

INTRODUCED BY: Commissioner Eric L. Buckson
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Ordinance 11-03
Accessory Structure Setbacks

An Ordinance to amend Kent County Code, Vol. II, Chapter 205, Zoning, Article IV, General Provisions, §205-23, Yards, building, projections and setbacks; §205-24 Accessory structures and uses; Article V, AC-Agricultural Conservation District, §205-53, Accessory structures/uses, Items D and E; Article VI, AR-Agricultural Residential District, §205-69, Accessory structures/uses, Items D and E; Article VII, RS1-Single-Family Residential District, §205-85, Accessory structures/uses, Items D and E; Article VIII, RS5-Medium Density Residential District, §205-100, Accessory structures/uses, Items D and E; Article IX, RM-Multifamily Residential District, §205-115, Accessory structures/uses, Items D and E; and Article X, RMH-Residential Manufactured Home District, §205-130, Accessory structures/uses, Items D and E to revise the setback provisions for accessory residential structures and open unenclosed porches patios and decks.

THE LEVY COURT OF KENT COUNTY, DELAWARE, HEREBY ORDAINS:

Section 1. That the Kent County Code, Vol. II, Chapter 205, Zoning, Article IV, General Provisions, §205-23, Yards, building, projections and setbacks is hereby amended by deleting the following bracketed language and adding the following underlined language:

§ 205-23. Yards, buildings, projections and setbacks.

Except as specified in Article XVII, Parking, and Article XXVII, Landscaping, of this chapter, setbacks along zoning district boundary lines shall be required to equal the standards of the more restrictive district.

A. On a corner lot, the front street shall be the street with the shorter street frontage. B. Any setback or other open space allocated to a structure shall be located on the same lot as the structure.

C. Specific open space and height requirements; exceptions.

(1) Except as provided in this subsection, required setback and open space shall be unobstructed and open to the sky.

(2) Architectural features such as windows, sills, chimneys, cornices, eaves or bay windows may project no more than three

feet into a required yard area and no closer than five feet from any lot line. The sum of the bay window projections on a wall may not exceed 1/4 of the length of the wall.

(3) Height limits.

(a) Except within an Airport Approach Zone, the height limitations specified in this chapter do not apply to:

[1] Flagpoles.

[2] Church spires.

[3] Belfries.

[4] Cupolas.

[5] Domes not used for human occupancy.

[6] Chimneys, ventilators, sky lights, water tanks, windmills, solar collectors or similar roof features.

[7] Lightning rods.

(b) The features enumerated in Subsection C(3)(a) of this section shall be created only to a height necessary to accomplish the purpose intended and in no event more than 15 feet above the lowest point of contact with the roof.

(c) Roof features such as water tanks, cooling towers, air-conditioning units, elevator shafts and bulkheads shall be enclosed within the walls of the structure and designed in harmony with the main walls of the structure on which they are located.

(4) A public governmental building, place of worship or hospital may be erected to a greater height than otherwise permitted, provided that the front, side and rear setbacks are increased not less than one foot for each foot by which the structure exceeds the height limitation established for the district in which the structure is located.

(5) Unless otherwise provided in Subsection C(3) of this section, a parapet wall may extend not more than five feet above the height limit for the district in which it is located.

(6) An open unenclosed porch, patio, or deck may project into required side and rear setback areas, provided that all such structures shall observe a minimum setback of 10 feet from all side and rear property lines, or may extend into the required front yard setback no more than 40% of the required front yard setback, and no closer than 15 feet to the right-of-way line. Furthermore, if a nonconforming front yard setback exists, created by the lawful construction of the principal structure, the 40% shall be determined based on the legal nonconforming front yard setback. This section does not extend to properties where variances were granted for relief of the front yard setback. All unenclosed porches, patios, and decks that project into the required setback shall be constructed at grade or at the first-floor level of the building. In no case shall such a structure be constructed with a floor level of more than ~~three~~ four feet above grade. Any enclosed porch, patio, or deck, or porch having a roof and capable of being enclosed, shall be considered a part of the structure in the determination of the size of the setback or the amount of lot coverage. Any porch, patio, or deck both enclosed and unenclosed shall not occupy more than 30% of the minimum required side or rear yard setback area.

