

# ORDINANCE

O-5-2024

## BOROUGH OF NORTH CALDWELL, ESSEX COUNTY

### AN ORDINANCE OF THE BOROUGH OF NORTH CALDWELL AMENDING CHAPTER 107, ZONING AND LAND USE, OF THE BOROUGH CODE TO MINIMIZE IMPACTS TO EXISTING RESIDENTIAL USES RESULTING FROM NEW SUBDIVISIONS AND IMPROVEMENTS TO EXISTING SINGLE-FAMILY LOTS BY UPDATING LAND USE DEFINITIONS, LOT REQUIREMENTS AND BULK REQUIREMENTS FOR SINGLE-FAMILY ZONES

**WHEREAS**, the Borough of North Caldwell Planning Board has recommended to the Borough Mayor and Council amending the Borough's Land Use Ordinances to minimize impacts from new subdivision applications to surrounding residential uses and overdevelopment of existing single-family lots; and

**WHEREAS**, the Borough discourages subdivisions which create irregular lot configurations, results in nonconforming conditions for existing lots, and locates dwellings which deviate from the prevailing neighborhood pattern of development; and

**WHEREAS**, the Borough intends to prevent the overdevelopment of single-family lots where new dwellings are excessively larger and out of character with the surrounding neighborhood by establishing a new maximum building coverage; and

**WHEREAS**, the Borough aims to limit excessive lot coverages where the entirety of the permitted lot coverage is consumed by only the dwelling and driveway leaving no area for other typical residential amenities without variance relief by requiring a portion of the maximum permitted lot coverage to be dedicated for typical residential amenities and establishing a new maximum building coverage requirement; and

**WHEREAS**, this ordinance updates the Borough's land use definitions, lot requirements and bulk requirements for single-family zones to specifically address the issues pertaining to subdivisions and overdevelopment of single-family lots;

**NOW THEREFORE, BE IT ORDAINED** by the Mayor and Council of the Borough of North Caldwell, in Essex County, New Jersey, that Chapter 107, Zoning and Land Use, is hereby amended as follows:

**SECTION 1. Definitions.** §107-8, "Terms defined," of Article II, "Definitions and Word Usage," of Chapter 107, "Zoning and Land Use," of the Borough Code is hereby amended and supplemented by revising several existing definitions and adding new definitions as set forth below (new text is underlined thus; deleted text is in brackets [thus]) and all other existing definitions shall remain unchanged:

#### **BUILDING COVERAGE**

The portion of a lot which is occupied by principal and accessory buildings divided by the lot area expressed as a percentage.

#### **LOT, CORNER**

A lot at the junction of and having lot lines on two or more intersecting streets.

#### **LOT, FLAG**

A land parcel positioned primarily behind another parcel, linked to a public road via a narrower private strip of land that provides access to the larger area of the site.

#### **LOT FRONTAGE**

The horizontal distance between side lot lines measured along the front lot line. In cases where a lot has frontage on more than one street, including corner and through lots, the lot frontage shall be measured along each street frontage.

#### **LOT, THROUGH**

Any lot which extends from one street to another and is not a corner lot. The lot frontage with the street address of the property shall be considered the front yard in determining front, side and rear yard requirements.

#### **LOT WIDTH**

~~The width measured at the required front yard setback. The distance between side lot lines measured parallel to the front lot line at the required front yard setback line. For corner lots, lot width shall mean the distance between side lot lines and the most nearly opposite street right-of-way lines measured along each required front yard setback line.~~

## MINOR SUBDIVISION

Any subdivision containing not more than three lots, fronting on an existing dedicated street, not involving any new street or road, planned development, extension of any off-tract improvements or the extension of municipal facilities, ~~and not in conflict with any provision or portion of the Master Plan, Official Map, Zoning Ordinance or this chapter.~~

**SECTION 2. General zoning requirements.** Section §107-13, "Location of building to be used as dwelling," of Article III, "Zoning," of Chapter 107, "Zoning and Land Use," of the Borough Code is hereby repealed and replaced in its entirety to read as follows (new text is underlined thus; deleted text is in brackets [thus]):

### §107-13 General zoning requirements.

#### §107-13.1 Location of building to be used as dwelling.

No building to be used as a dwelling shall be constructed, altered or moved in or to the rear of a building situated on the same lot nor shall any building be constructed in front of or moved to the front of a dwelling situated on the same lot.

