

An accessory structure which is customarily incidental and subordinate to the principal residential use of the lot, and is built around a tree or placed up in the branches of the tree, and utilized mainly for children to play in and not for residential purposes.

Article IV General Regulations

§ 205-9 Conformity required shall be amended and supplemented as follows:

- A. No building or structure shall hereafter be erected, and no existing building or structure shall be moved, structurally altered, added to, enlarged or rebuilt, nor shall any land be designed, used or intended to be used for any purpose other than those included among the uses listed as permitted uses in each zone, or in accordance with a variance granted pursuant to N.J.S.A. 40:55d-70 et seq., nor shall any open space contiguous to any building be encroached upon or reduced in any manner, except in conformity with the yard, lot area, building location, percentage of lot coverage, off-street parking space and such other regulations designated in this Chapter for the zone in which such building or space is located, or in accordance with a variance granted pursuant to N.J.S.A. 40:55d-70 et seq. In the event of any such unlawful encroachment or reduction, such building shall be deemed to be in violation of the provisions of this Chapter, and no Certificate of Occupancy shall be issued therefor.
- B. All developments resulting from subdivision, site plan or variance approvals shall be consistent with such approvals, and shall comply with design, performance standards and conditions imposed by the approving authority as shown on the approved plat/plan and/or included in the resolution adopted by the approving authority. Conditions contained in a resolution or court order approving an application for development, and conditions shown

on any map that is part of the development approval shall be deemed to be continuing conditions, and the property owner or subsequent transferees of the real property shall be responsible for the maintenance, replacement and repair of any improvements required by such conditions, including, but not limited to:

- (1) Detention and retention basins, berms and landscaping, including the replacement of all trees and shrubs that fail to survive;
- (2) Fencing, shielding and foot-candles of exterior lighting;
- (3) Curb stops, traffic circulation and directional signage; and
- (4) Dumpsters and dumpster enclosures, pavement markings, etc.

This requirement also applies to conditions on the property that prohibit specific uses, as well as conditions that are operational in nature, including, but not limited to:

- (1) Hours of operation;
- (2) Types of vehicles that can be stored or parked on the site;
- (3) Hours of the day that deliveries may be made;
- (4) The maximum size of delivery vehicles servicing the site;
- (5) The maximum floor space that may be occupied by a specific type of use on the property;
- (6) Limitations on the outside display of merchandise for sale, and limitations on outside storage of products, materials, pallets or containers.

Violation of any standard or condition imposed by the approving authority is subject to the enforcement provisions of § 205-137.1.

§ 205-9.1 shall be named Development Applications; Approval Required and replaced in its entirety as follows:

- A. Except as exempted by the provisions of this Chapter, a subdivision and/or site plan approval shall be required prior to:
 - (1) Division of any parcel of land into two or more lots, tracts, parcels or other divisions of land for sale or development.
 - (2) Commencement of use or change in use of any parcel of land, building or structure.

- (3) Erection, construction, reconstruction, alteration, conversion or installation of a structure or building.
- B. No Construction Permit shall be issued for any building or use or for the enlargement of any building or use unless a site plan is first submitted and approved in accordance with the provisions of Article XXVIII of this Chapter, and no Certificate of Occupancy shall be given unless all construction conforms to the approved plan.

§ 205-23 Setback encroachments shall be deleted in its entirety and replaced as follows:

The following encroachments into the required yard setback shall be permitted:

- A. Ordinary projections allowed by the State Uniform Construction Code, including, but not limited to, cornices and eaves, rain gutters, bay windows, awnings, belt courses, chimneys, flues, and buttresses, provided that such structures do not project more than three (3) feet into the required yard setback.
- B. Stairs may extend into the required yard setback, provided that they are no closer than five (5) feet to the side or rear property line, and no closer than three (3) feet to the front property line.
- C. Handicap ramps may extend into the required yard setback, provided that they are no closer than three (3) feet to the side or rear property line.
- D. A landing area at the top of stairs leading to an entry of the dwelling may encroach in the required setback areas, subject to the following requirements:
 - (1) The entry shall serve the first habitable floor.
 - (2) The total area of any landing serving a single entry shall not exceed 40 square feet, and no landing shall be located closer than five (5) feet to a property line.
 - (3) The landings and stairs shall be unroofed.