(7) The setback requirements of this chapter do not prohibit an otherwise lawful fence or wall, if the fence or wall does not impair visibility at any access to a public road and does not conflict with the provisions of Subsection C(9) of this section.

(8) A structure, fence, wall, hedge or planting more than two feet high as measured above the street surface at the nearest edge of the pavement may not be erected, placed or maintained on a corner lot within a triangular area formed by the intersecting street lines. The sides of the triangular area shall measure 25 feet from the point where the street lines will intersect if extended to the apex. The provisions of this subsection do not apply to trees more than six feet apart or to existing trees, provided that all branches are located at least six feet above the ground.

(9) Notwithstanding any provision to the contrary, if the average front yard setback of structures located on either side of a lot differs from the minimum setback required by this chapter, the setback shall approximate the average setback of the adjoining structures, or, if only one of the abutting lots is improved, the setback shall be the average of the minimum required setback in the district and the setback of the adjoining structure.

(10) A private recreational facility such as a tennis court, basketball court, aboveground swimming pool, or at-grade

swimming pool that is permitted as an accessory use on a residential lot for a single-family or two-family use shall be located so that the edge of the facility, including any deck or patio is at least 10 feet from each lot line.

~~[(11) Each private aboveground swimming pool and accessory use for a single or two family residential lot shall be located not less than the minimum setback required for the district from each lot line.]~~(11[2]) Each community recreational facility such as a tennis court, basketball court or at-grade swimming pool shall be located at least ~~[50]~~30 feet from each lot line, structure or dwelling unit, 25 feet from any right-of-way, and shall be screened in accordance with the provisions of this chapter.

~~[(13) A private at grade swimming pool may be authorized in the front yard setback of a waterfront lot, provided that the closest edge of the pool, or any appurtenance of the pool, is situated at least 10 feet from the front or side property line.]~~(13[4]) A noncommercial antenna structure or satellite dish may be authorized as an accessory structure in any residential district, provided that:

(a) The height of the structure does not exceed the lesser of:

[1] The width or depth of the property as determined by a line bisecting the structure and measured from one side of the property line to the other or from the front property line to the rear at the shortest distance there-between; or

[2] One hundred feet.

(b) The setback for the central vertical portion of the antenna structure is at least 10 feet from each property line for a structure up to 35 feet high, and 10 feet plus one additional foot for each three feet in excess of 35 feet for a structure over 35 feet high;

(c) Each rigid radiating element of an antenna structure is set back at least 10 feet from any property line; and

(d) The construction is of a type required by the Division of Inspections and Enforcement to form a safe and durable structure.

(14~~[5]~~) Handicapped ramps open, unenclosed and not covered by a roof or canopy may extend into the required side and rear yard setbacks, but no closer than five feet to the property line; or may extend into the required front yard setback no more than 40% of the required front yard setback, and no closer than 15 feet to the right-of-way line. Furthermore, if a nonconforming front yard setback exists, created by the lawful construction of the principal structure, the 40% shall be determined based on the legal nonconforming front yard setback. This section does not extend to properties where variances were granted for relief of the front yard setback.

(a) Kent County Planning Services will conduct an administrative review for all applicants requesting handicapped ramp permits (under this provision).

~~[(b) Removal of a ramp when need is no longer warranted. Written notice of said removal will be sent to the Kent County Planning Services, and it must be removed within 60 days.]~~~~[D. Topography shall be supplied if available on request by the Department at reproduction cost.]~~**Section 2.** That the Kent County Code, Vol. II, Chapter 205, Zoning, Article IV, General Provisions, §205-24, Accessory structures and uses is hereby amended by deleting the following bracketed language and adding the following underlined language:

§ 205-24. Accessory structures and uses.

A. Accessory structures or accessory uses shall be limited and located on the same lot with the principal structure or use to which they are necessary.

B. Any accessory structure attached to a principal structure, including attachment by means of a breezeway or roof passage, shall comply with the requirements of this chapter concerning principal structures. All other accessory structures shall conform to the requirements for accessory structures in the District in which they are located.

