

**BOROUGH OF PENNINGTON  
ORDINANCE NO. 2007 –12**

**AN ORDINANCE AMENDING AND SUPPLEMENTING  
CHAPTER 215, "ZONING",  
OF THE CODE OF THE BOROUGH OF PENNINGTON  
COUNTY OF MERCER, STATE OF NEW JERSEY**

**WHEREAS** the Borough Council of the Borough of Pennington in the County of Mercer and the State of New Jersey seeks to amend Chapter 215 of the Code of the Borough of Pennington to update definitions in the Code and to enact recommendations from the "Master Plan And Development Regulations Periodic Reexamination Report" adopted by the Borough Planning Board on February 23, 2005; and

**NOW, THEREFORE, BE IT ORDAINED** by the Borough Council of the Borough of Pennington, in the County of Mercer and the State of New Jersey, that Chapter 215, entitled "Zoning", of the Code of the Borough of Pennington is hereby amended and supplemented as follows:

**SECTION 1.** Add new definitions to Section 215-8, entitled "Definitions", of Chapter 215 of the Code of the Borough of Pennington in alphabetical order to read as follows:

"ADDITION - An extension or an increase in the floor area, height or coverage of a building or structure

ANIMAL HOSPITAL – A place where animals are given medical care and where the boarding of animals that receive onsite medical care is limited to short-term care incidental to the hospital use. For the purposes of this Ordinance, animal hospitals do not include dog kennels, breeding and boarding facilities or other similar uses.

ATTIC - A space between the ceiling beams of the top habitable story and the roof rafters.

BUFFER - An unoccupied portion of land maintained as a landscaped area and used to visually separate one use from another.

CARPORT – A roofed structure providing space for the parking of no more than two (2) motor vehicles and enclosed on not more than three sides. For the purpose of this Ordinance, a carport shall be permitted only where explicitly stated as a permitted secondary use and shall comply with the requirements for garages in Section 215-12.

COMPLETE APPLICATION - An application for development shall be complete for purposes of commencing the applicable time period for action by the applicable municipal agency or its authorized committee or designee when so certified by the municipal agency or its authorized committee or designee.

- a. In the event the application is not certified to be complete within forty-five (45) days of the date of its submission, the application shall be deemed complete upon the expiration of the forty-five (45) day period for purposes of commencing the applicable time period for action by the municipal agency or its authorized committee or designee unless:
  - 1) The application lacks information indicated on the appropriate checklists adopted by Ordinance and submitted by the applicant; and

- 2) The municipal agency or its authorized committee or designee has notified the applicant, in writing, of the deficiencies in the application within forty-five (45) days of submission of the application.
- b. The applicant may request that one (1) or more of the submission requirements be waived, in which event the municipal agency shall grant or deny the request within forty-five (45) days.
  - c. Nothing herein shall be construed as diminishing the applicant's obligation to prove in the application process that he is entitled to approval of the application.
  - d. The municipal agency may subsequently require correction of any information found to be in error and submission of additional information not specified in the Ordinance or any revisions in the accompanying documents, as are reasonably necessary to make an informed decision as to whether the requirements necessary for approval of the application have been met. However, the application shall not be deemed incomplete for lack of any such additional information or any revisions in the accompanying documents so required by the municipal agency.

**CONSERVATION EASEMENT** - An easement in favor of the Borough of Pennington, an approved Homeowners' Association, or other designated conservation organization acceptable to the Borough for the purpose of preserving open space, aquatic buffers and/or the natural, scenic, agricultural, aesthetic, or historic value of land and precluding any building on the premises.

**EASEMENT** - A right, created by deed or other legal means, to use the real property of another for one (1) or more specific purposes (e.g. access, drainage, conservation, utility services, etc.) for the benefit of private persons or for the benefit of the public.

**FAMILY** - The word "Family" shall mean the same as "Housekeeping Unit".

**FLOOR AREA RATIO (F.A.R.)** - The sum of the area of all floors of buildings or structures compared to the total area of the site.

**GRADE** - The slope of a road, path, driveway, swale or other surface, or the average finished ground elevation adjoining a building at project completion.

**HOUSEKEEPING UNIT OR HOUSEHOLD** - One (1) or more persons living together in one (1) dwelling unit on a non-seasonal basis and sharing living, sleeping, cooking and sanitary facilities on a non-profit basis.

**SETBACK LINE** - A line drawn parallel with a street line or proposed street line or lot line and drawn to the point of a building nearest to the street line or proposed street line or lot line. The term "required setback" means a line that is established a minimum horizontal distance from the street line or proposed street line or lot line and beyond which a building or part of a building is not permitted to extend toward the street line or proposed street line or lot line.

