

**ORDINANCE NO. 3521**  
**INTRODUCED BY: COMMISSIONER THOMAS J. EVANS**  
**INTRODUCED ON: JULY 6, 2023**  
**PUBLISHED: JULY 13, 2023**  
**PUBLIC HEARING: AUGUST 1, 2023**  
**PUBLISHED: AUGUST 10, 2023**

**AN ORDINANCE TO AMEND AND REVISE CHAPTER 700 “ZONING” OF THE  
NUTLEY TOWNSHIP CODE**

**ORDINANCE NO. 3521**

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**WHEREAS** the Board of Commissioners have determined that it is in the best interest of the Township and its residents to revise Chapter 700 to the Township Code.

**BE IT ORDAINED** BY THE BOARD OF COMMISSIONERS OF THE TOWNSHIP OF NUTLEY, IN THE COUNTY OF ESSEX, NEW JERSEY AS FOLLOWS:

**SECTION 1. §700-3 – Definitions** of the Township Code of the Township of Nutley is hereby amended to add and amend the following definitions.

§700-3 – Definitions.

**BUILDING**

**Any combination of materials forming a construction, whether installed on, above or below the surface of a parcel of land, and containing a roof supported by columns or walls, used or intended to be used for the shelter or enclosure of persons, animals or property.**

**CIGAR SHOP**

A commercial establishment that sells full-sized, hand-rolled cigars, and which derives at least sixty percent of its total annual gross sales from the sale of such full- sized, hand-rolled cigars.

**CIGAR LOUNGE**

Any establishment, or area within an establishment, designated specifically for the smoking of tobacco products, purchased on the premises or elsewhere; except that a cigar lounge that is in an area within an establishment shall be an area enclosed by solid walls or windows, a ceiling and a solid door and equipped with a ventilation system which is separately exhausted from the nonsmoking areas of the establishment so that air from the smoking area is not recirculated to the nonsmoking areas and smoke is not backstreamed into the nonsmoking areas.

**DRIVEWAY APRON**

Means that portion of a regularly established driveway lying between a property line and any curb, that is constructed out of concrete, the purpose of which is to provide vehicular access from the street across the curb, parkway and sidewalk to the property fronting thereon or abutting thereto.

**EMERGENCY**

The loss of primary power due to power outage beyond the control of the property owner.

**GENERATOR**

Reciprocating internal combustion engine and associated equipment, including but not limited to

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fuel tanks, cover, piping, pad and transfer switch, used to supply backup electric power when local utility is unavailable, not including portable generators.

**OPEN PORCH**

A covered area attached to an entrance to a dwelling, not enclosed by walls, glass, screens or otherwise except for columns and/or railings, which are no less than 50% open.

**PORTICO**

A covered area attached to an entrance to a dwelling, not enclosed by walls, glass, screens or otherwise, except for columns and/or railings which are open, that does not exceed a dimension of 6 feet in width and 4 in depth in depth.

**TATTOO PARLOR**

Any place, premises, building, part of building, cellar, basement, room or establishment in which the skin is permanently discolored by the intentional introduction of pigments into the dermis, or in which indelible or permanent marks or scars or permanent makeup are applied to the human body.

**WINDOW**

A glass area presented to the public for purposes of display. **Public display windows must be clear and non-reflective and not be painted or tinted (transparent, low-emissivity glass is permitted).**

**SECTION 2. §700-39** of the Township Code of the Township of Nutley, entitled “Prohibited uses in all districts” is hereby amended to add subsections P as follows:

P. Tattoo Parlors

**SECTION 3. §700-46** of the Township Code of the Township of Nutley, entitled “Schedule of Regulations as to Bulk, Height and Other Requirements” is hereby amended to read as follows:

§ 700-46 Schedule of Regulations as to Bulk, Height and Other Requirements.

