

**BOROUGH OF CAPE MAY POINT
COUNTY OF CAPE MAY
STATE OF NEW JERSEY**

ORDINANCE NO. 10-2020

**AN ORDINANCE AMENDING BOROUGH CODE CHAPTER 150
("ZONING"), ARTICLE II ("DEFINITIONS") AND ARTICLE III
("PROHIBITED USES"), TO MAKE SWIMMING POOLS A PROHIBITED
USE IN ALL ZONES**

WHEREAS, the Master Plan of the Borough of Cape May Point sets forth certain goals and objectives, namely the preservation of Lake Lilly in its restored state; the preservation of a sustainable habitat for fish and other wildlife; the preservation and the enhancement of native and indigenous vegetation; the preservation and conservation of potable water and the preservation of open space where and whenever possible;

WHEREAS, the Master Plan under "Recommendations" makes note of the fact that Cape May Point is dependent on desalinized water from the City of Cape May for drinking and cooking and consequently water conservation must be emphasized and further that the preservation of open space shall be deemed to mean not only open space in public areas, but also sight lines and room for privacy and noise isolation on private lots;

WHEREAS, the Master Plan under "Policy" provides that the code provisions designed to manage development should include standards for the preservation of the maximum amount of permeable land surface on building lots as possible and further notes that prospective conservation problems in the Borough include the loss of mating and migratory bird and other beach related wildlife due to environmental derogation, light pollution and lack of water recharge soils as well as the ever escalating cost of water as regional demand increases;

WHEREAS, the Master Plan further provides under "Policy" that in order to control the quality of water runoff that drains into Lake Lily, homeowners and gardeners throughout the Borough should be encouraged not to use chemical fertilizers;

WHEREAS, existing Section 150-11 ("Permitted Uses") makes no reference to "swimming pools" as a permitted primary or accessory use in the R-1 Zone;

WHEREAS, existing section 150-4 ("Prohibited Uses Enumerated") likewise makes no reference to swimming pools;

WHEREAS, until very recently there were no swimming pools located within the R-1 Zone which is the sole residential district in the Borough;

WHEREAS, the Borough of Cape May Point finds that although swimming pools under legal precedent may be permitted in residential zones as an implied accessory use such a use is incompatible with the objectives of the Borough's Master Plan;

WHEREAS, the Borough of Cape May Point further finds that said pools place inordinate demands on the Borough's Water and Sewer Utility. In particular, swimming pools require the excessive consumption of water which must be purchased at great expense from the City of Cape May. In addition, pools may cause the disposal of waste water containing sediment as well as other potential pollutants into the Borough's storm sewer system which drains into Lake Lily and may thereby endanger the delicate ecosystem of the Lake;

NOW THEREFORE BE IT ORDAINED by the Board of Commissioners of the Borough of Cape May Point that Chapter 150, Article II ("Definitions") and Article III ("Prohibited Uses") is hereby amended as follows:

SECTION 1

ARTICLE II Definitions

§ 150-3 TERMS DEFINED.

Except where the context shows clearly that a different meaning is intended, the following terms, as used in this chapter, shall have the meanings indicated:

ACCESSORY BUILDING

Shall mean a single-story building, including a private garage, on the same lot but subordinate to the main building and used exclusively for a purpose customarily incidental to that of the main building. No cooking facilities, toilet facilities or living quarters can exist in an accessory building.

ACCESSORY USE

Shall mean a use on the same lot with but subordinate and customarily incidental to the main use of the lot or of the main building thereon.

ARBOR/TRELLIS/PERGOLA

Shall mean a freestanding construction, including overhead members, and which is less than 50% enclosed in each plane and is used for decorative purposes or growing certain plants.

BOUNDARIES OF LOT OR PROPERTY LINE

Shall mean the boundary lines of a parcel of land as fixed by recorded deed of conveyance or by map filed in the office of the County Clerk.

