



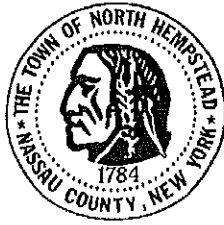
**TOWN OF NORTH HEMPSTEAD
OFFICE OF THE TOWN ATTORNEY**

LOCAL LAW MEMO

To: Supervisor and Members of the Town Board
From: Elizabeth D. Botwin, Town Attorney *EB*
Re: Proposed Local Law Amending Chapter 70 of the Town Code entitled
"Zoning"
Date: October 10, 2014

Enclosed is a copy of a proposed Local Law amending Chapter 70 of the Code of the Town of North Hempstead entitled "Zoning". The purpose of the amendment is to permit certain accessory structures, including central air-conditioners, generators, aboveground fuel tanks, light piers, decorative piers, arbors and flag poles, in the front yard and/or side yard of residential properties, subject to specified restrictions.

cc: Wayne H. Wink, Jr.
Cindy Cardinal
Robert Troiano
Aline Khatchadourian
Nick Guariglia
Rachel Brinn



**TOWN OF NORTH HEMPSTEAD
OFFICE OF THE TOWN ATTORNEY**

**PROPOSED LOCAL LAW AMENDING
CHAPTER 70 OF THE TOWN CODE ENTITLED
"ZONING"**

LOCAL LAW MEMORANDUM

Purpose of Law:

The purpose of the amendment is to permit certain accessory structures, including central air-conditioners, generators, aboveground fuel tanks, light piers, decorative piers, arbors and flag poles, in the front yard and/or side yard of residential properties, subject to specified restrictions.

Budget Implications:

The proposed Local Law will have no direct budgetary implications.

Explanation:

Matter in **bold** and underscored is new; matter in brackets with strikethrough [~~---~~] is old law to be omitted.

**TOWN OF NORTH HEMPSTEAD
LOCAL LAW NO. OF 2014**

**A LOCAL LAW AMENDING CHAPTER 70 OF THE TOWN CODE
ENTITLED "ZONING"**

BE IT ENACTED by the Town Board of the Town of North Hempstead, as follows:

Section 1. Legislative Intent.

The Board finds that it is in the best interest of the Town of North Hempstead to make amendments to Chapter 70 entitled "Zoning" in order to permit certain accessory structures, including central air-conditioners, generators, aboveground fuel tanks, light piers, decorative piers, arbors and flag poles, in the front yard and/or side yard of residential properties, subject to specified restrictions.

Section 2.

Chapter 70, Article XI, § 70-100.1., of the Town Code is hereby amended as follows:

§ 70-100.1. Accessory buildings.

A. Accessory buildings and/or structures, except as otherwise provided in this article, shall **be located in the rear yard**, not be over 15 feet in height at their highest point and shall not occupy more than 40% of the area of the rear yard. The yard area occupied by an accessory building or structure shall be included in computing the maximum coverage.

[Amended 3-11-2003 by L.L. No. 1-2003]

B. Unless otherwise provided in this article, accessory buildings and/or structures located in the rear yard shall be not less than three feet distant from the rear and side lot lines.

C. Unless otherwise provided in this article, accessory buildings and/or structures on corner lots 100 feet or less in depth shall be located as far as possible from the front property lines and shall conform to the provisions of § 70-100.1A and B.

[Amended 3-11-2003 by L.L. No. 1-2003]

D. No accessory building or structure, with the exception of fences which are four feet in height or retaining walls, shall be erected within 25 feet of a building used for residence purposes on an adjoining lot in Residence AAA or AA Districts, within 20 feet in Residence A or B Districts or within 15 feet in all other residence districts.

[Amended 4-28-1987 by L.L. No. 10-1987]

E. No accessory building or structure shall be erected in a rear yard, the area of which is not sufficient to permit compliance with the requirements of § 70-100.1A to D, inclusive.

F. A private detached garage accessory to a dwelling on the same lot or plot may be erected in a side yard and may be extended into the rear yard a distance of one-half (1/2) the length of the garage, provided that the width of the lot is sufficient to permit compliance with the side yard requirements in the particular district and § 70-100.1D and § 700-100.1K.

[Amended 1-3-2006 by L.L. No. 1-2006]

G. On a corner lot, a private detached garage accessory to a dwelling on the same lot or plot may be erected in the rear yard, provided that the depth of the lot is sufficient to permit compliance with the provisions of § 70-100.1A to D, and provided that the setback of such garage complies with the front yard requirements in the particular district.