- A. The schedule entitled "Schedule of Regulations as to Bulk, Height and Other Requirements," hereto attached and made a part of this article, is hereby adopted and declared to be a part of this chapter and may be amended in the same manner as any other part of this chapter.
- B. The regulations listed in said schedule for each district are hereby adopted and prescribed for such district and, unless otherwise indicated, shall be deemed to be minimum requirements in every instance of their application, except as modified by the following special provisions:

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- (1) The required schedule regulations per Article VIII for the construction, alteration or addition of a one-family dwelling shall not apply to any lot having less than the required area or width at the time of the adoption of this chapter and held at that time in separate ownership from that of adjoining land, provided that the area and width of such existing lot shall be no less than 80% of the required minimum set forth in the Schedule of Regulations.
- (2) Penthouses, stage towers, scenery lifts, elevators, bulkheads, clock towers, cupolas, water tanks and similar structures and mechanical appurtenances may be erected on a building to a height greater than the limit for the district in which the building is located, provided that no such exception shall cover at any level more than 25% of the area of the roof on which it is located; provided, further, that no such exception shall be used for sleeping or housekeeping purposes or for any commercial purpose other than such as may be incidental to the permitted use of the main building.
- (3) The height limitations of this chapter shall not apply to chimneys, church spires, belfries, standpipes, water towers, flagpoles, monuments or antennas or a satellite dish.
- (4) Extensions of a structure into a required front or rear yard shall be permitted as follows:
  - (a) By cornices, canopies and similar extensions which are 10 feet or more above grade: one foot.
  - (b) By open, fireproof fire escapes: four feet, in rear yards only.
  - (c) By eaves: two feet.
  - (d) **By any open portico and porch. No variance from front yard setback requirements of Chapter 700 Zoning shall be required for an open portico added to an existing single-family, two-family and three-family dwelling, which dwelling was constructed prior to August 1, 2023 in an R-1, R-1A, R-1AA, R-2, or R-3 Zone, provided that the following conditions are met:**
    - (i) **A portico or porch shall be open as defined by Subsection 700-3.**
    - (ii) **The portico shall not exceed a width of 6 feet or a depth of 4 feet. The height shall be such that the underside of the porch covering is not more than 10 feet above the porch floor.**

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- (iii) The portico shall not encroach more than 10 feet into the minimum required front yard for the zone in which it is located.**
  - (iv) The porch shall not exceed a depth of 6 feet. The height shall be such that the underside of the porch covering is not more than 10 feet above the porch floor.**
  - (v) The porch shall not encroach more than 6 feet into the minimum required front yard for the zone in which it is located.**
  
- (5) Extension of a structure into a required side yard shall be permitted as follows:

  - (a) Same as permitted for extensions into required rear yards, except that no uncovered porch or terrace shall project more than three feet into any required side yard.
  
- (6) In specified areas, the depth of front yards for one-family dwellings to be hereafter erected in an R-1, R-1A or R-1AA District and for one- or two-family dwellings to be hereafter erected in an R-2 District shall be as follows:

  - (a) In the area between two intersecting streets or between an intersecting street and the Township limit or between an intersecting street and a zoning district boundary ("intersecting streets," for the purpose of this section, are those which intersect the same side of the street on which the lot which is to be developed fronts), the depth of the front yard of a lot to be developed in the area shall not be less than the average depth of the front yards of other buildings on the same side of the street, in the same zoning district and having frontage upon the same street, provided that 50% of the frontage of the lots in the same area is developed, but not less than the setback required for the district by the Schedule of Regulations.
  - (b) Where the distance from the lot to be developed to an intersecting street, Township limit or zoning district boundary exceeds 200 feet, only those lots within 200 feet on each side of the lot to be developed (on the same side of the street, in the same zoning district and having frontage upon the same street) shall be included in determining the average depth of a front yard. Where the distance on one side of said lot to be developed to an intersecting street, Township limit or zoning district boundary does not exceed 200 feet, such distance plus the 200 feet on the other side of said lot shall be included in determining the average depth of a front yard.

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- (c) In the above specified areas, the required depth of a front yard shall not exceed 50 feet.
  - (7) The required maximum lot coverage regulations for the alteration of or addition to a one-family or two-family dwelling shall not apply to any lot to the extent such lot coverage exceeds 35% prior to July 25, 1987.
  - (8) The required minimum side, front and rear yard dimensions for the alteration of or addition to a one-family or two-family dwelling, provided that the same do not increase the existing lot coverage and/or footprint of existing building outline, shall not apply to the extent that said side, front, and rear yard dimensions (meet or exceed the requirements for side, front and rear yards set forth in the Schedule of Regulations, prior to July 25, 1987) shall be no less than 80% of the required minimum set forth in the Schedule of Regulations.
- C. Other miscellaneous residential mechanical equipment. The following regulations shall be specified:**
- (1) Air conditioners, mini-split systems, heat pumps, radon systems and other fans or portions thereof, including which are mounted in windows or walls of a building or structure and are placed upon the ground or on a ground-based platform outside of a structure or building may not be located in the front yard. Such structures shall be at least 3 feet from any property line.**
  - (2) Generators, oil tanks, and similar structures shall be set back from the side lot and rear lines at a distance equal to or greater than the distance required for principal buildings. Any ground-level generator shall be screened by an attractive and appropriate wall, fence, or planting of appropriate height and density to obscure the generator from the view of adjacent properties, which screening shall be subject to the approval of the Zoning Officer. Generators shall not be located in the front or front side yard on corner properties.**
  - (3) Other uses and structures. The Zoning Officer shall determine the applicability of this chapter to miscellaneous mechanical equipment, which is not specifically regulated herein.**
  - (4) When it is determined that there is no feasible location to place mechanical equipment in the rear or side yard, the Zoning Officer may approve mechanical equipment in the front yard when screened.**

