

§ 215-78.2 H-MU Highway Mixed Use Zone

A) Purpose. The purpose of this zone is to steadily transform the area covered by the previous commercial-only Business Highway (B-H) and Office Business (O-B) zones into a mixed-use zone that integrates a variety of housing and commercial uses. It is envisaged that the housing will be in high density, attached, multi-story buildings providing opportunities for deed-restricted affordable housing to help meet the Borough's fourth round obligation and non-restricted housing that is affordable to new residents wishing to join the Pennington community. It replaces the Route 31 Corridor Business Overlay zone which attempted to diversify the area it covered from large lots (65,000 sq.ft.) to smaller lots (10,000 sq.ft.) and permit uses that would create a pedestrian-oriented shopping environment consistent with the character of the surrounding community. The Overlay zone did not include housing.

B) Building configurations permitted.

- 1) Mixed commercial and attached residences, with a maximum height of 45 feet.
 - a) No more than 3 stories
 - b) Retail and other public-facing businesses allowed only on the first (ground) floor, subject to the permitted primary, secondary, conditional, and prohibited uses in sections below.
 - c) Executive or administrative, general business and professional offices allowed on first and second floors.
 - d) No more than 24 residences per floor.
- 2) Attached residences, including those with ground floor indoor parking
 - a) No more than 3 stories, in addition to the parking floor, with a maximum height of 45 feet.
 - b) No business or commercial uses allowed.
 - c) Not permitted to front directly on State Route 31.
- 3) Commercial and business use only
 - a) Existing commercial and business-use buildings in the zone as of the date of approval of this ordinance may continue as they are, or be modified in the future, subject to the permitted primary, secondary, conditional, and prohibited uses in sections C, D, E and F below.
 - b) Where substantial modifications to sites are contemplated, the owner of the site is encouraged to create residential, or mixed residential and commercial buildings, on the site to help the Borough move towards a more diversified and affordable supply of housing.

C) Design and other regulations for all buildings

- 1) All lands and uses in the H-MU Zone shall comply with the regulations set forth in the Schedule of Area, Yard and Building Regulations.
- 2) More than one building shall be permitted on a lot, provided that the total floor area ratio and total lot coverage of the combined uses/buildings on the lot do not exceed the maximums specified for the zoning district for a use/building on an individual lot.

- 3) All portions of all buildings on one lot shall be compatibly designed with a common architectural motif, whether constructed all at one time or in stages over a period of time. The architectural design and material surface and color of all building walls on all sides of all buildings shall be suitably finished for aesthetic purposes and shall be compatible in design and scale with the surface materials existing within the neighborhood.
- 4) Subject to section B above, certain buildings may contain more than one principal permitted use, provided that the total floor area ratio and total building and lot coverages of the combined uses do not exceed the maximums specified for the zoning district, that each use occupies a minimum gross floor area of 500 square feet and that the combined off-street parking requirements for all uses are met.
- 5) All buildings shall be separated by a minimum of 30 feet where any part of such separation is to be used for parking or vehicular circulation.
- 6) Unless otherwise specifically approved by the Board as part of a site plan application, no merchandise, product, equipment or similar material or objects shall be displayed or stored outside, except where otherwise permitted by this chapter or the code of the Borough of Pennington. Where merchandise, products, equipment or similar material or objects are approved by the Board to be displayed or stored outside, the materials shall be suitably screened to be obscured from view from any adjacent residential uses and must be situated within the property lines of the principal use.
- 7) All portions of a lot not covered by buildings or structures (e.g., parking lots, parking spaces, loading areas, access aisles, driveways, sidewalks, walkways, curbs, trash enclosures, etc.) shall be suitably landscaped with grass, shrubs and trees and shall be maintained in good condition. In any case, no less than 35% of the area of any lot shall be so landscaped, and the landscaped area may include approved detention and/or retention basins.
- 8) Landscaping. Any front or side yard with a parking area visible from the street shall be screened with a row of shrubs at least two feet high when mature. Street trees shall be planted along any street frontage 30 to 40 feet on center, and foundation plantings shall be included along the building facade. A landscaped or grass strip at least five feet wide shall be provided along the front and side yard property lines.
- 9) On-site circulation. Driveways with appropriate cross easements providing access between adjacent lots shall be permitted and provided where feasible. On-site circulation systems and parking areas shall be designed to accommodate the interconnection between adjacent lots.
- 10) Pedestrian access. Adequate and safe pedestrian access between uses or separate buildings in the development or on adjacent lots shall be provided, and the design of the development shall promote nonvehicular, pedestrian-friendly access, inclusive of bicycle racks, benches or other such amenities. Sidewalks shall be provided along street frontages and throughout the development.
- 11) Sign requirements. All signage shall be in accordance with the requirements specified in Article III, Sign Regulations, and specifically § 215-44 of this chapter.
- 12) Fences, walls and retaining walls shall be in accordance with the provisions of § 215-24.
- 13) Roof-mounted solar panels are allowed and are encouraged.
- 14) Geothermal heating is allowed and is encouraged.