#### §107-13.2 Corner lots.

- A. The principal building may face either street so long as the setback requirements provided in this chapter are satisfied.
- B. For the purposes of establishing setback requirements for corner lots, any yard which abuts a street shall be considered a front yard and all other yards shall be considered side yards.

For corner lots, lot width shall mean the distance between side lot lines and the most nearly opposite street right-of-way lines measured along each required front yard setback line.

#### §107-13.3 Neighborhood Average Calculations.

Neighborhood average calculations shall only apply to detached single and two-family dwellings as follows:

- A. In conducting neighborhood average calculations, the neighborhood shall consist of the three nearest lots on both sides of the subject property and three nearest lot across the street from the property having common street frontage(s) and located in the same zone. In cases where there are fewer than three lots on one or both sides of the subject property, or three lots across the street, the neighborhood average calculation shall be based on the greatest number of applicable lots up to an intervening street or street terminus. Corner lots, through lots and other lots with more than one street frontage shall provide neighborhood average calculations for each street frontage.
- B. The lot width and lot area of all remainder lots and any new lot created from a subdivision shall not be less than the applicable minimum lot requirements for that zone and shall also comply with the applicable minimum neighborhood lot average calculations.
- C. The minimum front yard setback for new lots resulting from a subdivision shall be the front yard setback required by the applicable zone or the neighborhood average front yard setback, whichever is greater.
- D. The minimum front yard setback for new dwellings shall be the front yard setback required by the applicable zone or the neighborhood average front yard setback, whichever is greater, but in no case shall be setback more than two times the minimum front yard setback of the zone.

#### §107-13.4 Lot Requirements.

- A. Purpose. North Caldwell is a nearly fully developed community comprised of mature, well-established residential neighborhoods. It is the Borough's intent to preserve these neighborhoods and minimize impacts from new development and subdivisions which are deemed to be

inconsistent with the existing land use patterns and residential character of the Borough by discouraging the following:

- (1) Intrusion of new subdivisions which result in irregular or non-rectangular lot configurations;
- (2) The placement of new buildings and site features in conflict with existing buildings and surrounding properties;
- (3) The creation of new roads which convert existing internal parcels to corner or through lots, or otherwise nonconforming lots;
- (4) The creation of lots where the effective or functional front yard of the new lot directly abuts the side or rear yard of an adjacent property; and
- (5) Impacts to light, air and open space, privacy and stormwater drainage.
- (6) Excessive land disturbance, lot coverage and building coverage relative to surrounding development and as permitted by ordinance.

- B. Neighborhood Average Calculations. New lots created from a subdivision application shall comply with the neighborhood average calculations in §107-13.3.
- C. Lot lines. In all rectangular lots, and so far as possible in all other lots, the side lot lines shall be at right angles to the street on which the lots face or radial to curved street lines. These side lines shall remain perpendicular or radial to the street for an uninterrupted length of 100 feet.
- D. Through Lots. Through lots, or lots other than a corner lot with more than one street frontage, created from the subdivision of one or more lots are prohibited.
- E. Irregularly shaped lots. For all new lots created from a subdivision, all side lot lines shall intersect the street. The creation of flag, "T"-shaped, "L"-shaped, or other similar irregularly shaped lots from the subdivision of one or more lots is prohibited.
- F. Subdividing front yard area prohibited. A lot shall not be created or subdivided within the front yard area between the entire front façade of an existing building and the front lot line(s). This provision shall not apply where the existing building will be removed as a result of the proposed subdivision.
- G. Change in off-site yard classifications. New roads as part of a subdivision application shall be prohibited when the creation of a road changes the yard classification(s) of an adjacent off-site parcel (e.g. side or rear yard to front yard). This includes, but is not limited to, the conversion of inline parcels to corner or through lots.
- H. Creation of off-site nonconforming conditions. Subdivisions which result in the creation of new or exacerbation of existing nonconforming conditions for adjacent off-site parcels shall be prohibited.

#### §107-13.5 Street Requirements.

- A. Street Setbacks. New streets created from a subdivision application shall have a minimum setback of 50 feet from adjacent off-site parcels as measured from the shared property line to the nearest street curb, or edge of pavement where there is no curb.

