

BOROUGH OF WATCHUNG

ORDINANCE #OR:18/17

AN ORDINANCE THAT AMENDS THE BOROUGH OF WATCHUNG LOW AND MODERATE INCOME ACCESSORY APARTMENT REQUIREMENTS TO PARTIALLY MEET THE BOROUGH'S AFFORDABLE HOUSING OBLIGATIONS, TO PROVIDE FOR ADMINISTRATIVE APPROVAL OF LOW AND MODERATE INCOME ACCESSORY APARTMENTS INSTEAD OF CONDITIONAL USE APPROVAL AND SETTING FORTH APPLICABLE REQUIREMENTS, PROCEDURE AND PROGRAM ADMINISTRATION.

BE IT ORDAINED, by the Mayor and Borough Council of the Borough of Watchung, County of Somerset, State of New Jersey, as follows:

Section 1. Section 28-404.B.8 which identifies "low and moderate income accessory apartments" as a conditional use in the "R-R" Rural Single-Family Residential District shall be deleted as follows: ¹

~~8. Low and moderate income accessory apartments as a conditional use~~

Section 2. Section 28-501-A, titled "Low and Moderate Income Accessory Apartments", which provide conditional use standards for Low and Moderate Income Accessory Apartments and which requires site plan approval, shall be deleted as follows:

~~**A. Low and Moderate Income Accessory Apartments.**~~

- ~~1. Purpose. This Article has been enacted for the specific purpose of providing additional opportunities for low and moderate income housing in the Borough.~~
- ~~2. An accessory apartment is a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance which is created to be occupied by a low or moderate income household. The accessory apartment may be created within an existing dwelling unit and may be created within an existing structure on a lot or be an addition to an existing home or accessory building.~~
- ~~3. Accessory apartment units shall meet all of the following conditions:~~
 - ~~a. The bulk requirements of the zone in which the accessory apartment is created shall be met.~~
 - ~~b. Accessory apartments shall comply with all applicable statutes and regulations of the State of New Jersey in addition to all local building codes.~~

¹ Editor's Note: The portions to be deleted are shown with strike-outs and will be deleted from the codified version of this Ordinance and the underlined portions will remain in the codified version of this Ordinance.

- ~~e. Accessory apartment shall be rented only to a household that is either a low or a moderate income household at the time of initial occupancy of the unit.~~
 - ~~d. Accessory apartments shall, for a period of at least ten (10) years from the date of the issuance of a certificate of occupancy for the same, be rented only to low or moderate income households.~~
 - ~~e. Rents of accessory apartments shall be affordable to low or moderate income households as per the COAH rules and regulations and shall include a utility allowance~~
 - ~~f. No more than ten (10) accessory apartments shall be created to address the Borough's fair share obligation.~~
 - ~~g. There shall be a recorded deed or declaration of covenants and restrictions applied to the property upon which the accessory apartment is located running with the land and limiting its subsequent rental or sale to the requirements of paragraphs c and d above.~~
 - ~~h. Accessory apartments shall have living/sleeping space, cooking facilities, a kitchen sink and complete sanitary facilities for the exclusive use of its occupants. It shall consist of no less than two (2) rooms, one (1) of which shall be a full bathroom.~~
 - ~~i. Accessory apartments shall have a separate door with direct access to the outdoors.~~
 - ~~j. The potable water supply and sewage disposal system for the accessory apartment shall be adequate as evidenced by the approval of the Watchung Board of Health.~~
 - ~~k. Accessory apartment shall be affirmatively marketed to the housing region in accordance with the requirements of this chapter.~~
 - ~~l. Accessory Apartments Permitted as a Conditional Use. Accessory apartments, as that term is described in and meeting the requirements of this paragraph A, shall be permitted as a conditional use in all districts provided that the property on which the accessory apartment is proposed is a conforming lot which abuts and has direct driveway access to a County of Somerset road or a United States highway;~~
 - ~~m. The net habitable floor area devoted to the accessory apartment shall not exceed twenty five percent (25%) of the aggregate net habitable floor area within all buildings on the site, including both the principal single family building on the site and all accessory buildings on the site.~~
 - ~~n. The construction of an accessory apartment shall be predicated upon both conditional use and minor site plan review and approval by the Watchung Planning Board.~~
- ~~4. Illegal Existing Accessory Apartments. In the case of an accessory apartment created illegally or without proper permits which the property owner desires to legitimize as an accessory apartment under this chapter, all of the requirements of this chapter shall apply~~

in addition to meeting COAH criteria, except that no subsidy shall be provided by the municipality