H. On a corner lot, a private detached garage may be erected in the front yard; provided, however, that the yard between said garage and the street property line complies with minimum front yard requirements as established for the main building, and provided further that there is compliance with the side yard and rear yard requirements of this section and requirements as to distance from the main building on an adjoining lot as required by this section, and provided further that said garage shall not be erected in front of or extended beyond the front of the main building.
[Amended 4-1-1997 by L.L. No. 8-1997]

I. A private garage may be erected within or as a part of the main building or may be attached to the main building by means of a permanent roof, and said garage shall not be considered an accessory building. Unless a private garage is so connected to the main building it shall be considered an accessory building and shall conform to the requirements for accessory buildings.
[Added 4-1-1997 by L.L. No. 8-1997]

J. No permit shall be issued for the construction of an accessory building upon any vacant lot unless such permit includes the construction of the principal building on said lot, and the owner or applicant shall not begin construction of the accessory building until the construction of the principal building has proceeded to the first-floor beams.
[Added 4-1-1997 by L.L. No. 8-1997]

K. Where the entrance to a detached garage faces a side property line, a minimum setback of 25 feet shall be provided between the side property line and the closest point of the garage structure.
[Added 1-3-2006 by L.L. No. 1-2006]

Section 3.

Chapter 70, Article XI, § 70-100.2., of the Town Code is hereby amended as follows:

§ 70-100.2. Accessory structures.

[Amended 12-3-1985 by L.L. No. 12-1985; 4-28-1987 by L.L. No. 10-1987; 7-9-1991 by L.L. No. 10-1991]

A. Fencing within residence districts shall:
[Amended 5-7-1996 by L.L. No. 6-1996]

(1) Not, if in existence under a Town permit on May 7, 1996, be affected by the following provisions of this subsection, except that if repairs to more than 50% of such a fence are required, the repaired fence shall comply with this subsection.

(2) Not be located, at any point, in the area between a public or private street and the nearest effective building line. For the purposes of this subsection only:

(a) The term "building line" shall mean a straight line continuing the line established by an exterior wall of a residential structure to the point where it intersects a property line;

(b) The term "effective building line":

[1] In the case of a lot having frontage on only one street, shall not include that portion of a building line which lies between the residential structure and the street.

[2] In the case of a lot having frontage on two or more intersecting streets shall include all of the building line.

(c) The term "exterior wall" does not include the side of an entranceway or a porch;

(3) Be constructed with the dressed side facing the street or adjacent property.

(4) Not exceed four feet in height, except that:

(a) A six-foot fence shall be permitted:

[Amended 1-26-1999 by L.L. No. 2-1999]

[1] Where a residential district immediately abuts a business or industrial district.

[2] Where a residential property immediately abuts a road maintained by the State of New York or by Nassau County and the main entrance of the dwelling on said residential property does not face the said road.

[3] Where a residential property immediately abuts property dedicated as parkland by the State of New York, by the County of Nassau, by the Town of North Hempstead, by one of the Town of North Hempstead's park districts or by an incorporated village, or where a residential property abuts a Nassau County recharge basin.

[Amended 1-25-2011 by L.L. No. 1-2011]

[4] In connection with a swimming pool when required by § 70-102C.

[Added 1-25-2011 by L.L. No. 1-2011]

[5] Along the rear property line.

[Added 1-25-2011 by L.L. No. 1-2011]

(b) A five-foot fence shall be permitted along the side property lines but in no case shall it extend forward of the front building line.

[Amended 1-25-2011 by L.L. No. 1-2011]

(c) These provisions shall not apply to hedges, privets, trees or other shrubbery which are not limited in height, except as provided in § 70-203C.

[Amended 1-25-2011 by L.L. No. 1-2011]

B. Dangerous fencing.

(1) In no case shall barbed wire, spikes, chipped glass, electricity or similar materials or devices be used in conjunction with or as part of any fence. No fence shall be permitted which is expressly

designed with the intent to injure or malign anyone who attempts to climb such a fence. The exceptions to this rule are certain types of fences listed in § 70-100.2B(2).

(2) Barbed wire or electric fences.

(a) A fence which is seven feet high with a barbed wire, razor wire or spiked top or an electric shock fence which would not be detrimental to the health, safety or welfare of any person coming into contact with it may be permitted in the industrial districts, upon issuance of a conditional use permit by the Board of Zoning and Appeals:

[1] Where it can be demonstrated that the fence is needed to prevent entry to an area which could be hazardous to the health, safety or welfare of a person or persons.

[2] Where, in the Board's opinion, other reasons are presented which, in the general community interests or interests of national safety, justify the need for such a fence.

(b) Where such fences are permitted, the fact that they are either barbed or electrified shall be clearly indicated on the fences at intervals of not more than 25 feet.

C. (Reserved) *Editor's Note: Former Subsection C, which dealt with retaining walls, was deleted 5-21-1996 by L.L. No. 8-1996; see now § 70-202.1.*

D. Stationary outdoor fireplaces shall be at least 10 feet distant from side and rear property lines and shall not exceed five feet in height.

E. Pools shall not exceed two feet in depth, except when in compliance with the provisions of § 70-102C(2)(b), and no such pools shall be constructed, except in compliance with the regulations of the Nassau County Department of Health and unless provided with a drain or outlet to permit the same to be emptied.

F. Pergolas shall not exceed 10 feet in height.

G. Portable sheds shall not exceed 100 square feet and shall be located only in the rear yard not less than three feet from any property line.

