

ORDINANCE NO. 623-20
BOROUGH OF ATGLEN
CHESTER COUNTY, PENNSYLVANIA

AN ORDINANCE AMENDING THE ATGLEN BOROUGH ZONING ORDINANCE, 2014,
TO DELETE "ALLEY" FROM THE DEFINITION OF "STREET", ALLOW FOR 4 FOOT HEIGHT
FENCES IN FRONT YARDS AND 6 FOOT HEIGHT FENCES OR WALLS AS PROVIDED, LIMIT ONE
SHED TO A MAXIMUM SIZE OF 240 SQUARE FEET, AND ADD REASONABLE
ACCOMODATIONS TO CONDITIONAL USES

WHEREAS, the Borough of Atglen desires to update the Borough's Zoning Ordinance to delete "Alley" from the definition of "Street", to allow for four (4) foot high fences or walls in front yards, to regulate the location of fences or walls to limit the maximum size of a storage/utility shed to two hundred and forty (240) square feet, and to provide for reasonable accommodation in connection with consideration of conditional use applications.

NOW THEREFORE BE IT ORDAINED AND ENACTED by Borough Council of the Borough of Atglen, Chester County, Pennsylvania as follows:

SECTION I. The Atglen Borough Zoning Ordinance, 2014 is hereby amended as follows:

1. Section 202. DEFINITIONS, Street is deleted as written and restated as follows:

Street. Includes street, avenue, boulevard, road, highway, freeway, parkway, lane, viaduct or any other ways used or intended to be used by vehicular traffic or pedestrians whether public or private but not including pedestrian trails or paths.

- 2 Section 1503.A. and B., FENCE AND WALL STANDARDS, are deleted as written and restated as follows:

A. Fences and Walls Permitted. Fences and walls may be erected, altered and maintained within the required yards, provided that any such fence or wall in the front yard shall not exceed four (4) feet in height; and any fence or wall in the side or rear yard shall not exceed six (6) feet in height with one exception as follows:

1. A parcel that has frontage on a street intended to be used for primary vehicular traffic or primary pedestrian traffic and abuts to the rear an alley may erect, alter, or maintain in the yard abutting the alley any fence or wall not to exceed six (6) feet in height, provided, however, that (a) the location of such fence or wall shall not be closer than three (3) feet from the property line and shall be located outside of any right-of-way.

B. Location.

1. Fences and walls shall not be located any closer than two (2) feet from the property line, except that fences and walls erected in a rear yard abutting an alley

shall be located at least three (3) feet from the property line, and all fences and walls shall be located outside of any street right-of-way, unless approved in accordance with section 1503.B.2. below.

2. Fences and walls may be erected along established property lines only if a written agreement exists between affected property owners, addressing maintenance of the fence and location of actual property lines.

1. Section 1602.B.1.b. ACCESSORY USE, Residential Accessory Uses, Storage Sheds is deleted as written and restated as follows:

b. Storage sheds. No more than two (2) storage/utility sheds may be located on a lot used for residential purposes. Each shed shall not exceed two hundred forty (240) square feet in size.

Section 2009.C. CONDITIONAL USE REQUIREMENTS, Procedures for Conditional Uses (MPC 603(c)(2); 909.1(b)(3); 913.2; 908(1.2)) is deleted as written and restated as follows:

1. Upon receipt of a complete conditional use application, the Borough Council shall schedule a public hearing on the application. The hearing shall be conducted by the Borough Council or the Council may appoint any member or an independent attorney as a hearing officer. The decision, or, where no decision is called for, the findings shall be made by the Borough Council. However, the appellant or the applicant, as the case may be, in addition to the municipality, may, prior to the decision of the hearing, waive decision or findings by the Borough Council and accept the decision or findings of the hearing officer as final.
2. The first hearing before the Borough Council shall be commenced within sixty (60) days from the date of determination that the application is complete, unless the applicant has agreed in writing to an extension of time. Such hearing shall be in accordance with the following procedures:
 - a. Notification of the public hearing shall be published in a newspaper(s) of general circulation in the Borough indicating the time, place, and nature of the public hearing. Such notice shall be published once a week for two (2) successive weeks prior to the date fixed for the hearing. The first (1) publication shall not be more than thirty (30) days and the second (2) publication shall not be less than seven (7) days from the date of the hearing, in accordance with requirements of the Municipalities Planning Code. Public notice of said public hearing shall be conspicuously posted on the affected tract or parcel(s) of land a minimum of two (2) weeks prior to the meeting, in conjunction with written notice to all adjacent property owners. Proof of proper notification shall be required as a precondition before any formal action on the application.
 - b. The parties to the hearing shall be the Borough, any person affected by the application who has made a timely appearance of record before the Borough

Council and any other persons, including civic or community organizations, permitted to appear by the Borough Council or Hearing Officer. The Borough Council or Hearing Officer as the case may be, shall have the power to require that all persons who wish to be considered parties must enter appearances in writing on forms provided by the Borough for that purpose.

- c. The President or acting President of Borough Council, or Hearing Officer, shall have the power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers, including witnesses and documents required by the parties.
- d. The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and argument and cross-examine adverse witnesses on all relevant issues.
- e. Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded by the Borough Council.
- f. The Borough Council or Hearing Officer, as the case may be, shall keep a stenographic record of the proceedings. The appearance fee for a stenographer shall be shared equally by the applicant and the Borough. The cost of the original transcript shall be paid in full by the Borough if the transcript is ordered by the Borough, or shall be paid in full by the person appealing from the decision of the Borough if such appeal is made. The cost of additional copies shall be paid by the person requesting such copy or copies.
- g. The Borough Council or Hearing Officer shall not communicate, directly or indirectly, with any party or his or her representatives in connection with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda, or other materials, except advice from the Borough Solicitor, unless the parties are afforded an opportunity to contest the material so noticed and shall not inspect the site or its surroundings after the commencement of hearings with any party or his or her representative unless all parties are given an opportunity to be present.
- h. Each subsequent hearing before the Borough Council or Hearing Officer shall be held within forty-five (45) days of the prior hearing, unless otherwise agreed to in writing by the applicant, or is otherwise on the record of the proceedings.
- i. An applicant shall complete the presentation of his case-in-chief within one hundred (100) days of the first hearing. Upon request of the applicant, the Borough Council or Hearing Officer shall assure that the applicant receives at least seven (7) hours of hearing within the one hundred (100) days, including the first hearing. Persons opposed to the application shall completed the presentation of their opposition to the application within one hundred (100) days of the first hearing held after the completion of the applicant's case-in-chief.

- j. An applicant may, upon request, be granted additional hearings to complete his case-in-chief provided the persons opposed to the application are granted an equal number of additional hearings. Persons opposed to the application may, upon the written consent or consent on the record by the applicant and the Borough Council, be granted additional hearings to completed their opposition to the application provided the applicant is granted an equal number of additional hearings for rebuttal.
- k. Borough Council shall render a written decision or, when no decision is called for, make written findings on the conditional use application within forty-five (45) days after the last hearing before the Borough Council. Each decision shall be accompanied by findings of fact and conclusions based thereon, together with the reasons for the final decision. The date for the Borough Councils' decision may be extended by the applicant either on the record or in writing addressed to the Borough Council. Where the application is contested or denied, each decision shall be accompanied by findings of fact or conclusions based thereon, together with any reasons therefore. Conclusions based upon this Ordinance, the Municipalities Planning Code, or any rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found.
- l. Where the Borough Council fails to render a decision within forty-five (45) days or fails to commence the required hearing with sixty (60) days from the day of the applicant's request for a hearing, or fails to complete the hearing no later than one hundred (100) days after the completion of the applicant's case in chief, unless extended for good cause upon application to the Court of Common Pleas, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record to an extension of time. Where a decision has been rendered in favor of the applicant because of the failure of the Borough Council to meet or render a decision as herein above provided, the Borough Council shall give public notice of said decision with ten (10) days from the last day the Borough Council could have met to render a decision in the same manner as required by the public notice requirements of this Section. If the Borough Council shall fail to provide such notice, the applicant may do so.
- m. Nothing in this Section shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.
- n. A copy of the final decision or, where no decision is called for, of the findings shall be delivered to the applicant and the parties that were seen before the Borough Council personally or mailed to them no later than the day following the date of the decision. If, after the conclusion of the public hearing(s), the application is amended or revised, the Borough Council shall hold such one or more public hearings thereon as may be necessary, and shall issue a new decision thereon in conformance with the procedure established in this Section.

