

Adopted October 8, 2021

**AN ORDINANCE TO AMEND CHAPTER 130 OF THE
MUNICIPAL CODE OF THE TOWN OF HENLOPEN ACRES,
BY AMENDING SECTIONS 130-4
RELATING TO ZONING DEFINITIONS.**

WHEREAS, Title 22, Chapter 3, Section 301 of the Delaware Code provides that "[f]or the purpose of promoting health, safety, morals or the general welfare of the community, the legislative body of cities and incorporated towns may regulate and restrict the height, number of stories and size of buildings and other structures, percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes."

WHEREAS, Article X, Chapter 130, Section 130-56 of the Municipal Code of the Town of Henlopen Acres provides that any amendment to any Zoning Ordinance shall be after a public hearing following fifteen (15) days' notice by publication in an official paper or a paper of general circulation with the municipality.

BE IT ORDAINED, by the Commissioners of the Town of Henlopen Acres, in session met, in the manner following to wit:

Section 1. Chapter 130, Section 130-4, of the Municipal Code of Henlopen Acres, as amended, be and the same is hereby further amended by making insertions as shown by underlining and deletions as shown by strikethrough, as follows:

§ 130-4 Definitions and word usage.

- A. Word usage. Words used in the singular number include the plural and words used in the plural number include the singular; the word "building" includes the word "structure."
- B. Unless otherwise expressly stated, the following words shall, for the purpose of this chapter, have the meaning herein indicated:

ACCESSORY BUILDING OR USE

A building or use customarily incidental or subordinate to, accessory to and attached to the principal building or use and located on the same lot as the principal use; provided, however, that any accessory building shall not exceed the following size and height restrictions and that any accessory building or use shall not have any of the following facilities:

- (1) The size of the accessory building shall not exceed 900 square feet and 24 feet in height and shall not exceed one story; other accessory structures shall not exceed

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48 square feet.

- (2) Toilet rooms, including a toilet or commode, bidet, shower, tub unit or any other similar facility, are prohibited, except that any accessory building may have one sink with running water.
- (3) Sleeping facilities, including, but not limited to, beds, sleep sofas, hammocks or any other sleeping apparatus which is or could be used for sleeping purposes, are prohibited unless stored in such a manner so as not to be available for sleeping purposes.

ATTACHED

The physical union of two otherwise independent structures and shall require connection by a space enclosed by a roof, walls and flooring.

BLOCK

Any given portion of lands and private ownership lying within the corporate limits of the Town the outside boundary line of which is defined, but in no way intersected, by the adjacent lines of any given number of the public roads, avenues, streets, lanes, alleys, ways, parks, beaches, strands, waterways, zoning districts or corporate limits of the Town.

BOARD OF ADJUSTMENT

The officially established Board of Adjustment of the Town of Henlopen Acres.

BUILDING

Any combination of materials forming a construction. The term "building" shall include the term "structure" as well as the following: signs, fences, walls, radio and television antennas, porches, carports, bins and other similar structures.

BUILDING AREA

The aggregate of the maximum horizontal cross-section areas of the building on a lot, excluding cornices, eaves, gutters or chimneys projecting not more than 18 inches.

BUILDING LINE

An imaginary line separating the required front, rear and side yards from the remainder of a lot within which buildings shall be confined.

BUILDING SETBACK LINE

The building line of the main front yard and designated as the distance from the ~~street line~~ point of the property line to the front building line.

COMMISSIONERS

The Mayor and Commissioners of the Town of Henlopen Acres.

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CONSTRUCTION

Includes but is not limited to the following activities: work in preparation for, participation in or cleaning up from installation of infrastructure, improvements or new structures; renovations to, repairs of, alterations to, modification to or demolition of structures; installation of or removal of trees or other landscaping; installing antennas, cable television, electric, water, sewer or other utilities; cleaning with power tools, furnishing, delivering, loading or unloading of materials or equipment to be used in any of the above enumerated or similar activities.

DISTRICT

A portion of the incorporated territory of the Town of Henlopen Acres within which certain zoning regulations and requirements or various combinations thereof shall apply under this chapter.

DRIVEWAY

An entrance or entrances to a property, used for ingress, egress and parking of vehicles, each of which may extend no more than 20 feet in width on a Town right-of-way.