D) Permitted business and commercial primary uses. In buildings or on sites where business or commercial or use is permitted, the primary uses allowed shall be as follows:

- 1) Retail business and personal service establishments which are clearly of a community service character, such as retail shops, studios for the arts or fitness, barber shops and beauty salons.
- 2) Restaurants, including those of a quick serve nature without a drive through window.
- 3) Executive or administrative, general business and professional offices.
- 4) Animal hospitals.
- 5) Hardware stores.
- 6) Wholesale business establishments other than cannabis wholesalers.
- 7) Technical training centers provided all instruction is conducted indoors.
- 8) Educational uses, other than schools and institutions of higher learning
- 9) Child-care centers licensed by the Department of Human Services pursuant to P.L. 1983, c. 492 (N.J.S.A. 30:5B-1 et seq.).
- 10) Municipal services, emergency response services and Post Office
- 11) Other business uses which in the opinion of the Planning Board acting as a Board of Adjustment are similar in scale and service nature to those permitted above.

E) Permitted secondary and accessory uses. For buildings and sites where business or commercial use is permitted, the secondary uses allowed shall be as follows:

- 1) Municipal parks, playgrounds and buildings deemed appropriate and necessary by the Borough Council of the Borough of Pennington.
- 2) Garage and storage buildings which are necessary to store any vehicles, equipment or materials on the premises in conjunction with a permitted use.
- 3) Off-street parking for the use of employees, customers and visitors.
- 4) Sidewalk sales by adjacent retail merchandise stores when authorized by a permit issued by the Borough Clerk.
- 5) Signs as permitted by Article III, Sign Regulations, and specifically § 215-44.
- 6) Make ready infrastructure and electric vehicle charging stations.
- 7) Outdoor dining associated with a permitted restaurant use.
- 8) Solar panels mounted to the roof of a building.
- 9) Enclosures for the storage and collection of trash and recyclable materials.
- 10) Outdoor recreation areas associated with permitted residential uses.
- 11) Dog parks.

F) Conditional business and commercial uses. The conditional uses allowed shall be as follows and shall be subject to the provisions of the indicated ordinances in Borough Code Chapter 215 Article VIII.

- 1) Public utility uses as a conditional use under N.J.S.A. 40:55D-67 (§ 215-80)
- 2) Cannabis retailers, medical cannabis dispensaries and cannabis delivery services (§ 215-81)
- 3) Schools and institutions of higher learning (§ 215-82)
- 4) Scientific or research laboratories (§ 215-90)
- 5) Health care facilities (§ 215-91)
- 6) Banks (§ 215-95).
- 7) Banks and financial institutions with drive-through facilities.

- a) The drive-through facility shall be located to the rear of the building.
- b) For queuing purposes, room for at least two automobiles per drive-through window shall be provided.

