

ORDINANCE 2021-04

BOROUGH OF HIGHTSTOWN
COUNTY OF MERCER
STATE OF NEW JERSEY

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 28, ENTITLED “ZONING,” OF THE “REVISED GENERAL ORDINANCES OF THE BOROUGH OF HIGHTSTOWN, NEW JERSEY,” RELATING TO NONCONFORMING BUILDINGS AND USES

WHEREAS, the existing zoning and land use regulations of the Borough of Hightstown (the “Borough”) are set forth in Chapter 28, entitled “Zoning,” of the “Revised General Ordinances of the Borough of Hightstown, New Jersey;” and

WHEREAS, the Mayor and Council wish to make certain revisions thereto relating to nonconforming buildings and uses; and

NOW, THEREFORE, BE AND IT IS HEREBY ORDAINED, by the Borough Council of the Borough of Hightstown, in the County of Mercer and State of New Jersey, as follows:

Section 1. Chapter 28, entitled “Zoning,” Section 28 entitled “Nonconforming Buildings and Uses” of the “Revised General Ordinances of the Borough of Hightstown, New Jersey,” is hereby amended and supplemented in the following limited respects (deletions are shown with ~~strikeout~~, additions are shown with underline):

Section 28-28

NONCONFORMING BUILDINGS AND USES

Subsections:

28-28-1 Applicability.

28-28-2 Continuation; Enlargement; Rebuilding; Change of Use.

Subsection 28-28-1 Applicability.

Except as hereinafter provided, no building or premises shall be used except in conformity with the provisions of this chapter which apply to the district in which it is located. The following provisions shall apply to all buildings and uses of land or buildings existing on November 6, 1978, which do not conform to the requirements set forth in this chapter, to all buildings and uses of land or buildings that become nonconforming by reason of any subsequent amendment to this chapter and the Zoning Map which is a part thereof and to all conforming buildings housing nonconforming uses. (1991 Code § 233-63)

Subsection 28-28-2 Continuation; Enlargement; Rebuilding; Change of Use.

a. Except as provided in paragraph e. below, any type of nonconforming use of buildings or land may be continued indefinitely but:

1. Shall not be enlarged or structurally altered, extended or placed on a different portion of the lot or parcel of land occupied by such use on November 6, 1978, or any applicable amendment thereof, nor shall any external evidence of such use be increased by any means whatsoever, except whereby through such alteration it is changed to a conforming use.

2. Shall not be changed to another nonconforming use without a variance from the Planning Board.

3. Shall not be reestablished after the physical operation thereof has ceased for a period of over six (6) months for any reason. Intent to resume active operation of a nonconforming use after cessation thereof shall

not confer the right to do so.

b. Except as provided in paragraph d. below, no building which houses a nonconforming use shall be:

1. Structurally altered or enlarged.

2. Moved to another location where such use continues to be nonconforming.

3. Changed back to a nonconforming use if once changed to a use permitted in the district in which it is located.

c. Any nonconforming use or structure existing at the time of the passage of this chapter may be continued upon the lot or in the structure so occupied and any such structure may be repaired in the event of partial destruction thereof. If restoration of such structure is not substantially completed within the six (6) month period from the date of partial destruction, the physical operation of the nonconforming use of such structure shall be deemed to have ceased, unless such nonconforming use shall have been carried on without interruption in the undamaged portion of such structure.

d. Any building housing a conforming use which does not conform to other than use regulations as set forth in this chapter may be rebuilt if damaged but shall not be altered or enlarged so as to increase the degree of nonconformity thereof.

e. Nothing in this section shall be deemed to prevent normal maintenance and repair of any building or the carrying out, upon issuance of a building permit, of major structural alterations or demolitions necessary in the interest of public safety. In granting such a permit, the Construction Official shall state precise reasons to the Planning Board why such alterations were deemed necessary.

f. To avoid undue hardship, nothing in this chapter shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this chapter and upon which actual building construction has been carried on diligently. Actual construction shall be hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner.

g. Where excavation, demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation, demolition or removal shall be deemed to be actual construction, provided that the work shall be carried on diligently.

h. All the foregoing provisions relating to nonconforming uses and buildings shall apply to all nonconforming uses and buildings existing on November 16, 1978, and to all uses and buildings that become nonconforming by reason of any amendment thereof, but not to any use established or building erected in violation of law, regardless of the time of establishment or erection.

i. Existing nonconforming conditions, including but not limited to inadequate lot size or yards and excess coverage, may be continued, but the degree of nonconformity may not be increased without securing a variance. No building may be constructed on a lot less than the minimum size for its district, even if preexisting, without securing a variance.

j. Additions to existing single-family dwellings and/or decks constructed on existing buildings which would extend into the required front, side or rear yards shall be permitted if the following conditions are met:

1. The existing and proposed residential use is permitted in the zone in which it is located.

2. The total lot coverage, off-street parking, garage and building height requirements of the applicable zone are met.

3. The existing residential structure does not reduce any required setback by more than fifty (50%) percent and the proposed setback of any addition does not increase any yard setback deficiency of the existing dwelling.

4. The length (front yard to rear yard) of the proposed violation of any side yard does not exceed thirty-five (35') feet.

5. All other applicable zone requirements affected by this proposed addition are met, except that existing lot area and lot width deficiencies shall not require variances, provided that all other requirements of this section are met. (1991 Code § 233-64; Ord. No. 1996-15 § 1; Ord. No. 2011-07)

k. Owners of existing undersized vacant lots, as of the date of the adoption of Ordinance 2021-04, can avoid appearing before the Planning Board for a Bulk Variance to build a new house if they meet all of the following conditions:

1. The proposed residential use is permitted in the zone in which it is located.
2. The proposed house does not encroach on any setback.
3. The proposed house and accessory structures does not exceed the percentage of lot coverage for all buildings.
4. The total lot coverage of all proposed structures and all other proposed lot improvements do not exceed the total allowed lot coverage.
5. The proposed house and accessory structure does not exceed the maximum height.
6. The proposed house and accessory structure is reviewed by the Planning Board Architectural Review Committee.
7. The proposed house and accessory structure is reviewed by the Hightstown Historic Preservation Commission.

8. All other applicable zone requirements affected by the proposed house and accessory structures are met, except that the existing lot area and lot width deficiencies shall not require variances, provided that all other requirements of this section are met as determined by the Zoning Official. Section 2. In the event that any portion of this Ordinance is found to be invalid for any reason by any Court of competent jurisdiction, such judgment shall be limited in its effect only to that portion of the Ordinance actually adjudged to be invalid, and the remaining portions of this Ordinance shall be deemed severable therefrom and shall not be affected.

Section 3. All other Ordinances or parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 4. This Ordinance shall become effective upon final passage and publication in accordance with the law.

Introduction: March 15, 2021

Adoption: April 5, 2021

ATTEST:

DEBRA L. SOPRONYI
MUNICIPAL CLERK

LAWRENCE D. QUATTRONE
MAYOR