

**ORDINANCE 2023-05**

**AN ORDINANCE OF THE BOROUGH OF BAY HEAD, COUNTY OF OCEAN, STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING CHAPTER 147 OF THE BOROUGH CODE OF THE BOROUGH OF BAY HEAD, ENTITLED "LAND USE"**

**NOW, THEREFORE, BE IT ORDAINED**, by the governing body of the Borough of Bay Head, County of Ocean, State of New Jersey, as follows:

**SECTION 1.** The Borough Code of the Borough of Bay Head is hereby amended and supplemented so as to amend Chapter 147, entitled "Land Use" so as to amend §147-2 entitled "Definitions; word usage," so as to amend subsection C. to delete the definition of "Accessory Use, Building" and replace as follows:

**ACCESSORY USE, BUILDING OR STRUCTURE**

A subordinate use, building or structure, the purpose of which is customarily incidental to that of the main use or building and on the same lot. An accessory use, building or structure is not permitted unless a principal structure, permitted by this Code or approved by the Bay Head Planning Board, exists on the property.

**SECTION 2.** The Borough Code of the Borough of Bay Head is hereby amended and supplemented so as to amend Chapter 147, entitled "Land Use" so as to amend §147-2 entitled "Definitions; word usage," so as to amend subsection C. to delete the definition of "Building Coverage" and add and arrange alphabetically the following definition:

**BUILDING COVERAGE**

That portion of the lot area covered by buildings and expressed as a percent of the total lot area, i.e., the ratio of the horizontal area, measured from the exterior surface of the exterior walls, or, in the absence thereof, of the horizontal areas covered by a roof or the structure below the roof projections, of all principal and accessory buildings on a lot to the total lot area. Areas containing breezeways, covered porches, stairs/steps to porches and decks greater than 12", bay windows, fireplaces, and store showcases shall be considered part of the building in calculating building coverage. Decks more than 12 inches in height above the preconstruction grade are to be included in building coverage, whether or not they are covered, and must conform to § 147-6H(1) and (5).

**SECTION 3.** The Borough Code of the Borough of Bay Head is hereby amended and supplemented so as to amend Chapter 147, entitled "Land Use" so as to amend §147-2 entitled "Definitions; word usage," so as to amend subsection C. to delete the definition of "Certificate of Occupancy" and replace as follows:

**CERTIFICATE OF OCCUPANCY**

A certificate of occupancy related to construction permits shall be issued by the Construction Official. The Code Enforcement Officer shall issue certificates of occupancy for changes in occupancy or ownership of a building which certifies compliance with all requirements of this chapter or such adjustment thereof which may have been granted by the Planning Board.

**rmshc**

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**SECTION 4.** The Borough Code of the Borough of Bay Head is hereby amended and supplemented so as to amend Chapter 147, entitled "Land Use" so as to amend §147-2 entitled "Definitions; word usage," so as to amend subsection C. to delete the definition of "Lot Coverage" and replace as follows:

**LOT COVERAGE**

That portion of the lot covered by impervious surfaces, i.e., the ration of the total area of all impervious surfaces to the lot area. Above- and below-ground swimming pools shall be included in lot coverage. Lot coverage shall be measured in a horizontal plane around the periphery of all buildings, structures, and impervious surfaces at the most extensive points of the buildings, structures, or surfaces.

**SECTION 5.** The Borough Code of the Borough of Bay Head is hereby amended and supplemented so as to amend Chapter 147, entitled "Land Use" so as to amend §147-2 entitled "Definitions; word usage," so as to amend subsection C. to delete the definition of "Lot Frontage" and replace as follows:

**LOT FRONTAGE**

The distance measured along the major street line of a lot when the side lines of the lot are at right angles to the street; and when the side lines are not at right angles to the street, the distance shall be measured across said lot at right angles to either side line, provided that the lot frontage of a lot shall not be less than the minimum width required for the particular zone in which the lot is located unless the lot is located on a cul-de-sac or street curve in which case the frontage cannot be less than 60% of the required lot width. For the purposes of calculating the width or depth of any lot fronting on the ocean or bay, the lot frontage shall be measured at the street. The minimum frontage, as required by any provision of this chapter, shall be continuous and unbroken.

**SECTION 6.** The Borough Code of the Borough of Bay Head is hereby amended and supplemented so as to amend Chapter 147, entitled "Land Use" so as to amend §147-2 entitled "Definitions; word usage," so as to amend subsection C. to delete the definition of "Preconstruction Grade" and replace as follows:

**PRECONSTRUCTION GRADE**

Elevations of the existing ground surface measured at the perimeter of and within 10 feet of all exterior walls of all proposed buildings or structures at the time of the construction and/or disturbance.