5. ~~The following designations are made to administer various components of the accessory apartment program:~~
 - a. ~~The Department of Community Affairs, Affordable Housing Management Service shall administer the following portions of the accessory apartment program: income qualifying of prospective renters, setting rents and annual rental increases, maintaining a waiting list of prospective accessory apartment residents, and handling application forms.~~
 - b. ~~The Borough Administrator shall administer the following portions of the accessory apartment program: advertising, distribution of the subsidy set forth herein, insuring that certificates of occupancy are obtained before occupancy, qualifying properties for the program, giving guidance for required Planning Board applications, filing of deed restrictions and COAH monitoring reports, affirmatively marketing of the accessory apartment program and any and all other administrative requirements of the program.~~
6. ~~An application for an accessory apartment shall only be denied if the project is not in conformance with COAH's requirements or this chapter. All denials shall be in writing with the reasons clearly stated.~~
7. ~~In accordance with COAH requirements, the Borough shall provide at least ten thousand (\$10,000.00) dollars to subsidize the physical creation of an accessory apartment conforming to the requirements of this section and COAH requirements. The said subsidy may be in the form of a low or no interest loan or a grant provided that the property owner shall enter into a written agreement with the Borough insuring that (i) the subsidy shall be used to create the accessory apartment and (ii) the accessory apartment shall meet the requirements of this chapter and COAH regulations.~~
8. ~~Applicants for the creation of an accessory apartment shall submit to the Planning Board an application for conditional use and minor site plan approval and the following:~~
 - a. ~~An applicant shall obtain from the Watchung Planning Board an application checklist and shall submit all documents required in accordance there with.~~
 - b. ~~A sketch of floor plan(s) showing the location, size and relationship of both the accessory apartment and the primary dwelling within the building or in another structure as to size and other matters~~
 - c. ~~Rough elevations showing the modification of any exterior building facade to which changes are proposed.~~
 - d. ~~A site development sketch showing the location of the existing dwelling and other existing buildings; all property lines; proposed addition if any, along with the~~

~~minimum building setback lines; the required parking spaces for both dwelling units and any natural or manmade conditions which might affect construction.~~

- ~~9. Based upon the above, the applicant shall be advised if the application is complete in accordance with MLUL requirements. When complete, the application shall be placed on the Planning Board agenda and a decision shall be made in accordance with MLUL requirements.~~

Section 3. Add a new Section 28-401.AA that sets forth an administrative approval process for Low and Moderate Income Accessory Apartments and the requirements for Low and Moderate Income Accessory Apartments as follows:

AA. Low and Moderate Income Accessory Apartments.

1. Purpose. The purpose of this Ordinance is to address a portion of the Borough's Third Round affordable housing obligation consistent with the Order on Fairness and Preliminary Compliance Hearing and provides a realistic opportunity for the development of affordable housing units that will satisfy the Borough's affordable housing obligation under the New Jersey Supreme Court's Mount Laurel decisions.
2. Requirements. Accessory apartments, as that term is described herein and meeting the requirements of this Section 28-401.AA, shall be permitted in association with existing single-family residences as a permitted accessory use in all districts provided the following requirements are satisfied:
 - a. The accessory apartment shall be a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters, and a private entrance, which is created within an existing single-family home, or through the conversion of an existing attached accessory structure on the same site, or by an addition to an existing single-family home or accessory building on the same site.
 - b. The property on which the accessory apartment is proposed abuts and has direct driveway access to a County of Somerset road or a United States highway.
 - c. The property on which the accessory apartment is proposed is a conforming lot in terms of minimum required lot area, lot frontage, lot width and lot depth.
 - d. The accessory apartment shall meet the following requirements with respect to affordability:
 - (1) At the time of initial occupancy of the unit and for at least ten (10) years thereafter, the accessory apartment shall be rented only to a household which is either a low or a moderate income household.
 - (2) Rents of accessory apartments shall be affordable to low or moderate income households as applicable income limits.