**SECTION 4. § 700-67 “Accessory buildings and uses”** of the Township Code of the Township of Nutley is hereby amended to add subsection E. which reads as follows.

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- A. Detached accessory buildings and accessory uses may occupy in the aggregate an area not to exceed 30% of the area of any rear yard. The height of a detached accessory building shall be one story not to exceed 14 feet.
- B. No detached accessory building or accessory use shall be located:
  - (1) Nearer than three feet or 1/2 the height of such building up to a distance of six feet, whichever is greater, to a side or rear lot line.
  - (2) Within 50 feet of the front lot line of the lot.
  - (3) Within six feet of a rear lot line that abuts a side lot line of a contiguous lot.
  - (4) Nearer to the side street line of a corner lot than the main building on the lot or, if an abutting lot to the rear faces said street line, then a distance equal to the depth of the front yard required on said lot to the rear, except in no case shall a garage on the corner lot and facing the side street be required to be set back more than 25 feet.
- C. No detached accessory building shall be located nearer than 10 feet to a main building.
- D. An attached accessory structure or accessory use shall be considered to be a part of the main building.
- E. **Decks & Patios. Decks and patios are permitted accessory structures in residential zones, contingent on the following:**
  - (1) **Decks or patios are not permitted within any drainage, sewer, or other easements.**
  - (2) **Decks attached to a house shall be included within the Coverage calculation, which shall not exceed the building coverage for the zone. Patios or terraces shall not be included in the Coverage calculation.**
  - (3) **Decks and patios must meet the following minimum setback requirements of Table 1**

<b>TABLE 1 – DECK &amp; PATIO SETBACKS</b>		
<b>Setback Requirements</b>	<b>Decks and Patios &lt;30 Inches in Height</b>	<b>Decks and Patios &gt;30 Inches in Height</b>
<b>Front Yard (ft)</b>	<b>Not Permitted</b>	<b>Not Permitted</b>
<b>Side Yard (Other) (ft)</b>	<b>Principal Bld. Setback</b>	<b>Principal Bld. Setback</b>
<b>Side Yard (ft)</b>	<b>3'</b>	<b>Principal Bld. Setback</b>
<b>Rear Yard (ft)</b>	<b>15'</b>	<b>24'</b>

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- (4) Privacy screens of up to six (6') feet shall be permitted to be attached to the deck, so long as the total height (deck height and screen height) does not exceed six (6') feet in height.**
- (5) Decks with privacy screens that exceed the maximum height of six (6') in height are required to meet the minimum zoning setbacks that apply for that property.**
- (6) Patios with a roof cover, screen room or sunroom are required to meet the minimum zoning setbacks that apply for that property.**

**SECTION 5. § 700-71 “Fences and retaining walls”** of the Township Code of the Township of Nutley is hereby amended to revised to read as follows.

- A. No fences of any type shall be permitted in any front yard.
- B. A fence erected along the side lines from the front line of a main structure to the rear line of such structure and within such lines shall not exceed four feet in height and shall be not less than two feet in height and shall be of 50% open construction (i.e., the open spaces in the fence shall be at least the same width of each picket, slat or other construction element of such fence). The setback for any such fence shall be in line with the furthest setback of the adjacent property or the property upon which the fence is being erected, whichever setback is greater.
- C. A fence erected along the sidelines from the rear line of a main structure, **but excluding an attached accessory deck or similar structure**, to the rear property line and along said rear property line and within such lines shall not exceed six feet in height and not be of solid construction. **A stockade fence is hereby deemed to be of solid construction.**
- D. A fence erected on any corner lot shall conform to the fence requirements for the adjoining properties.
- E. If, by the application of the provisions of this chapter, because of the location or position of any interior lots, the owners of lands along a common boundary line are restricted to the erection of fences of one or the other of two maximum heights, then, in such case, notwithstanding such provisions, all owners along said common boundary line shall be permitted to erect a fence of the greater maximum height, provided the fence so erected is the kind or type required by the provisions of this article.
- F. No permit shall be issued for the construction of any fence, the apparent purpose of which is to obstruct light and air in relation to adjoining property for any fence which shall constitute a hazard, including but not limited to spike, barbed-wire, electrical fences and “spite” type fences. A spite-type fence is any fence that creates a detrimental impact on adjacent