- o. Appeals from a determination of the Borough Council pursuant to any conditional use application shall be only as prescribed within such times permitted by the applicable provisions of the Municipalities Planning Code, as amended.
3. Notwithstanding the Conditional Use requirements in Section 2009D, the Board will grant reasonable accommodations and permit reasonable modifications where requested by or on behalf of disabled persons. A "reasonable accommodation" is a change in rules, policies, practices or services to enable a person with a disability to use and enjoy a dwelling unit or common space. A "reasonable modification" is a structural modification that is made to allow persons with disabilities the full enjoyment of housing and related facilities. Accommodations or modifications need not be made where to do so would fundamentally alter the programs or create an undue financial and administrative burden.
4. In granting a conditional use approval, the Borough Council may attach such additional reasonable conditions and safeguards as it deems necessary and appropriate to ensure compliance with the provisions of this Ordinance and to protect the health, safety, and general welfare of the community. The conditions of approval may include, but are not limited to, specific modifications to area and bulk requirements as might otherwise be applicable, provisions for additional utility or traffic safety measures, securing additional easements or property to assure proper site design, or modification to the applicable design standards.
5. Nothing in this Section shall be construed to relieve the applicant for a conditional use approval from obtaining other required approvals mandated by this Ordinance and the Subdivision Ordinance and any other applicable Borough, state and federal regulations.
6. When Borough Council approves the conditional use application, such approved plan shall accompany any application for subdivision of land or land development as prescribed by the Subdivision Ordinance in addition to the requirements normally required and any application for a building permit.
7. Any grant of conditional use approval shall be expired or may be extended in accordance with Section 1911 of this Ordinance. For such extension the applicant shall cite reasons for lack of progress in addition to plans for moving the project forward. Borough Council shall not be held to such information and may approve or deny the extension.

SECTION II. Repealer.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION III. Severability.

If any section or provision of this Ordinance is held, by the final Order of any Court of competent jurisdiction, to be unconstitutional, illegal or invalid, all the remaining sections and provisions of this Ordinance shall remain in full force and effect.


SECTION IV. Effective Date.

This Ordinance shall be effective at the earliest permissible date as provided for under the Pennsylvania Borough Code.

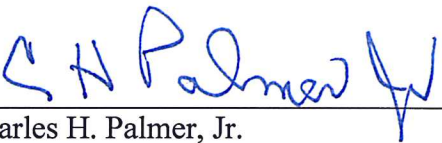
DULY ORDAINED AND ENACTED by the Borough Council of the Borough of Atglen, this 2nd day of November 2020, in lawful session duly assembled.

BOROUGH OF ATGLEN

Attest:

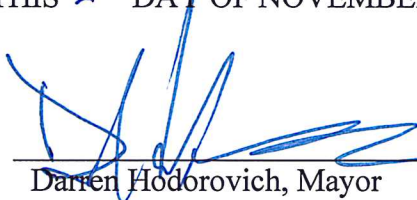


Caren D. Andrews, Manager/Secretary

By: 

Charles H. Palmer, Jr.
President of Borough Council

APPROVED THIS 2nd DAY OF NOVEMBER, 2020

By: 

Darren Hodorovich, Mayor