**SECTION 2. R-1 Residence District Bulk Requirements.** Section §107-21, "R-1 Residence District," of Article III, "Zoning," of Chapter 107, "Zoning and Land Use," of the Borough Code is hereby amended and supplemented by revising the maximum lot coverage requirement and creating a new maximum building coverage requirement which shall read as follows (new text is underlined thus; deleted text is in brackets [thus]) and all other existing provisions shall remain unchanged:

#### §107-21.D(9)

Maximum lot coverage. The total percentage of a lot that can be covered by impervious surfaces shall be no greater than 30%, including a reserve minimum of 5% of the lot area designated for rear yard amenities and improvements, or in side yards for corner lots.. Nothing contained herein shall prohibit the repair or replacement of existing impervious surfaces, provided the area of impervious coverage repaired or replaced is not expanded.

§107-21.D(10)

Maximum building coverage. The total percentage of a lot that can be covered by principal and accessory buildings, including accessory structures such as garages, porches, decks, pergolas, gazebos, sheds and similar features, shall be no greater than 15%.

**SECTION 3. R-1E Residence District Bulk Requirements.** Section §107-22, “R-1E Residence District,” of Article III, “Zoning,” of Chapter 107, “Zoning and Land Use,” of the Borough Code is hereby amended and supplemented by revising the minimum frontage, maximum lot coverage requirement and creating a new maximum building coverage requirement which shall read as follows (new text is underlined thus; deleted text is in brackets [thus]) and all other existing provisions shall remain unchanged:

§107-22.D(4)

The minimum frontage at the front lot line shall be ~~50~~ 200 feet and minimum lot width measured along the front setback line shall be 200 feet.

§107-22.D(6)

Maximum lot coverage. The total percentage of a lot that can be covered by impervious surfaces shall be no greater than 30%, including a reserve minimum of 5% of the lot area designated for rear yard amenities and improvements, or in side yards for corner lots.. Nothing contained herein shall prohibit the repair ~~or replacement~~ of existing impervious surfaces, provided the area of impervious coverage repaired ~~or replaced~~ is not expanded.

§107-22.D(7)

Maximum building coverage. The total percentage of a lot that can be covered by principal and accessory buildings, including accessory structures such as garages, porches, decks, pergolas, gazebos, sheds and similar features, shall be no greater than 15%.

**SECTION 4. R-2 Residence District Bulk Requirements.** Section §107-23, “R-2 Residence District,” of Article III, “Zoning,” of Chapter 107, “Zoning and Land Use,” of the Borough Code is hereby amended and supplemented by revising the maximum lot coverage requirement and creating a new maximum building coverage requirement which shall read as follows (new text is underlined thus; deleted text is in brackets [thus]) and all other existing provisions shall remain unchanged:

§107-23.D(4)

Minimum frontage: not less than ~~50~~ 100 feet at the front lot line.

§107-23.D(5)

Maximum lot coverage. The total percentage of a lot that can be covered by impervious surfaces shall be no greater than 30%, including a reserve minimum of 5% of the lot area designated for rear yard amenities and improvements, or in side yards for corner lots. Nothing contained herein shall prohibit the repair ~~or replacement~~ of existing impervious surfaces, provided the area of impervious coverage repaired ~~or replaced~~ is not expanded.

§107-23.D(6)

Maximum building coverage. The total percentage of a lot that can be covered by principal and accessory buildings, including accessory structures such as garages, porches, decks, pergolas, gazebos, sheds and similar features, shall be no greater than 20%.

**SECTION 5. Residential Cluster Districts Bulk Requirements.** Section §107-24, “Residential Cluster Districts,” of Article III, “Zoning,” of Chapter 107, “Zoning and Land Use,” of the Borough Code is hereby amended and supplemented by revising the maximum lot coverage requirements and creating new maximum building coverage requirements for the existing R-1 and R-3 Residential Cluster Districts which shall read as follows (new text is underlined thus; deleted text is in brackets [thus]) and all other existing provisions shall remain unchanged:

§107-24.B(6)(a)[1]

Maximum lot coverage. The total percentage of a lot that can be covered by impervious surfaces shall be no greater than 30%, including a reserve minimum of 5% of the lot area designated for rear yard amenities and improvements, or in side yards for corner lots. Nothing contained herein shall prohibit the repair ~~or replacement~~ of existing impervious surfaces, provided the area of impervious coverage repaired ~~or replaced~~ is not expanded.

§107-24.B(6)(a)[2]

Maximum building coverage. The total percentage of a lot that can be covered by buildings, including accessory structures such as garages, porches, decks, pergolas, gazebos, sheds and similar features, shall be no greater than 20%.

