

ORDINANCE NO. 02-22

AN ORDINANCE SUPPLEMENTING ARTICLE II, SECTION 207-4 “DEFINITIONS AND WORD USAGE”, AMENDING ARTICLE X, SECTION 207-27 “SCHEDULE I: RESIDENTIAL ZONE”, AND ADOPTING NEW ARTICLE XXII “ACCESSORY STRUCTURES AND USES” IN CHAPTER 207 “ZONING” OF THE CODE OF THE BOROUGH OF KINNELON TO PROVIDE FOR THE REGULATION OF ACCESSORY STRUCTURES AND USES IN RESIDENTIAL ZONES

WHEREAS, pursuant to N.J.S.A. 40:48-2, the governing body of a municipality may make, amend, repeal, and enforce such other ordinances, regulations, rules and by-laws not contrary to the laws of this state or of the United States, as it may deem necessary and proper for the good government, order and protection of person and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants, and as may be necessary to carry into effect the powers and duties conferred and imposed by this subtitle, or by any law; and

WHEREAS, pursuant to N.J.S.A. 40:55D-1 *et seq.* the governing body of a municipality may adopt land use, land development and zoning ordinances; and

WHEREAS, the Borough of Kinnelon desires to supplement Article II, Section 207-4 “Definitions and word usage”, amend Article X, Section 207-27 “Schedule I: Residential Zone” of Chapter 207 “Zoning” of the Code of the Borough of Kinnelon, and adopt new Article XXII entitled “Accessory Structures and Uses” in said Chapter, to provide for the regulation of accessory structures and uses in residential zones.

NOW, THEREFORE, BE IT ORDAINED, by the Governing Body of the Borough of Kinnelon, County of Morris, State of New Jersey, as follows:

SECTION 1. Article II, Section 207-4 “Definitions and word usage”, Paragraph B, shall

be supplemented to include the following additional definitions:

TEMPORARY STORAGE STRUCTURE - A movable or portable storage container or self-storage container, or other movable structure that can be used for the storage of personal property and which is located for such purposes outside an enclosed building other than an accessory structure.

TEMPORARY STORAGE STRUCTURE UNIT - A single unit of a temporary storage structure such as a PODS® (Portable on Demand Storage) or similar unit.

SECTION 2. Article X, Section 207-27 “Schedule I: Residential Zone” shall be amended such that the second paragraph of said section pertaining to “Accessory uses” is stricken and replaced with the following language and shall now read as follows:

Accessory structures and uses. Accessory structures and uses customarily incidental to the above uses (the term “accessory use,” however, not including a business) shall be regulated under Article XXII “Accessory Structures and Uses”, Sections 207-142 to 207-149, of this Chapter.

SECTION 3. Chapter 207, “Zoning”, of the Code of the Borough of Kinnelon, Morris County, New Jersey is hereby amended and supplemented to include new Article XXII, entitled “Accessory Structures and Uses”, Sections 207-142 to 207-149, which shall read as follows:

Article XXII “Accessory Structures and Uses”

§207-142 Purpose.

It is the intent of this Article is to regulate accessory structures and uses that are customarily incidental to the principal permitted uses delineated in Schedule I, Residential Zone, at Article X, Section 207-27.

§207-143 Survey Requirements for Accessory Structures, Walls, Fences, Generators, Air Conditioning Units and Temporary Storage Structures.

There shall be submitted to the Zoning Officer or other appropriate official a survey of any age, sealed or unsealed, which contains the name and signature of a licensed surveyor, showing the proposed location of a proposed accessory structure, wall, fence, generator, air conditioning unit or temporary storage structure, along with an affidavit of “no change” from the property owner provided no changes were made since the date of the survey. If changes were made to the property after the survey was performed, those changes must be marked up on the submitted survey, along with an affidavit from the property owner indicating that the marked-up survey reflects the current as-built condition. The survey, including any markups and dimensions, must be to scale, and cannot be a reduction or

enlargement of the original survey.

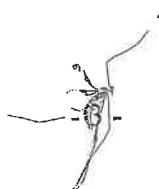
§207-144 Permitted Accessory Structures and Uses in Residential Zones.