§ 205-26 Front Yards on corner lots shall be amended as follows:

All yards facing on a public street shall be considered front yards and shall conform to the minimum front yard requirements for the zone for both intersecting streets, for both principal and accessory buildings and structures, and the remaining yards shall be considered side yards for the purposes of this Chapter.

§ 205-26.1 shall be named “Accessory buildings and structures” and be amended and supplemented as follows:

Unless elsewhere specified in this Chapter, accessory buildings and structures shall conform to the following regulations:

- A. An accessory building or structure attached to a principal building shall comply in all respects with yard requirements of this Chapter for the principal building.
- B. Detached accessory buildings, swimming pools and play courts shall be permitted in the rear yard only, except that accessory buildings may be permitted in the side yard, provided that:
 - (1) The accessory building complies with the minimum required principal building setback from the side and front property lines; and
 - (2) The accessory building does not extend beyond the front foundation wall of the dwelling on the lot.
- C. No accessory building or structure shall be closer than five (5) feet to a rear or side property line, except that grade level patios and similar structures shall maintain a minimum three-foot setback from the side and rear lot lines, provided that the stormwater runoff will be maintained on site and handled using the best management practices as set forth by the New Jersey Department of Environmental Protection, subject to the approval of the Township Engineer. Detached raised decks, including decks surrounding above ground pools, and structures commonly known as “tree houses” shall be setback at least 10 feet from the side and rear property lines plus an additional two (2) feet for every one (1) foot that the height exceeds eight (8) feet. For the purposes of this paragraph, deck height shall be measured from the mean ground level at the foundation to the highest point of the structure.
- D. On through lots, no accessory building or structure erected behind the rear line of the principal building on the lot shall be nearer the street line than the minimum distance specified for a front yard setback on that part of the street which said yard abuts. In the case of through lots or corner lots which abut a county road or state highway, and which do not have a principal building which fronts on such road or highway, the following conditions shall apply:
 - (1) Accessory buildings or structures erected behind the rear line of the principal building on the lot may be located a distance equal to $\frac{1}{2}$ of the required front yard setback in that zone, provided that principal buildings on adjoining lots do not front on such county road or state highway.
 - (2) A solid fence up to 6 ft. in height may be erected along the front property line which abuts a county road or state highway, provided that principal buildings on adjoining

lots do not front on such county road or state highway, and provisions of this Chapter pertaining to the sight triangle are met.

- E. For corner lots, no accessory building or structure shall be located nearer to the public right-of-way line than a distance equal to the minimum required front yard setback along such frontage.
- F. An accessory structure or use shall be clearly incidental, subordinate and accessory to the principal use on the same lot, and no accessory structure or use shall be located on a separate lot from the principal use to which it is incidental and subordinate.
- G. Accessory uses and structures shall not be established prior to the establishment of a principal use or structure on the lot, except that chain link fences may be erected to protect and secure vacant lots against intrusion, garbage dumping, unlawful entry or unlawful use or use inimical to the public health, safety and/or welfare. Such fences shall not exceed six (6) feet in height in residential zones and eight (8) feet in nonresidential zones, and may be permitted in the required minimum front yard setback. Such fences must be removed upon construction of a principal structure on the lot. It shall be the continuing responsibility of the owner to maintain the fence and keep the property in clean and sanitary condition free of vehicles, equipment, filth, rubbish, refuse, junk, slop, wood, paper or other materials which are or may constitute a hazard to health or cause accidents on said lot as long as the lot shall remain vacant.
- H. For single-family and two-family uses, an aggregate ground area of the rear yard covered by accessory buildings shall not exceed 30 percent. For all other uses, accessory buildings shall not exceed 10% of the lot area.
- I. No accessory building erected on any lot within any zone shall be used for residential purposes, and no such accessory building shall contain sleeping or cooking facilities.
- J. No accessory building or structure located on lots used for nonresidential purposes shall exceed 20 feet in height.

§ 205-26.2 shall be Reserved.

§ 205-26.3(C) Portable Storage Units shall be amended as follows:

- C. Permit required; application; fee. Before a PSU is placed on any property, the owner, tenant or contractor working on the subject property must submit an application for a zoning permit approving such placement from the Department of Community Development. If the permit application is made by a tenant or contractor, written permission of the owner of the subject property for the placement of such PSU on the subject property must be provided to the Department of Community Development before a permit is issued.

§ 205-26.3(H) shall be deleted in its entirety.