C. In an AC,~~and~~ AR, RMH, RM, RS5, or RSI Residential District, an accessory structure on the same lot with a residential use may not be used for residential purposes except properly approved ECHO housing or a properly approved accessory ~~[cottage, or for domestic employees employed on the premises by the owners or tenants of the principal structure.]~~dwelling unit.

D. An accessory structure may not dominate in area, extent or purpose the principal use or structure. The area of the principal structure shall be

calculated using the definition of floor area in this chapter with the inclusion of attached garages.

E. Except for patio homes, an ornamental fence or wall not more than four feet in height may project into or enclose any required front or side setback to a depth from the street line equal to the required depth of the front setback. Ornamental fences or walls may project into or enclose other required setbacks, provided that such fences and walls do not exceed a height of seven feet.

F. Setbacks for residential accessory structures.

(1) Except as otherwise provided by this chapter, an accessory structure shall not be located in the front yard or front setback of any parcel (as defined by this chapter) unless the accessory structure is located at least 100 feet from the front property line and/or side street line.~~], or no closer to the front property line than an existing principal structure.]~~

(2) An accessory structure may be located no closer than five (5) feet from the side or rear property line of any conforming or legal nonconforming parcel.~~], provided that the accessory structure is located at least 100 feet from the front property line or side street line.]~~(3) The regulations set forth in Subsection F(1) and (2) above shall not apply to accessory dwellings, manufactured home parks, school bus shelters, telephone booths or structures housing water well pumps which are used exclusively for farming operations.

G. Temporary fencing used primarily for construction projects and soil erosion protection shall not be used for permanent residential or commercial fencing. This type fencing includes, but is not limited to, such fencing as the bright fluorescent orange fencing and the solid black fencing.

Section 3. That the Kent County Code, Vol. II, Chapter 205, Zoning, Article V, AC-Agricultural Conservation District, §205-53, Accessory structures/uses, Items D and E is hereby amended by deleting the following bracketed language and renumber accordingly:

§ 205-53. Accessory structure/use.

~~[D. Accessory structures/uses in an AC Agricultural Conservation District shall:~~

~~(1) Occupy no more than 5% of the yard.~~

~~(2) Be located at least 60 feet from the front lot line or street right-of way.~~

~~(3) Be located at least 20 feet from each side or rear lot line., except that accessory buildings located at least 100 feet back from the front property line may be set back in compliance with the minimum standards adopted by the State Fire Marshal's Office.]~~

~~[E. Notwithstanding any other provision of this section, an accessory structure that is located on a corner lot may not be less than:~~

~~(1) Sixty feet from the side street line; or~~

~~(2) Fifty feet if a corner lot abuts a side street that does not have existing or proposed lots fronting on the same side of the street as the corner lot.]~~

Section 4. That the Kent County Code, Vol. II, Chapter 205, Zoning, Article VI, AR-Agricultural Residential District, §205-69, Accessory structures/uses, Items D and E is hereby amended by deleting the following bracketed language and renumbering accordingly:

§ 205-69. Accessory structures/uses.

~~[D. Accessory structures/uses in an AR—Agricultural Residential District shall:~~

~~(1) Occupy no more than 5% of the yard.~~

~~{(2) Be located at least 60 feet from the front lot line or street right-of way. (3) Be located at least 20 feet from each side or rear lot line., except that accessory buildings located at least 100 feet back from the front property line may be set back in compliance with the minimum standards adopted by the State Fire Marshal's Office.]~~

~~[E. Notwithstanding any other provision of this section, an accessory structure that is located on a corner lot may not be less than:~~

~~(1) Sixty feet from the side street line; or~~

~~(2) Fifty feet if a corner lot abuts a side street that does not have existing or proposed lots fronting on the same side of the street as the corner lot.]~~

Section 5. That the Kent County Code, Vol. II, Chapter 205, Zoning, Article VII, RS1-Single-Family Residential District, §205-85, Accessory structures/uses, Items D and E is hereby amended by deleting the following bracketed language and renumbering accordingly:

§ 205-85. Accessory structures/uses.