Accessory structures and uses shall not be permitted on any residential lot unless a primary structure exists. All utilities in an accessory structure may be installed only after obtaining the necessary zoning, building and fire permits, as applicable to the installation.

- A. Any structure on a property other than the primary residence may be considered an accessory structure;
- B. Shipping containers of any size cannot be considered as an accessory structure;
- C. All accessory structures will be considered in calculating the property's allowable impervious coverage;
- D. Sheds, detached garages and other accessory structures require a zoning permit prior to any construction;
- E. Fences and walls require a zoning permit prior to any construction per Section 207-147.

§207-145 Sheds.

- A. A zoning permit and a survey shall be required for all sheds, regardless of size;
- B. Sheds may not be greater than 200 sq. ft.;
- C. Sheds shall be located in either a side yard or a back yard;
- D. Sheds shall not be used for habitation or a commercial purpose;
- E. Sheds shall be prohibited in any front yard including those properties which have more than one front yard such as "corner lots" or "through lots";
- F. Sheds shall be for the exclusive use of the property's resident and shall not be rented or otherwise used by a third-party;
- G. Required setbacks:
 - (1) For properties having a lot frontage of 100 ft. or less:
 - (a) a minimum 10 ft. side-yard setback is required
 - (b) a minimum 5 ft. back-yard setback is required
 - (2) For properties having a lot frontage greater than 100 ft.:
 - (a) a minimum 15 ft. side-yard setback is required
 - (b) a minimum 5 ft. back-yard setback is required
- H. Sheds shall be located no less than 10 ft. from any building;
- I. The maximum permitted height of any shed shall be 15 ft. to the highest ridge, measured from the grade at the entrance of the shed.



- J. Maximum number of sheds:
- (1) For properties having a lot area of less than 60,000 sq. ft., one (1) shed is permitted.
 - (2) For properties having a lot area of at least 60,000 sq. ft., a maximum of two (2) sheds are permitted.

§207-146 Detached Garages.

- A. Detached garages require a zoning and construction permit. A survey shall also be submitted with the permit application;
- B. Detached garages or other accessory structures cannot have an apartment or other living space built above the same;
- C. Detached garages shall be used only for parking or storing vehicles, tools, workbenches, landscaping equipment, snow removal equipment, pool equipment, and general storage associated with residential uses;
- D. Detached garages shall not be used for habitation or commercial purposes;
- E. Garages, whether attached or detached, are for the exclusive use of the property's resident, and shall not be rented or otherwise used by a third-party;
- F. Detached garages shall not extend beyond the front wall of the primary structure;
- G. Detached garages shall be located in a side yard or backyard;
- H. Detached garages shall be prohibited in any front yard including those properties which have more than one front yard such as "corner lots" or "through lots";
- I. Detached garages shall be located no less than 10 ft. from any building;
- J. The maximum permitted height of any detached garage shall be 18 ft. as measured from the average grade within 10 ft. of the proposed structure to the roof mean height;
- K. Only one detached garage is permitted on any lot;
- L. Detached garages shall meet the following requirements:
 - (1) For properties having a lot area of less than 60,000 sq. ft.:
 - (a) a minimum 15 ft. side-yard setback;
 - (b) a minimum 25 ft. back-yard setback;
 - (c) a maximum of 2 vehicle bays;
 - (d) a maximum 10 ft. overhead door height;
 - (e) a maximum 18 ft overhead door width;
 - (f) a maximum 600 sq. ft. foundation footprint.
 - (2) For properties having a lot area of 60,000 sq. ft. or more:
 - (a) a minimum 25 ft. side-yard setback;
 - (b) a minimum 50 ft. back-yard setback;
 - (c) a maximum of 3 vehicle bays;
 - (d) a maximum 10 ft. overhead door height;
 - (e) a maximum 27 ft overhead door width;
 - (f) a maximum 1,000 sq. ft. foundation footprint.

§207-147 Fences and Walls.

Fences and walls having an exposed height of 2 ft. or more shall constitute permitted accessory structures. Such fences and walls require a zoning permit prior to the construction of same. A survey must be submitted with the permit application. Any wall having an exposed height of 2 ft. or more shall require a Soil Disturbance Permit in accordance with Chapter 169. Any wall having a total height of 4 ft. or more, as measured from the bottom of the foundation, may require a Building Permit in accordance with UCC rules.

