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Article XIII

General Zoning Regulations

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§ 184-124 Applicability of zoning regulations.

A. No land or premises may be used and no building or structure may be erected, raised, moved, extended, enlarged, altered or used for any purpose other than a purpose permitted by this chapter for the zone district in which the land, premises, building or structure is located, and all uses and construction shall be in conformity with the regulations provided for the zone district in which such land, premises, building or structure is located, and in conformity with the Uniform Construction Code.

B. In applying the provisions of this chapter, a departure from the literal requirements shall not be considered a violation if, in the opinion of the Zoning Officer, the departure is de minimus. For purposes of administering this provision, "de minimus" is intended to mean that the departure from the literal requirements of this chapter is inappreciable and does not impair the intent and purpose of the zone plan and this chapter. Any interested party may appeal a determination of the Zoning Officer in this regard in accordance with the procedures set forth in Article VIII.

C. No development shall be permitted without first obtaining zoning approval, a construction permit, demolition permit, or certificate of occupancy, as applicable, unless specifically exempted by this chapter or other law. No zoning approval, construction permit, demolition permit or certificate of occupancy shall be issued by the Construction Official or Zoning Officer except upon application and approval therefor in accordance with the procedures set forth in Article X and in conformity with the provisions of this chapter.

D. The control and regulation of the uses of buildings and structures by this chapter shall apply equally to the nature and extent of the uses of the lot or lots upon which they are erected.

§ 184-124.1 Mandatory affordable housing set-aside. [Added 12-5-2016 by Ord. No. 16-18R]

A. Purpose. Unless otherwise required by existing zoning or an adopted redevelopment plan, all new multifamily residential developments of five or more units that become permissible through either a use variance, a density variance increasing the permissible density at the site, a rezoning permitting multifamily residential housing where not previously permitted, or new redevelopment plan shall be required to provide an affordable housing set-aside as follows: (1) Required affordable housing units shall be equal to 20% of the number of housing units proposed in the application for units offered for sale. (2) Required affordable housing units shall be equal to 15% of the number of housing units proposed in the application for units offered for rent.

B. Affordable housing units may be provided on-site or off-site within the Borough and are subject to the provisions of the Borough's Affordable Housing Ordinance.[1] [1] Editor's Note: See Ch. 105, Affordable Housing.

§ 184-125 Variances.

A. General. The Board may in appropriate circumstances grant relief from the literal provisions of the zoning regulations in accordance with the powers of the Board set forth in Article III and in accordance with the procedures set forth in Article VIII. [Amended 12-9-2008 by Ord. No. 08-16R]

B. Expiration of variances. Any variance from the zoning regulations shall expire by limitation unless the construction, alteration or use, as applicable, permitted by the variance shall have been actually commenced within 12 months of the date of memorialization of approval of the variance; provided, however, that the running of the period of limitation herein provided shall be tolled in the case of legal action as provided in § 184-68. Notwithstanding the foregoing, any variance hereafter granted in connection with a subdivision or site plan application shall not expire as provided above, but shall expire in the same manner as the subdivision or site plan approval, as applicable, as set forth in Article IX.

C. Time period for approvals granted for preexisting conditions. Any approval granted for a preexisting condition shall not expire by limitation after 12 months as is provided elsewhere for variances granted for a condition not preexisting, but instead shall continue in full force and effect thereafter until a new application is received, different from the one received for which the approvals were granted.

§ 184-126 Yards. There shall be provided for every lot front, rear and side yards as required in the zone district in which said lot is located. The required yard dimensions shall be measured perpendicular to the lot line and shall be measured between the lot line and the farthest projection of the building, unless specified otherwise in this chapter.

A. Required yards apply individually to each lot. No open space which has been counted or included as a part of a side yard, rear yard, front yard, or other open space as required by this chapter for one lot may, by reason of change of ownership or for any other reason, be counted or included in order to comply with the yard, or other open space requirement of any lot.