**STREET** - Any street, avenue, boulevard, road, parkway, viaduct, drive or other way which:

- a. Is an existing State, County or municipal roadway; or
- b. Is shown on a plat heretofore approved pursuant to law; or
- c. Is approved by the Borough of Pennington in accordance with the provisions of this Ordinance; or
- d. Is shown on a plat duly filed and recorded in the office of the County Recording Officer prior to the appointment of a Planning Board and the

grant to such Board of the power to review plats.

A "Street" includes the land between the street lines, whether improved or unimproved, and may comprise pavement, shoulders, gutters, curbs, sidewalks, parking areas and other areas within the street line. A street is classified by its function as designated in the currently adopted Traffic Circulation Plan Element portion of the Pennington Borough Master Plan. Moreover, for the purposes of the street design and paving requirements of this Ordinance, all "private roads" shall be considered streets.

**STRUCTURE** - A combination of materials to form a construction for occupancy, use or ornamentation, whether installed on, above or below the surface of a parcel of land, including such things as buildings, fences, dumpster enclosures, poles, signs, towers, tanks, decks, paved or concrete driveways, parking lots and patios, swimming pools and tennis courts, but specifically excluding on-site wastewater treatment and disposal systems."

**SECTION 2.** Amend the following definitions in Section 215-8, entitled "Definitions", of Chapter 215 of the Code of the Borough of Pennington to read as follows:

**"ASSISTED LIVING FACILITY** - A complex of apartment dwelling units which contain living, sleeping and sanitary facility accommodations, with ancillary services and activities for the residents, including meals, housekeeping services, medical services, recreational services and other personal services required for the residents, where residents meet the requirements for "Assisted Living Residences" as defined by the State of New Jersey within N.J.A.C. 8:36 et seq., thereby requiring assistance in normal daily living activities between "independent living" and "nursing care".

**BASEMENT** - That portion of a building partly below and partly above grade, where the ceiling averages four feet (4') or more above the finished grade where such grade meets the outside walls of the building.

**BUILDING** - A combination of materials to form a construction adapted to permanent, temporary, or continuous occupancy and having a roof. For the purposes of this Ordinance, a tent which has been erected for a temporary business or social function shall not be considered to be a building, provided that it is not erect for more than one (1) week.

**BUILDING HEIGHT** - The vertical distance measured to the highest point of the building from the average elevation of the finished grade five feet (5') from the foundation of the building along all side(s) of the building. In all cases where this Ordinance provides for height limitations by reference to a specified height and a specified number of stories, the intent is to limit height to the specified maximum footage and the specified number of stories within said footage

**CELLAR** - That portion of a building partly below and partly above grade, where the ceiling averages less than four feet (4') above the finished grade where such grade meets the outside walls of the building.

**COMMON OPEN SPACE** - An open space area within or related to a site designated as a development, and designed and intended for the use or enjoyment of residents and owners of the development. Common open space may contain such complimentary structures and improvements as are necessary and appropriate for the use or enjoyment of residents and owners of the development.

**FLOOR AREA, GROSS (G.F.A.) OR TOTAL** - The sum of the gross horizontal area of each full story of a building on a lot, measured from the exterior face of the exterior walls, provided that any under-roof parking area shall not be included

in the G.F.A. calculation. For attached dwelling units/buildings, the gross floor area shall be measured from the centerline of a wall separating the two dwelling units/buildings.

**LOT COVERAGE** - The aggregate square footage or other area measurement by which all sidewalks, driveways and parking areas, whether paved, graveled or unsurfaced, and all buildings and other structures cover a lot, as measured in a horizontal plane to the limits of the structure or improvement.

**LOT, CORNER** - A lot abutting the intersection of two (2) or more streets, where the interior angle of intersection does not exceed one hundred thirty-five (135) degrees. The "lot width" of a corner lot shall be measured on the narrower of the two (2) sides of the lot abutting a street for purposes of meeting the minimum requirements, regardless of the orientation of the building on the lot. Each corner lot shall have two (2) front yards, one (1) side yard and one (1) rear yard, the side and rear yards to be designated by the proposed orientation of the dwelling or building on the lot at the time of application for subdivision, site plan or variance approval, or if there is no application for subdivision, site plan or variance approval, at the time of building permit application.

**LOT WIDTH** - The straight line horizontal distance between side lot lines at setback points on each side lot line measured from the street line at the minimum required building setback line.

