

Approved First Reading- December 16, 2022
Public Hearing – January 18, 2023
Approved Second Reading – February 24, 2023
Amendment Passed – February 24, 2023

AN ORDINANCE TO AMEND CHAPTER 160, ZONING, OF THE CODE OF THE TOWN OF FENWICK ISLAND, DELAWARE §160-5 (C) AND (G) RELATING TO MECHANICAL EQUIPMENT AND POOLS, HOT TUBS AND SPAS

WHEREAS, the Town Council of the Town of Fenwick Island desires for the purpose of promoting health, safety and general welfare of the inhabitants of the Town of Fenwick Island, Delaware;

BE IT ORDAINED by the Town Council of the Town of Fenwick Island, in session met, a quorum pertaining at all times thereto, in the manner following:

CODE OF THE TOWN OF FENWICK ISLAND, DELAWARE §160-5 (C) AND (G)
CURRENT ORDINANCE:

- C. Area regulations. Same as § **160-4C** as to use for single-family dwellings. For uses other than residential, the front building limit line setback, side yard and rear yard requirements shall be as follows:
- (1) Front building limit line. The building limit line shall be set back from the front lot line not less than 15 feet. [**Amended 7-24-2015**]
 - (2) Side yard. There shall be side yards on each side not less than seven feet in width, except as provided in § **160-8A(3)** and **(8)**, and except that, in the case of corner lots, the side yard adjacent to the side street shall have a minimum width of 15 feet. [**Amended 2-22-2013**]
 - (3) Rear yard setback requirements: [**Amended 7-24-2015; 4-27-2018**]
 - (a) The rear yard building limit line shall be set back from the rear lot line not less than 10 feet. In addition:
 - [1] All rear yard setbacks for lots located in the Commercial Zone shall include a professionally engineered or professionally landscaped five-foot vegetative stormwater buffer when abutting lots are used for residential purposes.
 - [2] Shrubs and trees are required in the buffer as follows:

- [a] A minimum of two feet in height at planting, maintained at a maximum of 10 feet in height, no encroachment onto adjacent residential property, and spaced at a maximum distance of 10 feet apart. Such plantings shall be nondeciduous shrubs or trees that keep foliage year round.
- (4) Any mechanical equipment shall be prohibited in the side yard setbacks except that, in the case of corner lots, with respect to the side setback adjacent to the side street, there shall be permitted an encroachment of no more than four feet into the 15-foot setback for such mechanical equipment. Any mechanical equipment shall be prohibited in the rear setback. Any mechanical equipment shall be prohibited in any area which is less than 15 feet from the front property line. Mechanical equipment, whether located in the rear yard, front yard or corner side setback shall be screened from view with screening that has openings constituting between 20% and 30% of the total surface area of the screening to provide for the flow-through of air. A detailed design drawing of the mechanical equipment, together with any required screening, shall be submitted with the application for a building permit. **Amended 3-4-2022.**
- (5) Commercial pools, hot tubs and spas. **[Added 6-23-2017]**
- (a) The front, side and rear yard setback requirements for commercial pools, hot tubs and spas shall be the same as those which apply to the main structure for the property.
- (b) Every unenclosed portion of a commercial pool shall be protected by a continuous safety barrier consisting of county-approved fencing or its equivalent. Fencing which is part of such a required commercial pool safety barrier may be up to six feet tall. Barriers are not required for commercial hot tubs or spas when a cover is provided.
- (c) All commercial pools, hot tubs and spas shall comply with all applicable state and county regulations.
- (6) The area between the front lot line and the front building limit line may be used for driveways and/or parking spaces provided it complies with § **160-10B(2)** (size of parking spaces in the Commercial Zone). The side yard and rear yard areas may also be used for driveways and parking areas; provided, further, that only limited-access entrances and exits to such driveways and parking areas are permitted from the bordering streets. The limited-access entrances and exits shall be controlled by drop between such entrances and exits, and the parking areas shall comply with the parking regulations of this chapter. **[Amended 8-22-2008; 7-24-2015]**
- (7) No part of any required building setback area in the front, rear, or side of any lot in the Commercial Zone may be covered or paved with impervious or semi-impervious materials such as concrete, asphalt, brick, flagstone, etc. Such coverings or paving existing at the time

of enactment of this subsection may continue to be used and repaired as a nonconforming use, but may not be expanded in any horizontal dimension nor rebuilt or replaced with such materials. **[Added 7-24-2015]**

- (8) Each motel/hotel permitted to be erected or altered hereafter shall occupy a lot(s) providing a minimum of 1,000 square feet of land area for each sleeping room therein, including sleeping rooms in any apartment included in the motel/hotel building. Each motel/hotel use existing as of the date of the adoption of this amendment on December 11, 2015, shall occupy a lot(s) providing a minimum of 600 square feet of land area for each sleeping room, not to exceed a total of 65 sleeping rooms, including rooms in any apartment included in the hotel/motel building. **[Amended 9-23-2005; 12-11-2015]**

- D. Fire regulations. All construction in the Commercial Zone must be approved by the State Fire Marshal, except individual single-family dwellings.

- E. Lighting. Lighting (inside and/or outside) on commercial properties must be arranged so as not to reflect or cause glare into any residential property where the intensity of light is strong enough to seriously disturb a person of normal sensibilities. This includes the lighting of permitted illuminated signs.