BUILDING

Shall mean any structure, including but not limited to open or closed attached porches, decks, enclosed patios, annexes or additions, that requires for its use a fixed location

on or above the land; provided, however, that an interior change or alteration of the structure which shall create additional living quarters shall also be deemed to be a "building" for the purposes of this chapter. This definition excludes driveways, ground level patios and sidewalks.

BUILDING LINE

Shall mean a line located on the lot parallel with the (front) street line and at a distance therefrom equal to the depth of the required front yard.

CONSTRUCT

Shall mean in addition to its usual meaning, includes the meaning of the words "reconstruct," "relocate," "build," "rebuild," "erect," "alter," "adapt" and "arrange."

DWELLING

a. SINGLE-FAMILY DWELLING

shall mean a wholly detached building constructed or adopted for use exclusively as a place of residence for one-family only.

b. MULTIPLE-FAMILY DWELLING

shall mean a wholly detached building constructed or adopted for use as a place of residence for two or more families.

FENCE

Shall mean a freestanding, constructed barrier used to delineate a particular area, restrict ingress to or egress from an area or for decoration.

GROSS FLOOR AREA

Shall mean the total of (1) all floor area within the horizontal and vertical perimeter of the outside walls of the main building, without deduction for hallways, stairs on all levels, closets, thickness of walls, columns or other features; (2) the area of the floor below that portion of habitable attic ceiling, with ceiling height at or above four feet; and (3) all occupiable or habitable areas with a ceiling at least seven feet above the floor surface (including an earthen floor) and enclosed on at least three sides and located beneath other gross floor area. Decks and porches shall be included. Attached garages not located beneath other gross floor area, grade level crawl spaces, stoops and steps shall not be included.

The inclusion of the areas specified in (3) above in Gross Floor Area shall become effective on July 1, 2004. Structures existing prior to July 1, 2004 and proposed structures for which a valid Zoning Permit has been issued prior to July 1, 2004 otherwise in compliance with maximum gross floor area except for the provisions of (3) above shall be deemed to be in compliance with maximum floor area.

HABITABLE ATTIC

Shall mean the space between the ceiling beams of the top story of a building and its roof rafters which has a stairway as a means of access and egress and in which the ceiling area, at a height of seven and one-third (7 1/3) feet above the attic floor, is not more than 1/3 of the area of the next floor below.

LOT

Shall mean any separate parcel of land having boundaries fixed by recorded deed of conveyance or by map filed in the office of the County Clerk.

NONCONFORMING LOT

Shall mean 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. (N.J.S.A. 40:55D-5)

NONCONFORMING STRUCTURE

Shall mean 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. (N.J.S.A. 40:55D-5)

NONCONFORMING USE

Shall mean 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. (N.J.S.A. 40:55D-5)

PARKING SPACE

Shall mean an open space or garage on a lot, used for parking operative motor vehicles, the area of which is not less than 200 square feet exclusive of drives, aisles or maneuvering areas and to which there is direct and unobstructed access from a street.

PERSON

Shall mean and include a natural person, copartnership, association, corporation and any number of them.

POOL

See definition of "Swimming Pool."

POOL, SPA

See definition of "Swimming Pool."

PRIVATE GARAGE

Shall mean a garage not conducted as a business or used for storage of more than one commercial vehicle and two pleasure cars.

ROOMING HOUSE

Shall mean a dwelling having rooms to let without cooking facilities for transient paying guests.

SCREEN

Shall mean a principally freestanding constructed protective device or object used to conceal or protect a particular interior local area of the property limited to 12 feet in length and six feet above the average elevation of the lot.

SIGNS

Shall mean any object, device, display or structure or part thereof, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, produce, service, event or location by any means including words, letters, figures, designs, symbols, pictures, colors, illumination or projected images.

SPA

See definition of "Swimming Pool."

SPECIAL BARRIER-FREE ACCESS

Shall mean a ramp, landing walkway or other constructed feature to be located on the exterior of a residential dwelling which is deemed necessary to provide access not otherwise obtainable to the interior of the building.