**PARKING SPACE** - Any area for the parking of motor vehicles, exclusive of driveways, access drives, fire lanes and public rights-of-way, either within a structure or in the open, in accordance with the following:

- a. Each non-handicapped, off-street parking space shall not be less than nine feet wide by twenty feet in length (9' x 20'), except that the length of a parking space may be reduced to eighteen feet (18') in length in those instances where a two foot (2') overhang area exists beyond a curb and where such overhang does not interfere with any proposed and/or required landscaping, as may be approved by the Board, or as permitted by N.J.A.C. 5:21-4.15 for residential dwelling units;
- b. Each handicapped space shall not be less than eight feet wide by twenty feet in length (8' x 20') and shall have an adjacent pedestrian access aisle at least five feet (5') wide except that at least eight feet (8') is required for a van accessible handicapped space, provided that if a different requirement for a handicapped space has been adopted by the State, the most current requirement shall be met; and
- c. The width and length of each space shall be measured perpendicular to each other regardless of the angle of the parking space to the access aisle or driveway.
- d. For the purposes of this Ordinance, the total number of required parking spaces for any development shall be the sum of the individual parking requirements for each use in the subject development, based upon the gross floor area or part thereof devoted to each use.

**SCIENTIFIC AND RESEARCH LABORATORIES** – Establishments designed and used for research and engineering activities involving scientific investigations, engineering studies and consumer product development of types other than carried on in "general business offices" and similar activities, with the

objective of creating products or research studies, but excluding the manufacturing, sale, processing, warehousing, distribution or fabrication of materials, products, or goods except as incidental to the principal permitted uses.

SITE PLAN - A development plan of one (1) or more lots which shows:

- a. The existing and proposed conditions of the lot including, but not necessarily limited to, topography, vegetation, drainage, flood plains, marshes and waterways;
- b. The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping, structures and signs, lighting and screening devices; and
- c. Any other information that may be reasonably required in order to make an informed determination concerning the adequacy of the plan in accordance with the requirements of this Ordinance.

STREET LINE - The edge of the existing or future street right-of-way, whichever may result in the widest right-of-way in accordance with the currently adopted Traffic Circulation Element portion of the Pennington Borough Master Plan. The "Street Line" is the dividing line between the street and a lot. All required front yard areas and building setbacks shall be measured from the street line.

STORY - That portion of a building included between the upper surface of any floor and the upper surface of the next floor above it or, if there is no floor above it, then the surface between the floor and the ceiling next above it. For the purpose of this Ordinance:

- a. The interior of a roof shall not be considered a ceiling; rather, the underside of the highest horizontal surface separating the area above from the remainder of the structure below shall be considered the ceiling.
- b. Cellars and basements ordinarily shall not be considered stories when considering the height of a building except, however, that:
  - (1) A finished basement and/or cellar in non-residential buildings shall be considered a "story" for the purposes of the height, floor area and parking requirements of this Ordinance unless used and restricted solely for ancillary storage.
  - (2) A basement in a non-residential or residential building, whether finished or not, shall be considered a "story" for the purposes of the height, floor area and parking requirements of this Ordinance when the distance from grade to the finished surface of the floor above the basement is more than six feet (6') for more than fifty percent (50%) of the total perimeter of the building or is more than twelve feet (12') at any point.
- c. A half-story is the area under a pitched roof at the top of a building, the floor of which is at least three feet (3'), but no more than six feet (6'), below the line of intersection of the roof and wall face.
- d. The attic or area under a pitched roof at the top of a building shall be considered a full story for the purposes of this Ordinance when the head room or ceiling at a height of seven feet (7') or more above the attic floor is more than one-third of the total area of the floor directly beneath and has access via walk-up stairs from the floor below.

**YARD** - An open space that lies between the closest point or projection of a principal or accessory building or buildings and the nearest lot line.

**FRONT YARD** - The open space extending across the full width of the lot and lying between the street line and the closest point of any building on the lot. The depth of the front yard shall be measured horizontally and at right angles to either a straight street line or parallel to a curved street line.

**REAR YARD** - The open space extending across the full width of the lot and lying between the rear lot line and the closest point of the principal building on the lot. The depth of the rear yard shall be measured horizontally and at right angles to either a straight rear lot line or parallel to a curved rear lot line.

**SIDE YARD** - The open space extending from the front yard to the rear yard and lying between each side lot line and the closest point of the principal building on the lot. The width of the side yard shall be measured horizontally and at right angles to either a straight line or the tangent lines of curved lot lines."