B. Permitted yard encroachments. Except as hereinafter specified, or as may be specified otherwise by this chapter, yards shall be entirely free of buildings above grade, structures, or parts thereof; provided, however, that no building, structure or part thereof shall be permitted to encroach beyond any boundary for the subject property, unless specifically permitted otherwise by this chapter or other law. (1) Cornices and eaves may encroach up to three feet into any required yard. (2) Window air conditioners, basement window wells, steel basement doors, ingress and egress platforms, awnings, and window flower boxes may encroach into any required yard without limitation. [Amended 6-14-2001 by Ord. No. 01-10R] (3) Fire escapes may encroach up to four feet into any required yard. (4) Ground-supported chimneys, chimney box structures, and flues, stacks and vents attached to the side of a building may encroach up to 2 1/2 feet into any required yard; provided, however, that the area of such encroachment projected to ground level shall not exceed 12 square feet. (5) Oriels, bay windows, bow windows, window greenhouses, and similar architectural devices, may encroach up to three feet into any required yard; provided however, that the area of such encroachment projected to ground level shall not exceed 15 square feet and further provided that such encroachment is limited to structures on the ground floor of the building. (6) Sills, leaders, belt courses and similar ornamental structural features may encroach up to six inches into any required yard.

C. Front yard in case of substandard street width. All front yards must face upon a dedicated public street and shall be of the size required for the particular zone district in which the lot is located; provided, however, that on streets having a right-of-way less than 50 feet in width, the required front yard shall be increased by one-half the difference between the width of the street and 50 feet in width as shown on the Street Plan of the Master Plan of the Borough and shall have a front yard setback measured from the nearest line of the proposed building or structure to the proposed right-of-way line as shown on said Master Plan. See §§ 184-117 and 184-118F(1) as they relate to the TAH and LGAH Zones.

D. Front yard requirement to reflect established pattern. Notwithstanding the minimum and maximum front yard requirement set forth for the R75 and R150 Zone Districts, where existing buildings on the same side of the street form an established front yard depth, the front yard on the subject property, or the street side yard on a corner property, shall not deviate from this established yard depth by more than two feet. If such established front yard depth varies, the dimension to be used in administering the above minimum and maximum front yard requirement shall be equal to the average depth of the established front yards. For purposes of administering this provision, the properties used for determining said established front yard depth shall be located, in whole or in part, within the following distances of the subject property and must be on the same side of the street, in the same block, and must be subject to the same front yard requirement in the zone district regulations as the property in question: [Amended 5-8-2007 by Ord. No. 07-08R] Zone Distance* R-150 200 feet R-75 100 feet *NOTE: Measured along the street right-of-way line.

E. Maximum front yard requirement for nonconforming buildings. Notwithstanding the maximum front yard requirement in the various zone districts, alterations to buildings which are nonconforming by reason of having a front yard greater than the maximum depth permitted herein shall not be required to comply with said maximum permitted front yard depth, provided that no such alteration shall increase the front yard above the depth which exists prior to the alteration.

§ 184-127 Buildings.

A. More than one principal building or structure on same lot prohibited. No lot shall contain more than one principal building or structure.

B. Basement dwelling units prohibited. Unless expressly permitted in this chapter, no dwelling unit shall be located in a basement. As used in this subsection, dwelling unit shall mean a space which contains kitchen facilities, sanitary facilities and sleeping facilities.

C. Basement floor usage in nonresidential buildings. Basement space in nonresidential buildings used for other than storage or similar support functions shall be hardwired with the rest of the building for fire alarms, and provide two ways out in the event of a fire.

D. Minimum floor area requirements for dwelling units. Dwelling units in all zones shall be required to contain the following minimum habitable floor areas; provided, however, that no dwelling unit shall contain less than 600 square feet of floor area in any event.