A. General requirements.

- (1) The finished side of every fence must face the property adjoining the lot on which the fence is erected.
- (2) No fence or wall shall be erected or maintained at a height or in a location that would limit or restrict sight distance for any street or driveway under the Residential Site Improvement Standards, N.J.A.C. 5:21-1.1 et seq., or any other regulation of the Borough of Kinnelon, the County of Morris, or the State of New Jersey.
- (3) No fence may contain razor ribbon or barbed wire.
- (4) Electrified fences are prohibited.
- (5) No fence shall be constructed or maintained in any manner which creates an unreasonable risk of harm to persons or animals.
- (6) No fence or wall shall be erected or maintained closer than 6 inches to any property line.
- (7) No Fence/Wall combination may exceed 6 ft. in combined height, measured from grade.
- (8) Fences constructed above or on top of retaining walls may be separated from the retaining wall below by a horizontal distance equal to the height of the retaining wall or the fence, whichever is greater. Fences and walls constructed in compliance with this spacing guideline shall be deemed to constitute separate structures for purposes of calculating height. Otherwise, such fences and walls shall be deemed to constitute one structure for purposes of height calculations. Fences less than 25% solid that do not exceed four feet in height shall be exempt from the requirements of this Subsection.
- (9) Any wall having an exposed height of 30 inches or more, shall have a permanent railing meeting the height and space opening

requirements of railings required for decks per the IRC or shall have a permanent fence meeting the pool code requirements. Any wall having an exposed height of 10 ft. or more shall have a permanent fence meeting the pool code requirements.

B. Fences and walls located closer to the street than the principal building.

- (1) No wall except a retaining wall shall be erected or maintained closer to a street line than the closest point of the principal building. Such retaining walls shall not exceed 4 feet in height.
- (2) Fences erected or maintained closer to a right-of-way than the closest point of the principal building shall not exceed 4 feet in height.
- (3) No fence which is 25% solid or more shall be erected or maintained closer to any street line than the principal building except for a decorative fence such as a picket fence.

C. Fences and walls in side and rear yards.

- (1) No fence or wall erected or maintained in any side or rear yard shall have a height exceeding 6 feet.
- (2) Fences and walls erected in side and rear yards may be up to 100% solid.

D. Fences or walls for swimming pools, hot tubs, and similar facilities.

Swimming pools, hot tubs, and similar facilities shall be screened from all adjoining properties by a solid fence or wall in accordance with Appendix G, Swimming pools, Spas and Hot Tubs, of the 2009 International Residential Code as revised and updated from time to time.

E. Fencing for certain athletic facilities.

The provisions of this section shall not apply to fences for athletic fields or tennis courts on public property or public school property.

F. Zoning permit required.

No fence or wall regulated by this section shall be erected, constructed, installed, altered, modified, enlarged or extended except in accordance with a zoning permit issued by the Zoning Officer.

§207-148 Permanently Installed (Non-portable) Generators and Air Conditioner Units.

Permanently installed, non-portable generators and air conditioner units shall not be

installed in a front yard; shall maintain a minimum side-yard setback of 25 ft.; and shall maintain a minimum back-yard setback of 25 ft.

The exterior condenser unit of a permanently installed residential air conditioner system may be replaced without zoning review if the new unit is situated in the same location as the unit being replaced and it utilizes the same pad, or a pad of the same dimensions, as the unit being replaced, so as not to alter existing set-backs or increase the impervious coverage of the property.

When completely installed on the exterior wall of a primary dwelling, ductless air conditioning or heating units shall maintain a minimum side-yard and backyard setback of 15 ft.

§207-149 PODS®, Storage & Shipping Containers, Temporary Truck Trailers

This Section shall apply to Temporary Storage Structures or Units as Defined in Article II, Section 207-4.