**SECTION 7.** The Borough Code of the Borough of Bay Head is hereby amended and supplemented so as to amend Chapter 147, entitled "Land Use" so as to amend §147-2 entitled "Definitions; word usage," so as to amend subsection C. to delete the definition of "Street" and replace as follows:

**STREET**

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Any street, boulevard, road, lane, drive or parkway which is an existing state or county roadway or was approved by the Borough of Bay Head for public use and is now open to public travel as provided by the Municipal Land Use Law (or its predecessor statute). The street shall include the paved traversable portion of the roadway, drains, curbs, gutters, sidewalks and other improvements of land within the total right-of-way width incidental to the improvements and maintenance of such street. A street shall have a minimum paved cartway width of 24 feet.

**SECTION 8.** The Borough Code of the Borough of Bay Head is hereby amended and supplemented so as to amend Chapter 147, entitled "Land Use" so as to amend §147-2 entitled "Definitions; word usage," so as to add and arrange alphabetically the following definition:

**EAVE**

The projecting lower edges of a roof overhanging the wall of a building.

**SECTION 9.** The Borough Code of the Borough of Bay Head is hereby amended and supplemented so as to amend Chapter 147, entitled "Land Use" so as to amend §147-6.H(1), (2) and (5) in their entirety so that they shall read as follows:

- (1) A patio, terrace or deck constructed 12 inches or less above ground level, excluding uncovered steps leading therefrom, may extend into a required front yard not more than four feet, except for those bay-front lots with boardwalks behind bulkheads which protect the tops of bulkheads and protect against personal injury from otherwise exposed tie-rods. In no case shall a patio, terrace, or deck constructed 12 inches or less above ground level extend into a required rear or side yard setback closer than three feet to the property line. The height of the deck shall be the vertical distance measured from the average elevation of the preconstruction grade level at the perimeter of the deck to the walking surface of the deck structure.
- (2) A buttress, cornice, pier or pilaster of a building may not project into a required front, side or rear yard. Chimneys and bay windows may project not more than two feet into a required front, side or rear yard. Eaves may project not more than one foot into a required front, side or rear yard setback.
- (3) (no change)
- (4) (no change)
- (5) Decks. All decks, whether attached or unattached to a structure, constructed more than 12 inches above ground level, as measured in accordance with Subsection H(1) above, must comply with any front, side and/or rear yard requirements and any other bulk requirements as set forth in the Bay Head Code for the structure to which the deck will be attached, including the provisions of Chapter 75, Article II, Protection of Beaches and Dunes, regarding dune protection. A balcony or deck, including the railing, may be provided above the floor level of the second story of the principal building, provided no portion of it extends above the roof peak; and provided, further, that the balcony or deck surface, exclusive of stairs which lead to the balcony or deck, does not exceed 75 square feet. In addition to the preceding standards, on buildings which have a floor above the second story, the deck or balcony, including the railing, shall not extend higher than the uppermost portion of the highest window of that level. No balcony or deck above the second story shall be cantilevered.

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**SECTION 10.** The Borough Code of the Borough of Bay Head is hereby amended and supplemented so as to amend Chapter 147, entitled "Land Use" so as to amend §147-6.1.B(4) entitled "Swimming Pools" in its entirety so that it shall read as follows:

(4) Swimming pools, Hot Tubs, Water Features and Solar Cover Storage.

(a) No swimming pool shall be constructed or placed in any lot except as follows:

[1] Except as otherwise provided in this section, swimming pools shall be located behind the front building setback line and shall not infringe upon the required minimum accessory building setback line.

[2] Notwithstanding Subsection B(4)(a)[1] above, a swimming pool may be located in the front yard of lots abutting the Barnegat Bay and Atlantic Ocean, provided that no swimming pool extending one foot or less above grade shall be located closer than 20 feet to a bulkhead or revetment of a tidal water body or street line. No swimming pool extending greater than one foot above grade shall be located closer than 35 feet to a bulkhead or revetment to supersede the requirements of Chapter 75, Article II, Protection of Beaches and Dunes.

[3] No swimming pool shall be located closer than 20 feet to any street line.

[4] All swimming pool setbacks shall be measured from the inside of the edge of the coping or the water line, whichever is closer.

[5] Hot tubs, water features and cover storage shall meet the minimum setbacks for swimming pools.