§ 205-34 Exceptions to height limitations shall be amended as follows:

Height limitations of this Chapter shall not apply to chimneys, church spires, gables, parapet cupolas, standpipes, flagpoles, monuments, transmission towers, radio and television antennas, cables, water tanks and conditioners and similar structures and necessary mechanical appurtenances for the zone in which the building is located, provided that no such exception shall cover at any level more than 10% of the footprint of the building on which it is located. The provisions of this Chapter shall not apply to prevent the erection above the building height limit of a parapet wall or cornice for ornament or screening, provided that no such structure shall exceed five (5) feet in height.

Article V General Regulations for Residential Districts

§ 205-45 shall be named “Number of principal uses and buildings on residential lots” and be amended as follows:

Any parcel utilized for single-family or two-family dwelling purposes shall not contain more than one principal building or use.

§ 205-45.1 shall be named “Size limits for detached accessory structures and buildings in residential zones and properties developed for residential use” and be amended as follows:

The following size limitations shall apply to all detached accessory structures and buildings in residential zones and on properties developed for residential use:

- A. Detached garages. Detached garages shall not exceed 24 feet in width, 24 feet in depth and 15 feet in height.
- B. Other accessory structures and buildings. With the exception of detached garages, no other accessory building or detached raised deck shall exceed 240 square feet in area and 12 feet in height, including detached pergolas/gazebos with louvered roofs and structures commonly known as “tree houses.”

Article XIVA C-4 Non-restricted Commercial District

§ 205-68.4(A) Permitted uses and prohibited uses shall be replaced in its entirety as follows:

- A. Permitted principal uses. The following uses and/or any combination thereof in a single building are permitted principal uses in the C-4 Unrestricted Commercial District:

- (1) All uses permitted in § 205-67 for the C-2 General Commercial District.
- (2) Restaurant and eating and drinking places, including drive-in restaurants.
- (3) Congregate care facilities.
- (4) Nursing homes.
- (5) Warehouses and distribution facilities.

Article XXA PUD-II Planned Unit Development

§ **205-87.4 Development standards** shall be amended as follows:

A. Residential development.

- (10) Minimum distance between buildings: 30 feet between structures which exceed two stories; 20 feet between all other attached structures. Detached single-family residential structures, except zero-lot-line units, shall have a minimum side and rear yard of five (5) feet. Zero-lot-line units shall have a minimum side yard of 10 feet on one side and five (5) feet in the rear yard.

Article XXIX Conditional Uses

§ **205-119 Shopping Centers** shall be deleted in its entirety and the section Reserved.

Article XXX Non-conforming Uses

§ **205-125 Continuance** shall be replaced in its entirety as follows:

- A. Except as otherwise provided in this Article, the lawful use of land or buildings existing at the date of the adoption of this Chapter may be continued upon the lot or in the structure so occupied, although such use of buildings does not conform to the regulations specified by this Chapter for the zone in which such land or building is located.
- B. No nonconforming lot shall be further reduced in size.
- C. No lawfully pre-existing nonconforming use shall be expanded, and no lawfully pre-existing nonconforming building shall be enlarged, extended or increased in size unless such enlargement, extension or increase, including new level additions that fit on top of the existing footprint, complies with all requirements of the zoning district in which the building is located.
- D. A lawfully existing lot which does not meet the minimum required lot area, lot width, or lot depth may be redeveloped with a single-family dwelling without the need for a variance, provided that:

- (1) The lot is located in a residential zone where a single-family use is permitted;
- (2) The lot is or was improved with a single-family or two-family dwelling; and
- (3) The proposed improvement meets all zoning requirements of the zoning district in which the lot is located.

§ 205-126 Abandonment shall be replaced in its entirety as follows:

- A. A nonconforming use shall be adjudged as abandoned when the concurrence of the following two factors exists:
 - (1) There is an overt act or failure to act which carries a sufficient implication that the owner neither claims nor retains any interest in the subject matter of the abandonment; and
 - (2) There is an intention to abandon.
- B. Any nonconforming use which was abandoned shall be terminated, and no such use or structure shall thereafter be reinstated or reoccupied except in conformance with the requirements of this Chapter.