E. Mobile homes. [Added 11-12-2002 by Ord. No. 02-20R] (1) Mobile homes are not permitted in any zoning district in the Borough of Fanwood. (2) Notwithstanding the provisions of Subsection E(1) above, a permit to temporarily locate a mobile home in the R-75 and R-150 Zoning Districts may be issued by the Zoning Officer of the Borough of Fanwood upon a finding of good cause. The Zoning Officer shall advise the governing body and Planning Board in writing as to the facts and circumstances warranting the issuance of such permit. (3) "Good cause" shall mean a condition whereby the homeowner is compelled to vacate the premises to protect the homeowner's health and/or safety. "Good cause" shall include but not be limited to fire, acts of God, flooding and other deleterious conditions that pose a direct threat to health and/or safety. (4) No permit shall be issued unless the homeowner evinces credible intent to remediate the hazardous condition. (5) The permit holder must present the Zoning Officer with a certificate of insurance or declaration page demonstrating that the mobile home is covered by the permit holder's homeowner's insurance policy in the same policy amounts as existed prior to date of the incident warranting issuance of the permit. The permit holder must present such proof no later than 10 days after issuance of the permit. The failure to provide such proof of insurance shall be cause for the immediate revocation of the permit. (6) The permit shall be valid for a period of four months after the date of issuance. The permit may be automatically extended by the Zoning Officer for an additional four months upon a showing of good cause. No additional extensions shall be granted unless a waiver is obtained from the governing body. The governing body may apply such terms and conditions to any subsequent extension as it believes appropriate. (7) Prior to the issuance of any permit, the applicant must present the Zoning Officer with a property survey indicating the proposed location of the mobile home. The applicant shall comply with all directives of the Zoning Officer respecting the location of the mobile home. (8) The applicant must obtain all necessary permits and approvals from the Borough. The applicant is not exempt from any applicable fees. The grant of a permit to temporarily locate a mobile home does not waive any local or state statutes, ordinances or regulations. (9) There shall be no fee for the issuance of a temporary mobile home permit.

§ 184-128 Height exceptions. Notwithstanding the height limitations in each zone district, the following structures shall be exempt from such limitations only to the extent indicated, unless provided otherwise by this chapter:

A. The height limitations required in each zone district shall not apply to church steeples.

B. Church buildings, school buildings and flag poles shall be exempt from the height limitations in each of the zone districts; provided, however, that such structures shall not exceed 45 feet in height.

C. Rooftop structures, including but not limited to decorative architectural elements such as cupolas, weathervanes, railings, etc.; heating, ventilating and air conditioning equipment; chimneys, etc., provided, however, that the foregoing structures shall comply with the following: (1) The area occupied by such rooftop structures shall not exceed 10% of the total roof area or 250 square feet, whichever is less; (2) Such rooftop structures, except for chimneys, shall be set back at least 10 feet from any wall of the building; and (3) The height of such rooftop structures above the ground shall not exceed the maximum height permitted for the principal building by more than seven feet, and shall not exceed the actual height of the building by more than seven feet, whichever is less.

§ 184-129 Dangerous conditions. No building permit or zoning approval shall be granted for a building, structure or use if the design or construction of said building or structure involves exceptional risks of traffic congestion or public safety. If the Construction Official or Zoning Officer, as applicable, finds either of the above to be the case, he/she shall refuse to issue a permit and refer the application to the Board.

§ 184-130 Animals and birds. The keeping of fowl, chickens, ducks, pigeons, horses, ponies, or other domestic equine animals, pigs, goats, sheep or cattle or other kinds of livestock or exotic animals prohibited in all zones.

§ 184-131 Flag lots. Flag lots, as defined in the Borough Code, are prohibited in all zones.

§ 184-132 Structures adjacent to gas transmission lines.

A. No building or structure shall be permitted to be constructed within 50 feet of any distribution, gathering or transmission line. Notwithstanding anything contained in this section to the contrary, no building or structure shall be permitted to be constructed within 45 feet of any distribution, gathering or transmission line as it relates to property located in the MAH Zone only.

B. No building or structure, or part thereof, which is used for the manufacturing, processing, generation or storage of corrosive, highly toxic, oxidizing, pyrophoric, water reactive, highly combustible, flammable, or explosive materials that constitute a high fire, explosion, or health hazard, including loose, combustible fibers, dust and unstable material, shall be constructed within 125 feet of any distribution, gathering, or transmission line.

C. Notwithstanding anything herein contained in this section to the contrary, this section shall not apply to the construction of any structure required to provide access to certain real property when no other reasonable means of access is available; to provide utility service to certain real property; or, to perform any work to a pipeline by or on behalf of the owner or operator of such pipeline.

§ 184-132.1 Cannabis uses prohibited. [Added 7-19-2021 by Ord. No. 21-13-R] Pursuant to section 31b of the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (P.L. 2021, c. 16), all cannabis establishments, cannabis distributors or cannabis delivery services are hereby prohibited from operating anywhere in Fanwood, except for the delivery of cannabis items and related supplies by a delivery service.