STREET LINE

Shall mean the side line of a street, road or highway as dedicated to the public or as otherwise acquired by the Borough, County or State for public use, and, for the purpose of this chapter, is the boundary line between the public way and the adjacent land.

SWIMMING POOL

Any structure intended for swimming, recreational bathing or wading that contains water over 24 inches (610 mm) dep. This includes in-ground, above ground and on-ground pools, hot tubs, spas and fixed-in place wading pools.

TRAILER

Shall mean a vehicle with or without its own motive power and mounted on wheels or designed to be mounted and transported.

VEGETATION

Shall mean plants of the area, including, but not limited to, flowers, shrubs and trees.

YARD

a. FRONT YARD

Shall mean the required open space the full width of the lot, extending from the front boundary or property line of the lot to the nearest main building exclusive of overhangs and decorative projections up to two and one-half (2 ½) feet in horizontal width.

b. REAR YARD

Shall mean the required open space the full width of the lot, extending from the rear boundary line or property line of the lot to the nearest main building exclusive of overhangs and decorative projections up to two and one-half (2 ½) feet in horizontal width.

c. SIDE YARD

Shall mean the required open space from the front yard to the rear yard on the lot, extending from the side boundary line or property line of the lot to the nearest main building, exclusive of overhangs and decorative projections up to two and one-half (2 ½) feet in horizontal width (except that no portion of any building, including overhangs and decorative projections shall extend closer than five feet to any side or boundary line or side property line).

SECOND 2

ARTICLE III Prohibited Uses

§150-4. PROHIBITED USES ENUMERATED. [1988 Code § 150-4; Ord. No. 463-02; Ord. No. 03-2018]

The use of lands and buildings permitted by this chapter shall not be construed to include the following:

- a. The erection or use of any tent for dwelling purposes.
- b. The use of any trailer, travel trailer, motor home, mobile manufactured home or similar

vehicle for dwelling purposes and the use of land as a collective parking place or camp for said vehicles.

- c. A used car lot.
- d. Roller-skating rinks.
- e. Sand or gravel pits.
- f. Tourist camp, hotel or motel.
- g. Open-air theaters.
- h. Livery or boarding stables.
- l. Training or boarding kennels.
- j. Commercial warehouses, contractors' storage yards, junkyards, secondhand lumber storage yards or other building materials storage.
- k. Commercial laundries, cleaning and dyeing works, slaughtering of poultry or animals, processing of foods, meat or fish smoking, rendering of fats and by-products.
- l. Any commercial process of manufacture, assembly or treatment which is not clearly incidental to a retail business conducted on the premises or which constitutes a nuisance by reason of noise, odor, dust, smoke or vibration.
- m. The dismantling or storage of wrecked, disabled or dismantled automobiles or airplanes or parts thereof.
- n. (Reserved)[1]
- o. Club, fraternity, sorority and boat houses, except that this shall not be construed to prohibit the moving of existing buildings necessitated by shoreline erosion.
- p. Row houses.
- q. Public garages and motor vehicle service stations.
- r. Apartments or living quarters in basements or below finished grade of lot.
- s. Public auction marts; road stands.
- t. Dumping of garbage, rubbish, refuse or other objectionable material for the purpose of regrading or landscaping land on which deposited.
- u. Any permitted sign erected within the Borough of Cape May Point shall not be closer than 15 feet to any public property be it Borough, County, State or Federally owned or owned by any subdivision thereof.
- v. Swimming Pools or spas.

SECTION 3

All ordinances inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

SECTION 4

Should any provision of this ordinance be deemed invalid for any reason that invalidity shall not affect the remaining provisions of the ordinance, and the provisions and sections of the ordinance are hereby declared to be severable with respect to their validity.

SECTION 5

This ordinance shall take effect twenty (20) days after final passage, according to law.

Final Adoption Vote	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT
Mullock						
vanHeeswyk						
Moffatt						

Robert Mullock, Commissioner

Anita vanHeeswyk, Commissioner

Robert Moffatt, Mayor

ATTEST:

Elaine L. Wallace, Borough Clerk

FIRST READING: October 8, 2020
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