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surrounding property owners, such as increased restricted use of a vehicle, creates a safety risk or potential motor vehicle damage.

- G. The finished side of the fence, as determined by the Construction Official, shall face toward the direction of the adjoining properties.
- H. Notwithstanding the foregoing, a stockade fence with no open construction may be erected in accordance with the location and height limitations contained in Subsection C hereof if the written consent of the adjoining property owner or owners is filed with the Construction Official.
- I. Notwithstanding the foregoing, fences in all zones other than residential zones shall not exceed eight feet in height, and front yard fences shall also be permitted in such nonresidential zones, not including residential uses, subject to all other provisions of this chapter not inconsistent herewith.
- J. All fences **and retaining walls** erected in a residential zone shall be located a minimum of four inches in from the property lines for fences that require a foundation. At no time can a fence either above or below ground encroach on the adjacent property.
- K. Temporary fences such as snow fences, silt fences, garden fences and construction fences do not need permits.

**SECTION 6. § 700-94 “Additional regulations on off-street parking for one- and two-family dwellings”** of the Township Code of the Township of Nutley is hereby amended to read as follows:

- A. Notwithstanding any other section of this chapter, no front yard of a lot upon which is located a one or two-family dwelling shall be used for the parking of motor vehicles, except that motor vehicles may be parked upon a driveway in the front yard. Similarly, in the case of corner lots, no side yard facing a street on a lot upon which is located a one- or two-family dwelling shall be used for the parking of motor vehicles, except that motor vehicles may be parked upon a driveway in the side yard. The use of a driveway for the parking of motor vehicles shall be subject to the following limitations:
  - (1) Front yard. The driveway shall consist of the area directly opposite to an attached garage, detached garage **or not more than two feet in front of the main dwelling when a 2-foot in-depth landscape area is provided directly in front of the main dwelling** or depressed garage or the extension of the side yard into the front yard. The driveway width shall not exceed 16 feet in **width for lots up to 50 feet in width. Lots having a width greater than 50 feet may have a driveway width of up to 18 feet in width when conforming to Section 700-48. However, if there is no garage and no available side yard, a driveway not to exceed 16 feet in width from the side lot line may be constructed.**



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- (2) Side yard of corner lots. The driveway shall consist of the area directly opposite and adjacent to an attached garage, detached garage or depressed garage, **or not more than two feet in front of the main dwelling, when a 2-foot in-depth landscape area is provided directly in front of the main dwelling** or the extension of the rear yard into the side yard which abuts a street. However, if there is no garage and no available rear yard, a driveway not to exceed 16 feet in width **from the rear lot line may be constructed. Lots having a width greater than 50 feet may have a driveway width of up to 18 feet in width when conforming to Section 700-48.**
- (3) Each property shall not have more than one driveway and one curb cut. Curb cuts are subject to the following standards:
  - (a) Curb cuts in R-1, R-1A, R1-AA R-2 and R-3 Districts shall not exceed 16 feet in length, **except when an 18-foot-wide driveway is permitted by ordinance. When an 18-foot-wide driveway is permitted, a curb cut shall not exceed 18 feet in length.**
  - (b) Curb cuts in all other districts shall not exceed ~~(20)~~24 feet in length.
- (4) **When a walkway or sidewalk is connected to a driveway, a 6-inch curb shall be installed to separate the driveway from the walkway.**

**SECTION 7. §700-116 – Zoning permits; certificates of occupancy; review fees”** of the Township Code of the Township of Nutley is hereby amended to read as follows.

§700-116 – Zoning permits; certificates of occupancy; review fees.