~~[D. Accessory structures/uses in a RS1 Single Family Residential District shall:~~

~~(1) Occupy no more than 5% of the yard.~~

~~(2) Be located at least 50 feet from the front lot line or street right-of-way. (3) Be located at least 15 feet from each side or rear lot line.], except that accessory buildings located at least 100 feet back from the front property line may be set back in compliance with the minimum standards adopted by the State Fire Marshal's Office.
‡~~

~~[E. Notwithstanding any other provision of this section, an accessory structure that is located on a corner lot may not be less than:~~

~~(1) Fifty feet from the side street line; or~~

~~(2) Thirty feet if a corner lot abuts a side street that does not have existing or proposed lots fronting on the same side of the street as the corner lot.]~~ **Section 6.**

That the Kent County Code, Vol. II, Chapter 205, Zoning, Article VIII, RS5-Medium Density Residential District, §205-100, Accessory structures/uses, Items D and E is hereby amended by deleting the following bracketed language and renumbering accordingly:

§ 205-100. Accessory structures/uses.

~~[D. Accessory structures/uses in a RS5 Medium Density Residential District shall:~~

~~(1) Occupy no more than 10% of the yard.~~

~~[(2) Be located at least 35 feet from the front lot line or street right-of-way. (3) Be located at least 5 feet from each side or rear lot line.]~~

~~[E. Notwithstanding any other provision of this section, an accessory structure that is located on a corner lot may not be less than:~~

~~(1) Thirty five feet from the side street line; or~~

~~(2) Twenty feet if a corner lot abuts a side street that does not have existing or proposed lots fronting on the same side of the street as the corner lot. }Section 7.~~

That the Kent County Code, Vol. II, Chapter 205, Zoning, Article IX, RM-Multifamily Residential District, §205-115, Accessory structures/uses, Items D and E is hereby amended by deleting the following bracketed language and renumbering accordingly:

§ 205-115. Accessory structure/use.

~~[D. Accessory structures/uses in a RM—Multifamily Residential District shall:~~

~~(1) Occupy no more than 10% of the yard.~~

~~[(2) Be located at least 35 feet from the front lot line or street right of way.](3) Be located at least five feet from each side or rear lot line.]~~

~~[E. Notwithstanding any other provision of this section, an accessory structure that is located on a corner lot may not be less than:~~

~~(1) Thirty five feet from the side street line; or~~

~~(2) Thirty feet if a corner lot abuts a side street that does not have existing or proposed lots fronting on the same side of the street as the corner lot. }Section 8.~~

That the Kent County Code, Vol. II, Chapter 205, Zoning, Article X, RMH-Residential Manufactured Home District, §205-130, Accessory structures/uses, Items D and E is hereby amended by deleting the following bracketed language and renumbering accordingly:

§ 205-130. Accessory structures/uses.

~~[D. Accessory structures/uses in a RMH—Residential Manufactured Home District shall:~~

~~(1) Occupy no more than 5% of the yard.~~

~~(2) Be located at least 35 feet from the front lot line or street right of way. (3) Be located at least 15 feet from each side or rear lot line. [, except that accessory buildings located at least 100 feet back from the front property line may be set back in compliance with the minimum standards adopted by the State Fire Marshal's Office.]~~

~~[E. Notwithstanding any other provision of this section, an accessory structure that is located on a corner lot may not be less than:~~

~~the minimum standards adopted by the State Fire Marshal's Office.]~~

~~[E. Notwithstanding any other provision of this section, an accessory structure that is located on a corner lot may not be less than:~~

- ~~(1) Thirty five feet from a side street line; or~~
- ~~(2) Twenty five feet if a corner lot abuts a side street that does not have existing lots fronting on the same side of the street as the corner lot.]~~

Section 9. Severability.

The provisions of this Ordinance are severable and if any of its provisions or any sentence, clause, or paragraph or the application thereof to any person or circumstance shall be held unconstitutional or violative of the Laws of the State of Delaware by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions which can be given effect without the invalid provision or application.

Section 10. Effective Date.


This Ordinance shall be effective upon the date of adoption.

ADOPTED BY THE LEVY COURT OF KENT
COUNTY, DELAWARE



President, Kent County Levy Court

This 25th day of January, 2011

ATTEST: 

Clerk of the Peace

Synopsis: This ordinance revises the required setbacks for accessory residential structures as well as open unenclosed porches, patios, and decks.