G) Prohibited uses. Any use not hereby specifically permitted is prohibited unless approved by the Planning Board acting as a Board of Adjustment. The following uses are hereby specifically prohibited:

- 1) Cannabis cultivators, cannabis manufacturers, cannabis wholesalers, cannabis distributors, medical cannabis cultivators, medical cannabis manufacturers and clinical registrants.
- 2) Drive through facilities associated with a quick serve restaurant.
- 3) No retail sales use may operate after 11:00 p.m. at night, and all site lights and signage shall be turned off at the close of business, except for a minimal amount of low-intensity security lighting specifically approved by the Planning Board.

H) Permitted Residential Uses.

- 1) Objectives. The provisions of this subsection are intended to encourage the planning and construction of multifamily dwelling units within the H-MU Zone that meet the special needs of suburban families and at the same time protect and promote the health, safety and general welfare of the public and the Borough of Pennington.
- 2) Qualifications. In order to qualify for consideration under the terms of this subsection, the site for any multifamily development shall be composed of a single tract of land, consisting of one or more contiguous lots. The physical conditions of the site, including soil type, ground water level, drainage and topography, shall be such as not to create hazards to the property or to the occupants, and the site shall not be subject to the possibility of subsidence or the reasonable probability of flooding or serious erosion.
- 3) General requirements.
 - a) Access to site. Any multifamily dwelling unit site shall abut or have permanent access to an approved or existing public street. Private streets within any development shall be permitted but shall be protected by a permanent easement and shall provide for safe and suitable vehicular circulation in the development at all times. Dead-end or cul-de-sac streets shall conform to the requirements of the Residential Site Improvement Standards.
 - b) Access to buildings. Convenient vehicular access to all buildings on the attached dwelling unit development site shall be provided for emergency equipment, furniture moving vans, fuel trucks where required, garbage collection, general deliveries of goods and snow removal. Pedestrian access to the rear of all buildings fronting on a public street shall be provided.
 - c) Access to dwelling units. A safe and convenient means for pedestrian access to all dwelling units shall be provided in such manner as not to require passage through any other dwelling unit.
 - d) Services and facilities. The development of the site shall be designed so that it does not infringe upon adjoining properties. Utilities and other similar facilities shall be provided for the development without dependence upon the availability of such services on adjoining properties. All attached dwelling unit developments shall be connected to and serviced by public systems for the provision of water and disposal

of sanitary and storm sewage. Such public systems shall have been determined adequate to serve the proposed development by competent authority designated by the Borough Council.

- e) Occupancy of dwelling units. No dwelling unit shall be occupied until all other dwelling units in the same building are completed and ready for occupancy, having all utility connections completed, pedestrian and vehicular accessways improved and parking areas paved and drained as designed and a certificate of occupancy having been issued.
- f) Compliance with other ordinances and regulations. The development shall conform to the recommendations of the Borough Master Plan regarding the creation of new streets, the widening of existing streets, drainage rights-of-way and conservation areas. Where subdivision of lands is required or desired by the developer of the attached dwelling unit development, in accordance with the provisions of Chapter 181, Subdivision of Land, the receipt of subdivision approval prior to proceedings under this chapter shall not in any way be construed to imply approval of the proposed attached dwelling unit development. Where the review and/or approval of the various elements or features of the proposed attached dwelling unit development is required to be received from any municipal, county or state agency or official, other than the Planning Board and Zoning Officer, such review and/or approval shall be obtained prior to proceedings hereinunder.