- A. A construction permit or a certificate of occupancy issued in accordance with the New Jersey State Construction Code shall satisfy the purpose of a zoning permit, upon satisfaction of the further conditions and requirements set forth in this chapter. Every application for a zoning permit shall be made, in writing, by the owner or his authorized agent and shall include a survey to scale, a statement of the use or intended use of a structure or vacant land and shall be accompanied by a plan drawn to lot and street lines. The Zoning Officer shall grant or refuse a zoning permit within 10 days after receipt of the application, except when site plan approval is required, in which case the Zoning Officer shall grant or refuse the permit upon receipt of notice of final action on the site plan by the Planning Board. If the Zoning Officer refuses to issue a permit hereunder, he shall state, in writing, the grounds of his refusal.
- B. Permit required.
  - (1) A zoning permit shall be obtained from the Zoning Officer for any of the following:

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- (a) The construction or alteration of any building or part of a building or any sign.
  - (b) The painting of a sign on a building.
  - (c) Occupancy and use of vacant land.
  - (d) Occupancy and use or change in the occupancy, ownership or use of any building, including but not limited to tenants, lessors, owners or other persons in all single-family, two-family or multiple-dwelling units.
  - (e) Change in the use of land or part of a lot.
- (2) No such construction, alteration, occupancy, use or change of occupancy, ownership or use shall take place until a zoning permit therefor has been issued by the Zoning Officer, and no excavation for any building or use of land shall commence until a zoning permit for such building or use has been issued by the Zoning Officer.
- C. If the occupancy and use of a building or of land for which a zoning permit has been issued in the form of a certificate of occupancy are not commenced within six months after the date of such issuance or such longer period as the Zoning Officer may authorize, in writing, because of the occurrence of conditions unforeseen at the time of issuance, such occupancy permit shall expire and a new occupancy permit shall be obtained before such occupancy and use are commenced. No such extension of time for a longer period than 90 days shall be authorized except upon approval by the Planning Board.
- D. A certificate of occupancy shall be deemed to authorize and is required for both initial and continued occupancy and use of the building or land to which it applies and shall continue in effect as long and only as long as such building and the use thereof or the use of such land are in full conformity with the provisions of this chapter and any requirements made pursuant thereto.
- E. Upon written request by the owner, the Zoning Officer shall, after inspection, issue a certificate of occupancy for any building or use thereof or of land existing at the time of the adoption of this chapter certifying such use and whether or not the same and the building conforms to the provisions of this chapter.
- F. **The Zoning Officer may revoke any zoning permit if it is determined that the actual conditions or construction does not adhere to the plans, specifications, terms and conditions or approvals upon which the construction permit was issued or there exist any violations of any applicable municipal or State regulations.**

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- G. The Zoning Officer shall not issue a certificate of occupancy associated with a transfer of real estate ownership prior to the closing or completion of all building permits and/or active development projects.**
- H. All new major construction shall provide an as-built survey and building height verification prior to the issuance of a certificate of occupancy.**
- I. Zoning review fees.

Residential Structures	Fee
Fences	\$10
Signs (each)	\$10
Non-structure (i.e., driveways, walks, patios, impervious surface, lot coverage)	\$10
Accessory structure (i.e., sheds, garages, swimming pools)	\$15
Attached structure (i.e., garages, porches, additions, decks)	\$15
New structures (principal structure on lot for principal use)	\$50
Alterations	\$25
 Nonresidential Structures	 Fee
Fences	\$15
Signs (each)	\$15
Additions on existing buildings	\$50
New structure (i.e., principal structure on lot or for principal use)	\$75
Change in commercial tenancy	\$25
Alterations	\$50
Awnings	\$25
Accessory structure (sheds, garage, etc.)	\$25
Nonstructural (driveways, walks, retaining walls)	\$25
Sight work and parking lots	\$100

**SECTION 8.** All ordinances of the Township of Nutley, which are inconsistent with the provisions of this ordinance, are hereby repealed to the extent of such inconsistency.

**SECTION 9.** If any section, subsection, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid by any court or competent jurisdiction, such decision shall not affect the remaining portion of this ordinance.

**SECTION 10.** All other provisions of §700 of the Code of the Township of Nutley are not further amended and remain in full force and effect.

This ordinance shall take effect immediately upon the expiration of twenty (20) days after final passage and publication in the manner provided by law.

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<i>Record of Vote</i>	<i>Commissioner John V. Kelly, III</i>	<i>Commissioner Thomas J. Evans</i>	<i>Commissioner Alphonse Petracco</i>	<i>Commissioner Mauro G. Tucci</i>	<i>Mayor Joseph P. Scarpelli</i>
<i>Yes</i>	X	X	X	X	X
<i>No</i>					
<i>Not Voting</i>					
<i>Absent/Excused</i>					