(b) Swimming pools shall be enclosed by a continuous fence. The fence shall have a minimum height of four feet (48 inches) and a maximum height of six feet (72 inches).

**SECTION 11.** The Borough Code of the Borough of Bay Head is hereby amended and supplemented so as to amend Chapter 147, entitled "Land Use" so as to amend the title of §147-15 from "Nonconforming uses" to "Nonconforming uses, buildings, lots and structures."

**SECTION 12.** The Municipal Code of the Borough of Bay Head is hereby amended and supplemented so as to amend Chapter 147, entitled "Land Use" so as delete Appendix A and replace with a new Appendix A, attached hereto as Schedule A.

**SECTION 13.** All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

**SECTION 14.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

**SECTION 15.** This ordinance shall take effect after second reading and publication as required by law.

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ATTEST:

Patricia M. Applegate  
Patricia M. Applegate, Municipal Clerk

APPROVED:

William W. Curtis  
William W. Curtis, Mayor

Introduced on First Reading:  
Introduced on Second Reading:  
Approved on Second Reading:

March 7, 2023  
April 3, 2023  
April 3, 2023

ATTEST:

Patricia M. Applegate  
Patricia M. Applegate, Municipal Clerk

APPROVED:

William W. Curtis  
William W. Curtis, Mayor

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LAND USE  
147 Attachment 1

Borough of Bay Head

Appendix A  
Schedule of Area, Yard and Building Requirements  
(§ 147-5)

[Amended 11-3-93 by Ord. No. 1993-10; 10-4-94 by Ord. No. 1994-10; 11-8-95 by Ord. No. 1995-11;  
3-16-99 by Ord. No. 1999-4; 3-5-20 by Ord. No.2002-2; 9-16-2003 by Ord. No.2003-6; 9-3-2013 by Ord. No. 2013-05  
7-5-2016 by Ord. No. 2016-16; 4-6-20 by Ord. No. 2020-05]

Zone	Minimum Lot Requirements				Principal Building Requirements								Accessory Structure			
	Area	Width	Frontage	Depth	Min. Front Yard Setback	Min. Each Side Yard Setback	Min. Combined Side Yard Setback	Min. Rear Yard Setback	Maximum Building Coverage	Maximum Lot Coverage	Maximum Height	Maximum Height	Min. Front Yard Setback	Min. Side Yard Setback	Min. Rear Yard Setback	Max. Accessory Structure Height
	Sq. Ft.	Feet	Feet	Feet	Feet	Feet	Feet	Feet	Percent (%)	Percent (%)	Stories	Feet	Feet	Feet	Feet	Feet
R-100	10,000	100	100	100	35	10	25	15	35	50	2.5	35	35	10	10	16
R-100-BF	10,000	100	100	100	35	10	25	15	35	50	2.5	35	35	10	10	16
R-100-OF	10,000	100	100	100	Note 7	10	25	20	25	40	2.5	35	Note 7	10	10	16
R-50	5,000	50	50	100	20	6	16	10	35	50	2.5	35	20	4	4	16
B & B	5,000	50	50	100	20	6	12	10	60	75	2.5	35	20	4	4	16
B-1	5,000	50	50	100	20	6	12	20	60	75	2.5	35	20	4(2)	4(2)	16
B-2	10,000	100	100	100	35	10	25	15	35	75	2.5	35	25	10	10	16
C	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

NOTES:

- <sup>1</sup> Corner lots in the R-100-OF Zone on the east side of East Avenue shall have a minimum bulk area of 12,000 square feet; see § 147-5B.
- <sup>2</sup> Accessory buildings can occupy no more than 30% of the required yard area.
- <sup>3</sup> Single-family residences within the B-1 Zone and B&B Zone shall comply with the bulk requirements of the R-50 Zone.
- <sup>4</sup> Single-family residences in the B-2 Zone shall comply with the bulk requirements of the R-100-BF Zone.
- <sup>5</sup> Buildings in flood hazard areas shall be permitted to have a maximum height of 32.5 feet above base flood elevation
- <sup>6</sup> Existing lots in the R-100-OF Zone which are less than 75 feet in width shall have combined side yards which are at least 1/3 of the lot width. The minimum side yard depth shall remain 10 feet, except in the case of lots which are less than 60 feet in width, where the side yards shall have a minimum depth of seven feet.
- <sup>7</sup> Front yard setback in the R-100-OF Zone is established for each oceanfront property individually as set forth in Appendix B.