4) Design requirements. At a minimum, all multifamily dwelling unit developments shall comply with the following design requirements and standards:

- a) Site area. Site areas shall not be less than 20,000 square feet of usable land.
- b) Floor area. Total floor area shall not exceed an amount equal to 80% of site area.
- c) Coverage. Building area and related impervious surface coverage (parking areas, roads, walks, etc.) shall not exceed an amount equal to 60% of the site area.
- d) Recreation area. Outdoor recreation space shall be provided in all developments of 30 or more units. Such outdoor recreation space shall not be less in area than an amount equal to 5% of the gross floor area of the development.
- e) Parking spaces required. The Planning Board shall determine the number of off-street parking spaces required based on dwelling unit mix and size and related factors. Maximum requirement shall not exceed one and one half spaces per unit nor shall be less than one space per unit. The developer may elect, subject to the approval of the body conducting the site plan review, to improve only a portion of the area which has been designated for parking on the plan.
- f) Buildings. Buildings shall not exceed 3 stories or 45 feet in height. Buildings shall not contain dwelling units above the third story nor below grade. Buildings shall be designed so that an offset of at least two feet shall occur every 50 feet of building wall.
- g) Dwelling unit mix and density. Each development shall contain a mixture of dwelling unit types in a ratio approved by the Planning Board. Maximum gross residential density shall not exceed twenty four (24) units per acre.
- h) Building setbacks. Building setbacks shall provide adequate distance between buildings on the site and the abutting properties. However, no such setback need exceed a distance of 50 feet.

- i) Streets, roads, curbs, parking areas and sidewalks. All streets, roads, curbs, parking areas and sidewalks shall be constructed in accordance with Borough specifications furnished by the Borough Engineer.
- j) Plantings. The character and appeal of the site shall be enhanced by retaining and protecting existing trees and other natural features of the site whenever possible and through the addition of new planting materials for privacy, shade, beauty of buildings and grounds, and to screen objectionable features. Plant materials to be provided shall be in scale with the composition of the buildings, the site and its various uses and surroundings. Plant materials shall be arranged to harmonize in size, shape, color, texture and winter characteristics with the buildings and development of the grounds. Plant location and spacing shall be determined by ultimate mature growth. Plant materials shall be indigenous to the area or be readily adaptable to the local climate and soil conditions. Plant materials shall not be excessively weedy in habit or growth characteristics nor be unduly subject to noxious pests or plant diseases.
- k) Outdoor lighting. Attractive lighting fixtures for walks, steps, parking areas, streets and other facilities shall be provided at locations to assure the safe and convenient use of such facilities. Fixtures shall be placed and designed in keeping with the character of the development and be adequately shielded to reduce glare and eliminate light trespass onto adjacent properties.
- l) Electric and telephone lines. All electric power and telephone transmission lines shall be installed underground at a depth and at such location as will minimize risk of interruption of services.
- m) Screening. Fences, walls, shrubbery or other appropriate screening devices shall be installed around garbage and trash storage areas, parking areas, service areas and at such other locations deemed desirable or necessary by the Planning Board.
- n) Laundry facilities. Each residential unit shall have its own laundry facilities.

I) Off-street parking and loading requirements

- 1) Parking areas shall be located within side and rear yards, provided they are not within 15 feet of the boundary of a residence zone or street line. Driveways shall be limited to two for each 200 feet of frontage on a public street. Where multifamily dwelling units are added to existing single story buildings, existing parking areas that do not comply with this section shall be permitted to remain.
- 2) No parking, loading area, driveway or other structure (except for approved accessways, signs and fencing) shall be permitted within 5 feet of any property line and within 10 feet of any street line or residential zoning district, and such perimeter area shall be planted and maintained in lawn areas or ground cover and landscaped with shrubbery, except that:
 - a) No parking, loading area, driveway or other structure (except for approved accessways, signs and fencing) shall be permitted in the front yard area between the principal building.
 - b) The Planning Board may approve off-street parking in front yard areas between principal buildings and State Highway Route 31 where the existing development on the subject property (e.g., an existing building set back an excessive distance from the abutting street right-of-way) creates a practical difficulty in locating the required off-street parking in rear and/or side yard areas, provided that:

- (i) A minimum parking setback of 5 feet to any street line shall be provided, where feasible, and shall be planted and maintained in lawn area or ground cover and shall be landscaped with trees and shrubbery as approved by the Board; and
- (ii) When approving the location of off-street parking in front yard areas, the Planning Board must find that parking may be located within the front yard area without adversely affecting neighboring properties.
- c) Driveways with appropriate cross-easements providing access between adjacent lots shall be permitted and provided, where feasible; on-site circulation systems and parking areas shall be designed to accommodate the interconnection between adjacent lots.
- 3) Each individual use shall provide parking spaces according to the following minimum provisions. Where a permitted use includes different specific activities with different specific parking requirements, the total number of required parking spaces shall be obtained by computing individually the parking requirements for each different activity and adding the resulting numbers together:
 - a) Retail business uses: one space for each 300 square feet of sales floor area.
 - b) Personal and business service establishments: one space for each 300 square feet of floor area.
 - c) Professional and business offices, laboratories and technical training centers: one space for each 250 square feet of floor area or part thereof.
 - d) Restaurants: one space for each four seats, plus one space for each two employees.
 - e) Wholesale business establishments: one space for each 500 square feet of building area.
 - f) Offices, laboratories and technical training centers shall provide parking at the ratio of one parking space per 250 square feet of gross floor area or part thereof
 - g) Child-care centers shall provide parking at a ratio of one parking space per employee, plus one additional parking space for every eight children.
 - h) Where a permitted use of land includes different specific activities with different specific parking requirements, the total number of required parking spaces shall be obtained by computing individually the parking requirements for each different activity and adding the resulting numbers together
- 4) Parking areas for individual uses shall be designed to be interconnected with adjacent properties and shall utilize common entrance(s) and exit(s), where feasible, to minimize access points to the street.
- 5) Shared parking. Nothing in the above requirements shall be construed to prevent the employment of shared parking, which may be implemented in one of two manners:
 - (i) On-site shared parking. For parcels containing a multiple-occupant building or two or more buildings with different permitted uses, on-site shared parking may be implemented.
 - (a) A shared parking allowance of 50% shall be permitted for combining weekday uses with evening/weekend uses in the same building or in separate buildings on the same parcel. Office and retail uses are considered to be weekday uses, while residential and restaurant uses are considered to be evening/weekend uses.
 - (b) Fifty percent of the parking requirement of the evening/weekend use of the building may be met through parking already provided for the weekday use.

For example, a building contains office space that requires 20 parking spaces and residential units that require eight parking spaces. The residential parking is permitted to be reduced by 50% or four parking spaces. Therefore, the development would only be required to construct 24 parking spaces instead of 28.

- (ii) Off-site shared parking. For parcels that cannot accommodate all or a portion of their required parking spaces, the differential parking requirement may be shifted to an adjacent property determined by the Zoning Officer to have parking in excess of zoning requirements or parking that is demonstrated to be unused during normal hours of operation. This would require the submission of a memorandum of agreement between the two property owners, which demonstrates the shifting of parking spaces from one site to an adjacent site.

J) Off-street loading requirements and provision for garbage pickup.

- 1) Each principal building or group of buildings shall provide at minimum one off-street loading space on site at the side or rear of the building or within the building. Any loading area shall have adequate ingress and egress from a public street and adequate space for maneuvering. There shall be no loading or unloading from the street or front yard area. Such space shall not infringe upon area required for off-street parking
- 2) There shall be at least one trash and garbage pickup location on site within convenient access to and from the building being served, including provisions for the separation and collection of recyclable materials in accordance with the recycling requirements of Mercer County and in accordance with the following:
 - a) The trash and garbage pickup location shall be provided either within the building being served or in a pickup location outside the building;
 - b) If located within the building, the doorway may serve both the loading and trash/garbage functions, and if located outside the building, it may be located adjacent to or within the general loading area(s), provided the container in no way interferes with or restricts loading and unloading functions;
 - c) If located outside the building, the trash and garbage pickup location shall include a fully enclosed trash and garbage container located in a manner to be obscured from view from parking areas, streets and adjacent residential uses or zoning districts by a fence, wall, planting or combination of all three. Enclosures shall be constructed of masonry material consistent with the architectural design of the buildings.