**SECTION 3.** Delete the definition of "Building Line" in Section 215-8 of Chapter 215 of the Code of the Borough of Pennington in its entirety.

**SECTION 4.** Amend the definition of "Temporary Sign" in Section 215-31 B. of Chapter 215 of the Code of the Borough of Pennington to read in its entirety as follows:

"TEMPORARY SIGN – Any sign or advertising display designed or intended to be displayed for a short period of time and used to draw the attention of the public to any use, building, product, individual or service. For the purposes of this Ordinance, any temporary free-standing portable sign shall be displayed only during the hours of operation of the use or building to which the advertising applies."

**SECTION 5.** Add a new subsection to Section 215-67 D., entitled "Other provisions and requirements" in the R-80 Residence Zone, of Chapter 215 of the Code of the Borough of Pennington to read in its entirety as follows:

"(2) The Floor Area Ratio shall not exceed 0.275, and no dwelling unit shall exceed 4,500 square feet of gross floor area."

**SECTION 6.** Add a new subsection to Section 215-68 D., entitled "Other provisions and requirements" in the R-100 Residence Zone, of Chapter 215 of the Code of the Borough of Pennington to read in its entirety as follows:

"(2) The Floor Area Ratio shall not exceed 0.25, and no dwelling unit shall exceed 6,500 square feet of gross floor area."

**SECTION 7.** Add a new subsection to Section 215-71 B., entitled "Permitted primary uses" in the TC Town Center Zone, of Chapter 215 of the Code of the Borough of Pennington to read in its entirety as follows:

"(5) General business office uses on the second and/or third floors of a building where the Borough Zoning Officer or the Planning Board has determined

that the size, access or other physical features of the second and/or third floor preclude the floor from being used as a residential dwelling unit, provided that no office uses shall be permitted above a residential dwelling or floor that could accommodate a residential dwelling."

**SECTION 8.** Add a new subsection to Section 215-71 E., entitled "Schedule of regulations" in the TC Town Center Zone, of Chapter 215 of the Code of the Borough of Pennington to read in its entirety as follows:

"(8) All buildings shall have a dual pitched, single ridge roof (such as a gable, hip, gambrel or mansard roof), provided however that where roof mounted equipment is necessary and/or preferable for the operation of the building, a facade roof treatment exhibiting the appearance of such a dual pitched, single ridge roof may be permitted if specifically approved by the Planning Board as part of a submitted site plan application . No flat roofs shall be permitted."

**SECTION 9.** Amend Section 215-71.1 E., entitled "Schedule of regulations" in the TCB Town Center Buffer Zone, of Chapter 215 of the Code of the Borough of Pennington to read in its entirety as follows:

"E. Schedule of regulations. The provisions of the "schedule of regulations" specified in Section 215-71 E. for the Town Center Zone also shall apply to the Town Center Buffer Zone."

**SECTION 10.** Add a new permitted secondary use in the "MU-2" Mixed Use Zone to Section 215-78 C. of Chapter 215 of the Code of the Borough of Pennington to read in its entirety as follows:

"(3) One (1) carport per lot, not exceeding 450 square feet in size and in accordance with the requirements for garages."

**SECTION 11.** Amend the title of Section 215-80, entitled "Utility uses", of Chapter 215 of the Code of the Borough of Pennington to read in its entirety as follows:

"**§215-80. Public utility uses.**"

**SECTION 12.** Amend the title and first line of Section 215-87, entitled "Motor sales establishments", of Chapter 215 of the Code of the Borough of Pennington to read in its entirety as follows:

"**§215-87. Motor vehicle sales establishments.**

Motor vehicle sales establishments shall be subject to the following:"

**SECTION 13.** Amend the title of Section 215-92, entitled "Continuing-care treatment facilities", of Chapter 215 of the Code of the Borough of Pennington to read in its entirety as follows:

"**§215-92. Continuing-care retirement facilities.**"

**SECTION 14.** 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 that subsection, clause or provision so adjudged and the remainder of this Ordinance shall be deemed valid and effective.

**SECTION 15.** This Ordinance shall take effect immediately upon final adoption, publication and the filing of a copy of said Ordinance with the Mercer County Planning Board, all in accordance with the law.

Introduced: \_\_\_\_\_

Advertised: \_\_\_\_\_

Public Hearing: \_\_\_\_\_

Adoption: \_\_\_\_\_

Advertised: \_\_\_\_\_

Attest:

Approved:

\_\_\_\_\_  
Elizabeth Sterling, Borough Clerk

\_\_\_\_\_  
Anthony Persichilli, Mayor