EASEMENTS OR BRIDLE PATHS

Those locations, 10 feet in width, delineated on the survey map of Henlopen Acres as "Holly Walk," "Green Way," "Gypsy Lane," "Indian Trail," "Fox Run," "Willow Bend," "Point O' Woods," "Beach Pass," "Bayberry Path," "Bright Water Ride" and "Pines End" which are to be used for the erection, construction and maintenance of utilities and for other use, except by written permission of the Town of Henlopen Acres, and for no other use, except by written permission of the Town of Henlopen Acres, and which shall remain clear of obstructions, plantings or trash and used for removal of trash, brush, etc., and maintenance of such easement area for access to utilities thereon.

ENVIRONMENTAL APPROVAL COMMITTEE

The Environmental Approval Committee appointed by the Mayor composed of three members, confirmed by a majority of all the Commissioners of the Town of Henlopen Acres. All members of this Committee shall be property owners but none shall be a Commissioner. All appointments shall be for a period of three years, provided that the terms of the original members shall be established in such a manner that the term of at least one member shall expire each year, and the successor shall be appointed for a term of three years.

FAMILY

An individual or two or more persons who are related by blood, marriage or adoption, living together and occupying a single housekeeping unit with single culinary facilities,

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or a group of not more than four persons living together by joint agreement and occupying a single housekeeping unit with single culinary facilities on a nonprofit, cost-sharing basis. Domestic servants, employed and residing on the premises, shall be considered as part of the family.

FENCE

A barrier, railing, or other upright structure, enclosing an area of ground to mark boundary, control access, or prevent escape.

FIREBREAKS

Those parcels of land reserved as firebreaks and property of the Town of Henlopen Acres, such parcels being designated on the Survey Map of Henlopen Acres as 20 feet wide between Lots A 5 and A 6, between Lots B 4 and C 1, and between Lots E 10 and H 1; and also designated as 10 feet wide between Lots A 9 and B 5 and between Lot H 14 and Block Q; and also designated as 25 feet wide between Lots R 4 and R 5; and also designated as 50 feet wide between Lots L 5 and M I and noted "Green Gate"; and also the area designated as having a varying width to a minimum of 77 feet adjoining the rear of lots in Block R and Block S and extending from Blocks R and S northerly to the common property line of the Town of Henlopen Acres and the North Shores Subdivision, which area is designated "Sandy Bottoms." Such areas shall remain clear of any obstructions, and no plantings, trees or shrubs which would contribute to a fire shall be placed therein, and no other use thereof shall be made without the written consent of the Town of Henlopen Acres first being had and obtained and no other use thereof shall be made without the written consent of the Town of Henlopen Acres first being had and obtained.

FLOOR AREA

The sum of the total horizontal areas of every floor of every building on a lot. The measurement of gross floor area shall be computed by applying the following criteria:

- (1) The horizontal square footage is measured from the outside face of all exterior walls.
- (2) Except upper floor areas in open atriums, no deduction shall apply for horizontal areas void of actual floor space, for example, elevator shafts and stairwells.
- (3) All parking structures count toward floor area unless specifically exempted by other sections of this chapter.

~~FLOOR AREA RATIO~~

~~The floor area in square feet of all buildings on a lot divided by the area of such lot in square feet.~~

FRONT YARD

The required open space unoccupied and unobstructed extending the full width of the lot between any part of the building and the ~~street~~ property line.

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GROUP RENTAL

A rental or tenancy of a residential dwelling by a group of more than two persons living together by joint agreement and occupying a single housekeeping unit with single culinary facilities on a nonprofit, cost-sharing basis or on a profit basis; also, any usage for profit or otherwise inconsistent with this chapter by an individual or a family. Any subtenancy is deemed a group rental.

HEIGHT

The vertical distance of a building measured from a point where the center line of a building to be erected intersects with the center line of the street on which the building will face to the highest point of the highest roof; provided, however:

- (1) Such vertical distance of a building, within the floodplain area as described in Chapter 71 of the Code, shall be measured from a point where the center line of a building to be erected intersects with a point three feet above the base flood elevation at the building site to the highest point of the highest roof.
- (2) Any roof shall have a minimum pitch of five inches of vertical rise for each 12 inches of horizontal run to the ridge of the greatest height of the roof, and it is further provided that architectural elements such as dormers, porte-cochere, entranceways, and porch roofs may have a pitch less than the minimum required so long as none or combination of these comprise the majority of the structure's roof surface. Roof surface is determined by the coverage of the roof as projected on the ground in square feet.
- (3) Chimneys shall not exceed five feet over such designated heights.