§107-24.B(6)(b)[1]

Maximum lot coverage. The total percentage of a lot that can be covered by impervious surfaces shall be no greater than 30%, including a reserve minimum of 5% of the lot area designated for rear yard amenities and improvements, or in side yards for corner lots. Nothing contained herein shall prohibit the repair ~~or replacement~~ of existing impervious surfaces, provided the area of impervious coverage repaired ~~or replaced~~ is not expanded.

§107-24.B(6)(b)[2]

Maximum building coverage. The total percentage of a lot that can be covered by buildings, including accessory structures such as garages, porches, decks, pergolas, gazebos, sheds and similar features, shall be no greater than 20%.

**SECTION 6. Nonconforming uses.** Section §107-29, “Nonconforming uses,” of Article III, “Zoning,” of Chapter 107, “Zoning and Land Use,” of the Borough Code is hereby amended and supplemented to read as follows (new text is underlined thus; deleted text is in brackets [thus]):

§107-29 Nonconforming uses, structures and lots.

- A. Continuance. Any nonconforming use or structure which lawfully exists ~~existing~~ at the time of the passage of an ordinance may be continued upon the lot or in the structure so occupied, and any such legally existing nonconforming building or structure may be restored or repaired in the event of partial destruction thereof in accordance with this section.
- B. Conformance with requirements. Nonconforming uses or structures in all zone districts shall conform to the following requirements:
  - (1) Any structure or use of land which is nonconforming because of use shall not be changed, increased, enlarged or extended in any manner whatsoever.
  - (2) There shall be no structural alterations made to any nonconforming building or structure that is nonconforming because of use. Structural alterations may be made in a building which is nonconforming because it fails to comply with height, area, yard, off-street parking or other like requirements of this chapter, so long as the structural alteration does not extend, enlarge or aggravate the nonconformance.
  - (3) A nonconforming use changed or altered to a conforming use may not thereafter be changed back to a nonconforming use, but nothing hereinbefore stated shall prevent the strengthening or restoring to a safe and lawful condition of any part of the building declared unsafe by the Construction Official, the Chief of the Fire Department or the Borough Engineer.
  - (4) In the event that there shall be a cessation of operation of any nonconforming use for a period of six consecutive calendar months, the same shall be a rebuttable presumption of an intent to abandon such nonconforming use. Any subsequent attempt to rely upon, exercise or reinstate such abandoned nonconforming use, the provisions of this § 107-29 notwithstanding, shall be presumptively deemed a violation of the terms of this chapter.
  - (5) Nothing in this chapter shall be construed as authorization for an approval of the continuance of the use of a building, structure or premises in violation of any zoning ordinances, rules or regulations in effect immediately preceding the time of the effective date of this chapter.

- (6) Any nonconforming use that is nonconforming because it fails to comply with height, area, yard, off-street parking or other like requirements of this chapter shall not be changed, increased or altered to enlarge the nonconformance.

C. Restoration and alterations.

- (1) Nothing in this chapter shall prevent the restoration or continuance of a nonconforming building or structure which is nonconforming because of its use and which is partially destroyed by fire, explosion, act of God or of any public enemy or the like.
- (2) Nothing in this chapter shall prevent the restoration or continuance of a nonconforming building or structure which is nonconforming because it fails to comply with any height, area, yard, off-street parking or other like requirements of this chapter and which is partially destroyed by fire, explosion, act of God or of any public enemy or the like; provided, however, that any restoration of any such building or structure shall not enlarge the previously existing nonconformance.
- (3) When any nonconforming building or structure is destroyed by fire, other causality, act of God or intentionally reduced to less than 50% of its previous existing area may be restored, reconstructed, provided that the restoration or reconstruction complies with all zoning requirements in place at the time of the restoration or reconstruction. In the case of a nonconforming foundation, all construction from grade shall conform with existing zoning requirements. Single and two-family dwellings shall comply with the neighborhood average front yard setback calculations in §107-13.3.

D. Applicability of provisions in district changes. Whenever the boundaries of a district shall be changed so as to transfer to area from one district to another of a different classification, the foregoing provisions shall also apply to any nonconforming uses existing therein or created thereby.