- A. General Requirements. The following shall apply to a temporary storage structure or a temporary storage structure unit to be located upon residential private property:
- (1) The internal area shall be limited to a size of not less than 392 cubic feet (7 feet x 7 feet x 8 feet) and not greater than 1,024 cubic feet (16 feet x 8 feet x 8 feet).
 - (2) The temporary storage structure or unit shall not contain advertising or other writing, except to identify the manufacturer or owner of the temporary storage structure or unit.
 - (3) No more than one temporary storage structure or unit shall be located on a single parcel of private property.
 - (4) At the time of application to the Zoning Officer for a zoning permit for a temporary storage structure or unit, the applicant shall provide a survey of the property. The Zoning Officer shall mark the survey with the location the temporary storage structure unit is to be placed.
 - (5) A temporary storage structure or unit may be placed on private residential property only after a zoning permit is issued by the Zoning officer to the owner of such property.
 - (6) An applicant may request a 30-day permit, a 60-day permit or a 90-day permit.
 - (a) 30 day and 60 day permits may be renewed up to a maximum total of 90 days.

A zoning permit extension application shall be submitted to the Zoning Officer prior to the expiration of the initial period.

- (b) The permitted temporary storage structure or unit shall not remain on such private property after the expiration of the initial permit period unless a further extension zoning permit shall be applied for and issued prior to the said expiration.
- (7) In no event shall a temporary storage structure or unit remain on private residential property for any period beyond 90 consecutive days from the date of issuance of the initial permit.
- (8) Permit and extension requests for temporary storage structures or units on properties not owned by the applicant shall be accompanied by an original, written consent of the owner, landlord or governing body of a tenant/condominium association. This consent shall specify a requested location on the property and the requested duration.

B. Location.

- (1) A temporary storage structure or unit is prohibited from being located within a public right-of-way. No temporary storage structure shall obstruct the visibility or free flow of pedestrian or vehicular traffic.
- (2) A temporary storage structure or unit shall be located in a driveway or other property location at the furthest point from the street.
- (3) The Zoning Officer shall determine the location on the private property where the temporary storage structure or unit shall be located. The Zoning Officer's determination shall be guided by due consideration for accessibility and safety.

C. Required Permit Fees.

- (1) 30-day permit: \$25
- (2) 60-day permit: \$50
- (3) 90-day permit: \$75

A zoning permit extension application for any period following the expiration of the initial period shall be accompanied by a permit fee of \$25 for each additional 30 days. No permit may exceed a total of 90 days.

D. Enforcement; violations and penalties.

The Zoning Officer or the Police Department shall be responsible for enforcing the provisions of this Section.

The owner of private property within the Borough of Kinnelon upon which any temporary storage structure or unit is located without the prior approval of the Zoning Officer required pursuant to this Article shall be subject to the penalties set forth below:


- (1) Any temporary storage structure or unit not in compliance with this Section is and shall be declared to be a public nuisance and may be abated by the Borough at the expense of the owner of the private property, the owner of the temporary storage structure or unit, or other person or legal entity deemed responsible.
- (2) The owner of the private property, the owner of the temporary storage structure or unit, or other person or legal entity deemed responsible for a temporary storage unit not removed within five (5) days after the date of a written notice of violation issued under this Article shall be subject to a summons to the municipal court of the Borough and a fine.
- (3) Fines are to be determined as follows: Failure to obtain the necessary permit: Up to \$100.00 per day, per violation, beginning on the 6th day after issuance of a notice of violation.

SECTION 4. All ordinances, resolutions and regulations or parts of ordinances, resolutions and regulations inconsistent herewith are hereby repealed to the extent of such inconsistency.


SECTION 5. If any section, paragraph, article, subdivision, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply to the section, paragraph, article, subdivision, clause or provision so adjudged and the remainder of this Ordinance shall be deemed valid and effective.

SECTION 6. This Ordinance shall take effect after approval and publication as required by law.

ATTEST:


Karen M. Iuele, RMC, Borough Clerk

BOROUGH OF KINNELON


James J. Freda, Mayor

CERTIFICATION

I, Karen M. Iuele, Borough Clerk of the Borough of Kinnelon, County of Morris, State of New Jersey, do hereby certify the foregoing to be a true copy of an Ordinance introduced, read by title and passed on the first reading at the regular meeting of the Borough held on January 20, 2022 and adopted by the Governing Body at a regular meeting of the Borough held on February 17, 2022.



Karen M. Iuele, RMC, Borough Clerk