§ 205-127 shall be named “Total Destruction and Partial Destruction of Nonconforming Uses, Buildings and Structures” and be replaced in its entirety as follows:

- A. The right to renovate or rebuild a legally nonconforming use, building or structure which is damaged, whether by design, accident or disaster, shall be determined by the extent of damage to the building or structure, and shall be classified as either a “total destruction” or a “partial destruction” by the Construction Official in consultation with the Zoning Officer and utilize the following standards:
 - (1) In order to determine that the building or structure is a partial destruction which would allow for renovation, the entirety of the footings and foundation, and a minimum of two-thirds of the wall area of two distinct load-bearing exterior walls shall be found to be structurally sound, and shall also be incorporated into the Construction Plans for the renovation of the building or structure.
 - (2) The property owner may submit certification from an architect licensed in the State of New Jersey to support the position that the footings, foundation and building walls meet the criteria specified above to qualify the building as a partial destruction.
 - (3) The removal of a building, except for its foundation and footing, shall constitute a total destruction of the nonconforming building, and shall terminate the nonconforming use.

- (4) If a particular principal building by itself does not constitute the entire use, and is rather part of an overall nonconforming use that consists of several buildings, the total destruction of such single principal building shall not prohibit the building from being restored.
 - (5) For multi-use buildings containing nonconforming uses, the determination of whether the nonconforming use is total or partial destruction shall be based on the damage to the portion of the structure containing such use rather than the whole building's condition.
- B. Total destruction of the nonconforming use, building or structure shall terminate any rights previously existing relative to its legally non-conforming status, and said building or structure shall not be renovated or rebuilt unless it complies with the provisions of this Chapter.
 - C. The minimum amount of all building components utilized as part of a building deemed partial destruction, including those identified footings, foundations, and structural building walls, shall be incorporated into the renovation plans for the building or structure and no Construction Permit shall be issued which fails to incorporate such components.
 - D. With respect to destruction of nonresidential structures and uses, in the event of partial destruction, no unsafe, unhealthy, or blighted condition shall be perpetuated, and a site plan review may be required by the Zoning Officer.
 - E. Nothing in this Chapter shall prevent the strengthening or restoring to a safe condition of any wall, roof or floor which has been declared unsafe by the Construction Official.

§ 205-129 Alterations shall be replaced in its entirety as follows:

A building that contains a lawfully pre-existing nonconforming use may not be reconstructed or structurally altered as to allow the use of the building to expand, unless said building is changed to a conforming use.

Article XXX Nonconforming Uses

§ 205-130 Effect on prior approvals shall be deleted.

Article XXXI Land Subdivision Procedures

§ 205-132.12 Procedure for approval of final plat of major subdivision shall be amended and supplemented as follows:

D. Required approvals.

- (2) The Planning Board may grant final approval conditioned upon the receipt of all necessary approvals as may be required by the Board, but no approval signatures will be affixed to any plat prior to obtaining all such required approvals. The Board may determine a reasonable time for obtaining all such required approvals. If no time for obtaining such approvals is specified by the Board, the approvals shall be obtained within two years. For purposes of calculating the time period within which conditions must be fulfilled, such time periods shall commence from the date on which the resolution of approval was adopted.
- (3) In the event that such required approvals are not obtained within two years from the date on which resolution of approval was adopted or as specified by the Board, the conditional approval shall lapse, and submission of a new application shall be necessary. Any provisions of Chapter 205, Land Use, that are adopted subsequent to the original date of submission of an application for development shall apply to the new application. Upon submission of such new application, the Board shall determine whether the application complies with the ordinance and any other applicable regulations, and shall consider whether conditions previously imposed continue to advance the purpose of zoning or planning for which they were imposed, and whether the conditions should now be modified, annulled or retained.
- (4) Nothing herein contained shall be construed as preventing the Board from specifying a longer period of time within which any specific condition must be fulfilled, or from granting an extension of time for good cause shown.

Article XXXV Enforcement; Certificates and Permits

A new section, “§ 205-137.1 Violations and Penalties” shall be established as follows:

- A. For any and every violation of the provisions of this Chapter, including construction, erection, structural alteration or enlargement of any building or structure, or use of any land, building or structure in violation of the provisions of this Chapter, or not in accordance with a resolution or plan approved by an approving authority, a detailed Notice of Violation issued by an enforcement officer (Zoning Officer, Code Enforcement Officer, or other member of the Community Development Department as so directed by the Director of the Department) shall be served upon the property owner, lessee, tenant, agent or any person or corporation which lets such violation be committed or exist. The notice must be sent by certified and regular mail to the last-known address of the person or corporation, and shall provide a 10 or more-day period, subject to the discretion of the enforcement officer, in which such person or corporation shall be afforded the opportunity to cure or abate the violation. Service by mail is complete upon mailing, and no additional notice shall be required for a violation of the same regulation by the same person or corporation for which voluntary compliance previously has been sought within two years from the date of the original notice.