HENLOPEN ACRES, INC.

A corporation and initial owner of lots included in the Town of Henlopen Acres. Henlopen Acres, Inc., is a party to all original deeds of lots, except for United States Government land in the Town.

LOT

A parcel of land with or without a building, recorded on the Survey Map of Henlopen Acres as one unit of land.

LOT AREA

~~The area of a lot shall be determined by the product of the average depth and average width measurements of the lot.~~

- ~~(1) The depth measurement shall be made between the street line and the rear line of the lot, which distance shall be to the middle of the ten-foot wide bridle path or utility right of way at the rear of such lots. The depth of those lots bordering on the bridle path or utility right of way "Holly Walk" shall include the total 10 feet of such bridle path or utility right of way and shall extend to the boundary line~~

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~~between the Town of Henlopen Acres and the Town of Rehoboth Beach. Those lots bordering on the bridle path or utility right of way "Bright Water Ride" shall include the total ten-foot width of such bridle path or utility right of way and shall extend to the demarcation line for the property of the United States Government. Those lots bordering on the bridle path or utility right of way "Pines End" shall include the total ten-foot width of such bridle path or utility right of way and shall extend to the demarcation line of the water area and wetlands "Sandy Bottoms," a fire break and property of the Town of Henlopen Acres.~~

- ~~(2) The width measurement shall be made between the side lines of the lot and shall include 1/2 of the ten-foot bridle path or utility right of way where such path or right of way is noted on the Survey Map of Henlopen Acres.~~

The area of a parcel of land. The total area of a horizontal plane between the boundary lines, expressed in square feet, as determined by recorded documents on file with the Sussex County Recorder of Deeds.

NONCONFORMING PROPERTY

An existing building, structure, accessory or parcel of land, or any combination thereof, lawfully existing prior to adoption, revision or amendment of this chapter, which does not conform to the provisions of this chapter for the district in which said property is located by reason of such adoption, revision or amendment. Residential structures which received approval and began construction or were completed prior to October 15, 1968, are legal nonconforming structures; residential structures built between October 15, 1968, and April 12, 1974, are legal nonconforming structures if they meet the then-existing Sussex County yard setbacks as follows: front yard, 30 feet from right-of-way line of the road on which the structure fronts; side yard, 10 feet; rear yard, 15 feet; and that accessory buildings located at least 100 feet back from the front line may be located within not less than five feet of the side lot line.

NONCONFORMING USE

A use lawfully existing prior to the adoption, revision or amendment of this chapter which does not conform to the provision of this chapter for the district in which said use is located, by reason of such adoption, revision or amendment.

NONPROFIT ORGANIZATION

Any nonprofit organization registered as such and in good standing with the Internal Revenue Service engaging in civic or community services.

OCCUPANCY CERTIFICATE

Written statement issued by the Office of Zoning Administration authorizing the occupancy of a property.

PARKING LOT

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A lot or portion thereof used for parking of passenger automobiles and which, in the R-Residential District, does not exceed the garage storage capacity or for a maximum of three vehicles in lieu of garage, all plus a no more than twenty-foot width for a driveway on a Town right-of-way.

PRIVATE GARAGE

A building attached to the dwelling for the storage of not more than three automobile passenger cars.

REAR YARD

The required open space unoccupied and unobstructed extending along the rear lot line (and not street line) through the whole width of the lot, the depth of which shall be measured from the rear lot line, exclusive of any easement or bridle path, and the closest point of the nearest principal or accessory building.

SATELLITE ANTENNA

A parabolic dish antenna, including its structural supports, used by consumers for home reception of audio or video signals, or both, directly or indirectly, from a transmitter or a transmitter relay located in planetary orbit.

SIDE YARD

The required open space unoccupied and unobstructed between any part of the building and the side lot line and extending through the whole depth of the lot.