- (3) Prior to issuance of Certificate of Occupancy for the initial tenant of the accessory apartment, there shall be a recorded deed or declaration of covenants and restrictions applied to the property running with the land that maintains the affordability of the accessory apartment for the minimum 10 year period. After expiration of the 10-year period the accessory apartment may be converted to a market-rate unit unless the affordability restriction is extended by mutual agreement of the Borough and property owner.
- e. Accessory apartments shall have living/sleeping space, cooking facilities, a kitchen sink and complete sanitary facilities for the exclusive use of its occupants. It shall consist of no less than two (2) rooms, one (1) of which shall be a full bathroom.
- f. The potable water supply and sewage disposal system for the accessory apartment shall be adequate as evidenced by the approval of the Borough Board of Health.
- g. The net habitable floor area devoted to the accessory apartment shall not exceed twenty-five percent (25%) of the aggregate net habitable floor area within all buildings on the site, including both the principal single-family building on the site and all accessory buildings on the site.
- h. In the case of an accessory apartment created illegally or without proper permits which the property owner desires to legitimize as an accessory apartment under this Section 28-401.AA, all of the requirements of this Ordinance shall apply.
- i. The creation of the accessory apartment shall not create a non-conforming condition on the site regarding applicable zoning requirements (e.g., applicable building setbacks, building coverage, impervious coverage).
- j. Off-street parking shall be provided for the occupants of the affordable accessory apartment.
- k. There shall be no more than one (1) accessory apartment located on any one (1) lot.
3. Zoning Approval Procedure. Applicants for the creation of an accessory apartment shall submit for approval through the Borough's Zoning Permit approval process. The application shall include the forms required for a Borough Zoning Permit and all information necessary for the Zoning Officer to determine compliance with this Ordinance and other applicable zoning requirements (e.g., applicable building setbacks, building coverage, impervious coverage). Such information shall include, but may not be limited to, the following:
- a. A plot plan (survey) indicating the location of the proposed construction and demonstrating conformity to the applicable bulk requirements of the zone.
- b. A sketch of floor plan(s) showing the location, size and relationship of both the accessory apartment and the primary dwelling within the building or in another

- structure as to size and demonstrating compliance with the applicable requirements of this Ordinance
- c. Elevations showing the modification of any exterior building facade to which changes are proposed.
 - d. The Zoning Permit for an application for an accessory apartment shall only be denied if the property is not in conformance with this Ordinance and other applicable zoning requirements. All denials shall be in writing with the reasons clearly stated.
4. Administration. The following designations are made to administer various components of the accessory apartment program:
- a. The designated Administrative Agent shall administer the following portions of the accessory apartment program: implementing the Affirmative Marketing Plan adopted by the Borough; accepting applications from interested households; determining eligibility of households; conducting random selection of applicants for rental of restricted units as necessary; creating and maintaining a waiting list of applicant households; ensuring compliance with permissible rents and annual rental increases; establishing and maintain effective communication with owners; sending out annual mailings about restrictions including allowable annual rent increases; and providing annual activity reports.
 - b. The Borough Administrator shall administer the following portions of the accessory apartment program: administering the subsidy set forth herein; insuring that certificates of occupancy are obtained before occupancy; filing of deed restrictions; serving as the custodian of all legal documents; and satisfying other administrative requirements of the program.
 - c. In accordance with applicable affordable housing requirements, the Borough shall provide up to thirty thousand (\$30,000.00) dollars to subsidize the creation of an accessory apartment conforming to the requirements of this Section 28-401.AA and applicable affordable housing requirements. The said subsidy may be in the form of a grant provided that the property owner shall enter into a written agreement with the Borough insuring that (i) the subsidy shall be used to create the accessory apartment and (ii) the accessory apartment shall meet the requirements of this Ordinance and applicable regulations.

Section 3. The Borough Clerk is directed to give notice at least ten (10) days prior to a hearing on the adoption of this Ordinance to the Somerset County Planning Board and to all other persons or entities entitled thereto pursuant to N.J.S.A. 40:55D-15, including to the Clerk of adjoining municipalities. The Borough Clerk shall execute Affidavits of Proof of Service of the notices required by this Section 3, and shall keep the Affidavits on file along with the Proof of Publication of the notice of the required public hearing on the proposed change.

Section 4. After introduction, the Borough Clerk is hereby directed to submit a copy of the within Ordinance to the Planning Board of the Borough of Watchung for its review in accordance with N.J.S.A.

40:55D-26 and N.J.S.A. 40:55D-64. The Planning Board is directed to make and transmit to the Borough Council, within thirty-five (35) days after referral, a report including identification of any provisions in the proposed Ordinance which are inconsistent with the Master Plan and recommendations concerning any inconsistencies and any other matter as the Board deems appropriate.

Section 5. If any section, paragraph, subdivision, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision so adjudged and the remainder of the Ordinance shall be deemed valid and effective.

Section 6. All ordinances or parts of ordinances inconsistent with or in conflict with this Ordinance are hereby repealed to the extent of such inconsistency.

Section 7. This Ordinance shall take effect immediately upon: (i) adoption; (ii) publication in accordance with the laws of the State of New Jersey; and (iii) filing of the final form of adopted Ordinance by the Clerk with the Somerset County Planning Board pursuant to N.J.S.A. 40:55D-16.

ATTEST:

BOROUGH OF WATCHUNG

Michelle DeRocco
Michelle DeRocco, Clerk

Stephen K. Pote
Stephen K. Pote, Mayor

Introduced: November 19, 2018

Adopted: December 6, 2018