H. No accessory structure or building shall be erected upon the premises for the purpose of containing air-conditioning equipment, ventilating fans and appurtenances thereto; such air-conditioning equipment, ventilating fans and appurtenant equipment shall be contained within the confines of the main building or upon the roof thereof. In the alternative, a central air-conditioning unit of five tons or less may be installed **in the rear or side yard** when the outer face of the unit is not less than [five] **three** feet from the side and rear property lines [~~and when such installation has a certified sound level rating at the adjoining property line not exceeding 25 to 35 decibels~~] **but in no case shall such unit be located more than three feet from the subject dwelling. A central air-conditioning unit may be located in a front yard provided it complies with § 70-101 (H). Central air-conditioning units located less than five feet from a property lot line or located in the front yard must be screened from view from adjoining properties and the street by evergreen plantings or fencing in compliance with § 70-100.2.**

[Amended 10-5-2010 by L.L. No. 12-2010; 12-14-2010 by L.L. No. 17-2010]

I. Other accessory structures not mentioned herein shall be located in accordance with the requirements for accessory buildings as provided in § 70-100.1A to G.

J. Parabolic satellite dish antennas with a diameter greater than three feet, designed to receive or transmit signals from space satellites, shall be deemed accessory structures for the purposes of this section. Provisions of § 70-100.1C, D and E shall apply to the installation of use of dish antennas. In addition, the following provisions shall further limit and regulate the installation and use of dish antennas:

(1) Dish antennas shall only be permitted in rear yards; there shall be no more than one dish antenna per plot.

(2) Subject to the provisions of § 70-100.1A, a dish antenna shall not occupy more than 20% of the rear yard in which it is situated; no part of the dish antenna shall be located any closer than 10 feet to the side or rear lot line or any closer to said line than the distance which is equal to the height of the antenna plus six feet, whichever is greater.

(3) No part of the dish antenna, except for footings, foundations or buried wire, shall be located below ground level; the natural grade of the ground shall not be raised for the purpose of installing a dish antenna.

(4) Dish antennas shall be screened from adjoining lots and roadways by a completely planted visual barrier consisting of evergreen plantings, the height of which, after planting, is at least equal to the height of the dish antennas.

K. Generators and aboveground fuel tanks shall be permitted only in the side and rear yard so long as the outer face of the generator or fuel tank is not less than five feet from the side and rear property lines but in no case shall such generator or fuel tank be located more than five feet from the subject dwelling.

L. Light piers or decorative piers shall be permitted in the front yard of a dwelling, subject to the following:

(1) A maximum of four light piers or decorative piers are permitted.

(2) A residential property with a circular driveway may have one pier installed on each side of both driveway entrances.

(3) Piers shall be a maximum of two feet in any horizontal dimension with a maximum height of three feet.

M. Arbors not exceeding eight feet in height and five feet in any horizontal dimension shall be permitted in a side yard within a line of fencing or other barrier. No more than one arbor shall be permitted in any side yard per line of fencing or other barrier separating yards.

N. A maximum of one freestanding flagpole, not exceeding 20 feet in height, shall be permitted in the front yard of any residential property. A flagpole must be set back from all property boundaries a distance which is at least equal to the height of the pole. For purposes of this code, a "flagpole" shall mean a pole that is professionally manufactured for the purpose of displaying

flags. Makeshift structures, or manufactured poles that have become structurally unsafe, shall not be considered a flagpole.

Section 4.

Chapter 70, Article XI, § 70-101., of the Town Code is hereby amended as follows:

§ 70-101. Permitted encroachments.

[Amended 4-28-1987 by L.L. No. 10-1987]

Encroachments into required yards are permitted in the residential districts as provided in this article only.

A. Cornices and eaves shall project not more than 18 inches, gutters not more than eight inches and chimneys not more than 18 inches; bay windows shall be not more than eight feet in width and shall project not more than 24 inches into any required yard: belt courses and sills shall project not more than six inches.

B. One-story open porches and terraces shall project not more than five feet into a required front yard.

C. A one-story enclosed vestibule not greater than eight feet in width and five feet in depth may extend into a required front yard, provided that said vestibule shall conform in architecture and material to the main building.

D. No encroachment which is permitted to extend into any yard or court if unroofed or unenclosed shall thereafter be enclosed in whole or in part, either permanently or temporarily.

[Added 4-1-1997 by L.L. No. 8-1997]

E. (Reserved) *Editor's Note: Former Subsection E, prohibiting the extension or projection of permitted encroachments closer than five feet to any lot line, added 4-1-1997 by L.L. No. 8-1997, was repealed 9-16-1997 by L.L. No. 20-1997.*

F. In any case, where the Board of Appeals has diminished a required yard by variance, none of the foregoing encroachments shall be permitted in such diminished yard.

[Added 4-1-1997 by L.L. No. 8-1997]

G. Steps extending into a minimum yard will not be considered an encroachment into such yard, provided that such steps do not exceed in height the first floor level of the building, and provided further that such steps are necessary to provide access to a walk, porch, terrace or vestibule.

[Added 4-1-1997 by L.L. No. 8-1997]

H. A central air-conditioning unit shall not project more than five feet into a required front yard. The average front yard setback shall not be considered when determining the required front yard setback for the purposes of locating air-conditioning units in a front yard.

Section 5.

This Local Law shall take effect immediately upon filing with the Secretary of State.