E. A nonconforming use shall not be permitted to be changed to another nonconforming use.

F. Nonconforming lots.

- (1) Nonconforming improved lots. When a lot exists as a separate isolated lot (does not adjoin any land or lot of the same owner), and which said lot is nonconforming due to size, shape, area or setback, any existing residential building or structure on the lot may be further improved, provided that:
- (a) The number of dwelling units shall not be increased even if such increased number of dwelling units is allowed in the zone, unless approved by the Zoning Board of Adjustment.
- (b) Any existing nonconforming setbacks from streets, side lot lines or rear lot lines shall not be extended or made more nonconforming, including any vertical or belowground additions of any type.
- (c) Any existing and proposed improvement on the nonconforming improved lot shall not exceed the percentage of maximum building coverage, lot coverage, and floor area ratio set forth in the Schedule of Space Regulations located in the Appendix at the end of this chapter.
- (2) Nonconforming unimproved lots. Notwithstanding any other provisions of this article, any existing undeveloped nonconforming lot which does not adjoin any vacant land under common ownership, and which is nonconforming due to lot width or area, may be improved with a new building or structure provided that the structure and improvements shall meet all other requirements in this chapter.

**SECTION 7. Lots.** §107-48, "Lots," of Article VI, "Design Standards," of Chapter 107, "Zoning and Land Use," of the Borough Code is hereby amended and supplemented to read as follows (new text is underlined - thus; deleted text is in brackets [thus]):



- A. ~~Lot lines. In all rectangular lots, and so far as possible in all other lots, the side lines shall be at right angles to the street on which the lots face or radial to curved lines.~~ Lot requirements. See §107-13.4.
- B. ~~Double frontage lots. Double frontage lots should have a depth of no less than 350 feet, except where topographic conditions permit no other form of platting.~~
- B. Lot Numbering. The numbering of blocks and lots shall conform to the standards established in the Borough and be in conformity with the Borough Tax Maps. Each lot shall also bear the number to be given to the building to be erected thereon, which street number shall be enclosed in a circle and indicated on each lot.

**SECTION 8. Streets and highways.** Section §107-46, “Streets and highways,” of Article VI, “Design Standards,” of Chapter 107, “Zoning and Land Use,” of the Borough Code is hereby amended and supplemented by adding the following provision (new text is underlined thus; ~~deleted text is in brackets [thus]~~) and all other existing provisions shall remain unchanged:

§107-46.N. Street Requirements. See §107-13.5.

**SECTION 9.** All other provisions of Chapter 107 of the Borough Code shall remain unchanged.

**SECTION 10.** Pursuant to N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64, after introduction of this Ordinance, it shall be referred to the Borough of North Caldwell Planning Board for the review required by the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., prior to the hearing on adoption of this Ordinance.

**SECTION 11.** Any article, chapter, section, paragraph, subsection, clause, or other provision of the Borough Code inconsistent with the provisions of this ordinance is hereby repealed to the extent of such inconsistency.

**SECTION 12.** In case, for any reason, any portion or provision of this Ordinance shall be held to be unconstitutional or invalid, the same shall not affect any other portion or provision of this Ordinance, except so far as the portion or provision so declared unconstitutional or invalid shall be severed from the remainder or any portion thereof.

**SECTION 13.** The Borough Clerk is hereby directed to give notice at least ten (10) days prior to the hearing on the adoption of this Ordinance to the Borough of North Caldwell Planning Board and to all other entities entitled thereto pursuant to the provisions of N.J.S.A. 40:55D-15. Upon adoption of this ordinance, after public hearing thereon, the Borough Clerk is further directed to publish notice of the passage thereof and to file a copy of this ordinance as finally adopted.

**SECTION 14.** This Ordinance shall be part of the Code of the Borough of North Caldwell as though codified and fully set forth therein. The Borough Clerk shall have this Ordinance codified and incorporated in the official copies of the Code.


**SECTION 15.** This Ordinance shall take effect immediately upon publication and final passage according to law.

**Introduced:** March 26, 2024  
**Public Hearing:** April 16, 2024  
**Adopted:** April 16, 2024

Moved By: Councilman Tilton  
Seconded By: Councilman Rees

COUNCIL MEMBER	YES	NO	ABSTAIN	ABSENT	COUNCIL MEMBER	YES	NO	ABSTAIN	ABSENT
ATLAS				X	REES	X			
FLORIA-CALLORI	X				TILTON	X			
KESSLER				X	WEINSTEIN	X			

ATTEST:

  
TAMI MICHELOTTI, BOROUGH CLERK

  
JOSHUA H. RAYMOND, MAYOR