- B. Subsequent to the expiration of the period to cure or abate the violation, upon reinspection of the property, if it is determined that the abatement has not been substantially completed, a summons shall be issued and served via regular mail to the last known address of the owner, lessee, tenant, agent or any person or corporation which failed to abate such violation. Upon conviction, the person or corporation shall be subject to a minimum fine of \$100 for the first offense and to a maximum fine not exceeding \$2,000. Each and every day a violation shall exist, shall constitute a separate violation.
- C. Any municipality that chooses to impose a fine in an amount greater than \$1,250 upon an owner for violations of housing or zoning codes shall provide a 30-day period in which the owner shall be afforded the opportunity to cure or abate the condition and shall also be afforded an opportunity for a hearing before a court of competent jurisdiction for an independent determination concerning the violation. Subsequent to the expiration of the 30-day period, a fine greater than \$1,250 may be imposed if a court has not determined otherwise or, upon reinspection of the property, it is determined that the abatement has not been substantially completed.
- D. Any corporation or person who is convicted of violating this Chapter within one year of the date of a previous violation of the same ordinance and who was fined for the previous violation, shall be sentenced by a court to an additional fine as a repeat offender. The additional fine imposed by the court upon a person or corporation for a repeated offense shall not be less than \$300 or exceed the maximum fine fixed for a violation of this Chapter.
- E. If, after final approval of an application for development or zoning permit, it is discovered that any application, or plan, or statement, or any representations made to induce approval contained a misrepresentation of any material facts or untrue statements, the approving authority may, in addition to such other sanctions as are available by law, revoke the approval and proceed as if final approval had not been obtained.
- F. If during the course of construction, a developer or agent of the developer is served via certified and regular mail to the last known address by the Zoning Officer, Code Enforcement Officer, or Township Engineer with a Cessation Order, and fails to cease the construction of improvements, or use of certain construction methods and procedures, or use of or lack of use of site maintenance methods and procedures which may result in hazards to life, health or property, or continues to carry on the activities specifically prohibited in the Cessation Order(s), then any such developer or agent of such developer shall be subject to the fines and penalties established by this Chapter. Each and every day that a developer or agent of a developer operates in violation of the Cessation Order shall constitute a separate violation.

BE IT FURTHER ORDAINED, that if any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section paragraph, subsection, clause or provision so adjudicated, and the remainder of the Ordinance shall be deemed valid and effective; and

BE IT FURTHER ORDAINED, that any ordinances or parts thereof in conflict with the provisions of this Ordinance are repealed to the extent of such conflict.

BE IT FURTHER ORDAINED, This Ordinance shall take effect upon passage and publication in accordance with applicable law.

TITLE

This Ordinance shall be known as may be cited as the Ordinance Amending and Supplementing Chapter 205, Land Use

Michael C. Hritz
Director of Community Development

Justine Progebin
Business Administrator

Ronald H. Gordon, Township Attorney
(Approved as to legal form)

RECORDED VOTE FIRST READING

COUNCIL MEMBER	YES	NO	ABSTAIN	NOTES
MEHTA				
LOPEZ				
GUADAGNINO				
ANDREWS				
DAVIS				
SOCIO				
MAYOR WOMACK				

RECORDED VOTE SECOND READING

COUNCIL MEMBER	YES	NO	ABSTAIN	NOTES
MEHTA				
LOPEZ				
GUADAGNINO				
ANDREWS				
DAVIS				
SOCIO				
MAYOR WOMACK				

CERTIFICATION

I hereby certify that the above Ordinance was duly adopted by the Township Council of the Township of North Brunswick, County of Middlesex, at its meeting held on May 17, 2021.

Lisa Russo, Township Clerk

EFFECTIVE DATE

This Ordinance shall take effect on June 1, 2021, upon passage and publication in accordance with applicable law.

- APPROVED
- REJECTED

Francis M. Womack III, Mayor
Township of North Brunswick

Date Signed: _____, 2021