SINGLE-FAMILY DETACHED DWELLING

A building designed for and occupied exclusively as a residence for only one family and having no party wall in common with an adjacent building and no part of such building was formerly used for a cabin, railroad car, trailer, mobile home or house boat. The design shall permit free movement to all parts of the dwelling by doorways, halls and open stairways. Outside stairs to floors above the ground floor will not be permitted.

SPECIAL EXCEPTION

The permission or approval granted by the Board of Adjustment in situations or conditions where provisions therefor are made by the terms of this chapter.

STREET LINE

The line of dedication in the case of a dedicated street, avenue, lane or alley of the Town and which street line marks the boundary line between the dedicated street and the bordering lot. The distance between street lines designating the dedicated street is 70 feet for all streets except Fields End which is 60 feet wide and Tidewaters adjoining Lots A 1 to 5 which, width varies to 25 feet.

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STRUCTURE

Any thing constructed, erected upon or attached to, on or below the ground, including but not limited to the following: dams, docks, fences, walls, principal buildings, accessory buildings, dish or satellite antennas, footings, basements, framing, piling and foundations.

SWIMMING POOL

Any portable pool or permanent structure containing a body of water 18 inches or more in depth area intended for the purpose of immersion or partial immersion therein of human beings and including all appurtenant equipment recreational purposes, including a wading pool, but not including an ornamental reflecting pool or fish pond or other type of pool located and designed so as not to create a hazard or be used for swimming or wading.

TOWN MANAGER

A person appointed by the Commissioners of the Town of Henlopen Acres as the Town Manager, or such other persons designated by the Commissioners to act on his/her behalf.

TOWN OF HENLOPEN ACRES

A municipality in Sussex County, Delaware, as incorporated under the Laws of Delaware Volume 57, Chapter 504, approved June 4, 1970.

UNDER ROOF

All areas including, but not limited to, areas covered by a traditional roof with or without pitch or slope and areas whether or not enclosed by walls under cover of a deck or structure above that has been finished to protect the area below from weather. It shall not include areas subject to weather due to a permeable deck or structure above, or any unimproved area.

UNINHABITABLE ATTIC

The area between roof framing and the ceiling of the rooms below, and that is not habitable but may be reached by ladder or pull-down stairs/ladder.

UNINHABITABLE BASEMENT

The area of a building that is partially or completely below ground where the vertical measurement from the basement floor to the bottom of the first-floor joists does not exceed 6 1/2 feet and where the bottom of the first-floor joists is not at a height of more than three feet as measured from a point where the center line of the building to be erected intersects with the center line of the street on which the building will front.

UNOBSTRUCTED

Clear and free from obstructions or obstacles, excluding trees, shrubs, planted

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vegetation, driveways and sidewalks placed at grade, and heating and air conditioning equipment placed within three feet of the main building structure.

VARIANCE

An authorization to deviate from the terms of this chapter where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of actions of the applicant, a literal enforcement of the chapter would result in unnecessary and undue hardship.

ZONING CERTIFICATE

Written statement issued by the Office of Zoning Administration, authorizing zoning sufficiency prior to the construction or alteration of buildings or structures. This term is synonymous with the term “Building Permit”.

ZONING CHAPTER OR THIS CHAPTER

The official Zoning Ordinance of the Town of Henlopen Acres adopted by the Commissioners, together with maps and all amendments thereto.

ZONING MAP

The official Zoning Map of the Town of Henlopen Acres adopted by the President and Commissioners, together with all amendments thereto.

Section 2. If any provision of this Ordinance shall be deemed or held to be invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not affect any other provision of this Ordinance which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Ordinance are hereby declared to be severable.

Section 3. This Ordinance shall take effect immediately upon its adoption by the Commissioners of the Town of Henlopen Acres.

I, Thomas A. Roth, Assistant Secretary of the Commissioners of the Town of Henlopen Acres, do hereby certify that the foregoing is a true and correct copy of the ordinance passed by the Commissioners at their meeting held on October 8, 2021, at which a quorum was present and voting throughout and that the same is still in full force and effect.



Assistant Secretary

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Synopsis: This Ordinance amends Chapter 130 by making insertions and deletions to the following definitions: BUILDING SETBACK LINE, DRIVEWAY, FENCE, FLOOR AREA RATIO, LOT AREA, NONPROFIT ORGANIZATION, PARKING LOT, SWIMMING POOL, UNOBSTRUCTED, and ZONING CERTIFICATE.