- F. Sidewalks approved by DELDOT, in compliance with ADA regulations and no less than five feet in width or a DELDOT and ADA approved alternative are required for all new construction and substantial improvements in the Commercial Zone. (See § 140-2 - Article II - Sidewalks.) **[Added 7-24-2015]**

CODE OF THE TOWN OF FENWICK ISLAND, DELAWARE §160-5 (C) AND (G)

PROPOSED AMENDMENT:

- C. Area regulations. Same as § **160-4C** as to use for single-family dwellings. For uses other than residential, the front building limit line setback, side yard and rear yard requirements shall be as follows:
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 - (2) Side yard. There shall be side yards on each side not less than seven feet in width, except as provided in § **160-8A(3)** and **(8)**, and except that, in the case of corner lots, the side yard adjacent to the side street shall have a minimum width of 15 feet. [**Amended 2-22-2013**]
 - (3) Rear yard setback requirements: [**Amended 7-24-2015; 4-27-2018**]
 - (a) The rear yard building limit line shall be set back from the rear lot line not less than 10 feet. In addition:
 - [1] All rear yard setbacks for lots located in the Commercial Zone shall include a professionally engineered or professionally landscaped five-foot vegetative stormwater buffer when abutting lots are used for residential purposes
 - [2] Shrubs and trees are required in the buffer as follows:
 - [a] A minimum of two feet in height at planting, maintained at a maximum of 10 feet in height, no encroachment onto adjacent residential property, and spaced at a maximum distance of 10 feet apart. Such plantings shall be nondeciduous shrubs or trees that keep foliage year round.
 - (4) Any mechanical equipment shall be prohibited in the side yard setbacks except that, in the case of corner lots, with respect to the side setback adjacent to the side street, there shall be permitted an encroachment of no more than four feet into the 15-foot setback for such mechanical equipment. Any mechanical equipment shall be prohibited in the rear setback. Any mechanical equipment shall be prohibited in any area which is less than 15 feet from the front property line. Mechanical equipment, whether located in the rear yard, front yard or corner side setback shall be screened from view with screening that has openings constituting between 20% and 30% of the total surface area of the screening to provide for the flow-through of air. A detailed design drawing of the mechanical equipment, together with any required screening, shall be submitted with the application for a building permit. **Amended 3-4-2022.**

- (5) Commercial pools, hot tubs and spas. **[Added 6-23-2017]**
- (a) **All pools, hot tubs and spas shall be located between the front setback line and the main structure, be at ground level designed to utilize the main structure as a screen, and shall not extend any closer than 25 feet from the rear property line. The front and side yard setback requirements for commercial pools, hot tubs and spas shall be the same as those which apply to the main structure for the property.**
- (b) Every unenclosed portion of a commercial pool shall be protected by a continuous safety barrier consisting of county-approved fencing or its equivalent. Fencing which is part of such a required commercial pool safety barrier may be up to six feet tall. Barriers are not required for commercial hot tubs or spas when a cover is provided.
- (c) All commercial pools, hot tubs and spas shall comply with all applicable state and county regulations.
- (6) The area between the front lot line and the front building limit line may be used for driveways and/or parking spaces provided it complies with § **160-10B(2)** (size of parking spaces in the Commercial Zone). The side yard and rear yard areas may also be used for driveways and parking areas; provided, further, that only limited-access entrances and exits to such driveways and parking areas are permitted from the bordering streets. The limited-access entrances and exits shall be controlled by drop between such entrances and exits, and the parking areas shall comply with the parking regulations of this chapter. **[Amended 8-22-2008; 7-24-2015]**
- (7) No part of any required building setback area in the front, rear, or side of any lot in the Commercial Zone may be covered or paved with impervious or semi-impervious materials such as concrete, asphalt, brick, flagstone, etc. Such coverings or paving existing at the time of enactment of this subsection may continue to be used and repaired as a nonconforming use, but may not be expanded in any horizontal dimension nor rebuilt or replaced with such materials. **[Added 7-24-2015]**
- (8) Each motel/hotel permitted to be erected or altered hereafter shall occupy a lot(s) providing a minimum of 1,000 square feet of land area for each sleeping room therein, including sleeping rooms in any apartment included in the motel/hotel building. Each motel/hotel use existing as of the date of the adoption of this amendment on December 11, 2015, shall occupy a lot(s) providing a minimum of 600 square feet of land area for each sleeping room, not to exceed a total of 65 sleeping rooms, including rooms in any apartment included in the hotel/motel building. **[Amended 9-23-2005; 12-11-2015]**
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- F. Sidewalks approved by DELDOT, in compliance with ADA regulations and no less than five feet in width or a DELDOT and ADA approved alternative are required for all new construction and substantial improvements in the Commercial Zone. (See § 140-2 - Article II - Sidewalks.) [Added 7-24-2015]

G. **Mechanicals/Grease Interceptors/Transformers.**

(1) All mechanical equipment shall have a decibel level less than 85 decibels at the source and no more than 55 decibels as measured at any residential property line. A decibel meter app may be used to make the determination and shall be presumptively deemed accurate of any decibel measurement and if used, two measurements are to be measured and recorded. Emergency equipment, such as emergency generators, will be exempt from the decibel requirement during the State of Emergency or a power outage. The acceptable decibel reading may be achieved by using sound buffering cabinets or enclosures.

(2) The maximum height of the screening or sound enclosure for mechanicals shall not exceed the maximum height allowed for the building.

(3) Grease interceptors shall be mandatory for any structure that provides food services and shall be located underground no closer than 25 feet from a rear property line.

(4) Transformers shall be located within 25 feet of the front setback and shall be screened as set forth in §160-5 (C) (4).