



**BOROUGH OF FLORHAM PARK
COUNTY OF MORRIS
STATE OF NEW JERSEY**

ORDINANCE # 19-3

AN ORDINANCE OF THE BOROUGH OF FLORHAM PARK, COUNTY OF MORRIS AND STATE OF NEW JERSEY ESTABLISHING SECTION 250-14.3 OF THE GENERAL LEGISLATION OF THE CODE OF THE BOROUGH OF FLORHAM PARK, ENTITLED “AFFORDABLE ACCESSORY APARTMENTS”.

WHEREAS, it is the intent and purpose of the Municipal Land Use Law (the “MLUL”) to encourage municipal action to guide the appropriate use or development of all lands in the State, in a manner which will promote the public health, safety, morals, and general welfare; and

WHEREAS, the general purpose of this Chapter is to provide an opportunity for the creation of accessory apartments within residential districts of the Borough sufficient to meet the Borough’s allocation of affordable housing as set forth in the Borough’s Housing Plan of the adopted Borough Master Plan; and

WHEREAS, it is further intended that the owner-occupant of a dwelling located in a residential zone may apply to construct or provide one such accessory apartments in said residential zone which shall be rented according to the provisions of the Uniform Housing Affordability Control Rules (N.J.A.C. 5:80-36.1, et seq.), and as administered by the appropriate Borough officer;

NOW, THEREFORE, it is hereby duly ordained by the Borough Council of the Borough of Florham Park, County of Morris, State of New Jersey, as follows:

SECTION 1. General Legislation, Chapter 250, Section 14.3 Affordable Accessory Apartments, of the Code of the Borough of Florham Park is hereby created as follows:

A. Applicability. This chapter applies to the creation of subsidized accessory apartments in all Residential Districts of the Borough.

B. Purpose. It is the purpose of this program to help meet a portion of the Borough’s fair-share housing obligation and provides a realistic opportunity for the development of affordable housing through subsidizing the construction of up to ten (10) accessory apartments for

occupancy by low-income or moderate-income households, Borough-wide. Accessory apartments are permitted in conjunction with the Borough's affordable housing program and the rules and regulations established herein shall be designed to ensure that each accessory apartment established hereunder shall be and shall remain creditworthy under the rules and regulations of the New Jersey Council on Affordable Housing (COAH) and other applicable law for a period of at least 10 years.

C. Definitions. Definitions pertaining to affordable housing not found below are the same as those definitions that appear in the rules and regulations adopted by the Council on Affordable Housing in N.J.A.C. 5:93-1 et seq. as used in this chapter:

ACCESSORY APARTMENT

A self-contained residential dwelling unit of no less than 300 square feet with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is created within an existing home, or through the conversion of an existing accessory structure on the same site, or by an addition to an existing home or accessory building, or by the construction of a new accessory structure on the same site. Any dwelling unit created or designated as an accessory apartment pursuant to this section shall be and shall remain permanently accessory to the primary use of the property as a single-family dwelling and shall in no way confer upon the property owner any future rights to subdivide the existing lot in order to place the accessory dwelling on a separate lot from the principal dwelling.

APPLICANT FOR AN AFFORDABLE ACCESSORY APARTMENT

The person or persons applying for funds to create an accessory apartment in accordance with the provisions of this chapter.

COUNCIL ON AFFORDABLE HOUSING

The Council established by the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq., also known as "COAH."

HOUSING ADMINISTRATOR

The person, agency or consultant designated by the Borough Council to perform the duties described in this chapter. The Borough Council may appoint the Borough Housing Liaison as the Housing Administrator.

LOW-INCOME HOUSEHOLD

A household with a gross household income equal to 50% or less of the median gross household income for households of the same size within the housing region in which the housing is located as determined by the Council on Affordable Housing in N.J.A.C. 5:93-1 et seq., or its subsequent rules and regulations.

MODERATE-INCOME HOUSEHOLD

A household with a gross household income more than 50% but less than 80% of the median gross household income for households of the same size within the housing region in which the housing is located as determined by the Council on Affordable Housing in N.J.A.C. 5:93-1 et seq., or its subsequent rules and regulations.

UTILITY ALLOWANCE

An allowance for utilities that is consistent with the personal benefit expense allowance for utilities as defined by HUD (or a similar allowance approved by COAH).

D. Minimum Standards.

- (1) Accessory apartments shall be permitted on properties in which a dwelling with three or more bedrooms, which is in conformity with the regulations of the zoning district in which it is located, including minimum required lot area, lot frontage, lot width, and lot depth, and is at least one (1) acre in area.
- (2) Accessory apartments shall have living/sleeping space, cooking facilities, a kitchen sink, and complete sanitary facilities for the exclusive use of its occupants. The accessory apartment shall have a separate, private entrance from the principal structure on the same property. It shall consist of no less than 300 square feet with at least two (2) rooms, one (1) of which shall be a full bathroom.
- (3) The potable water supply and sewage disposal system for the accessory apartment shall be adequate as evidenced by approval of the Borough Water & Sewer Utility.
- (4) 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 buildings on the site, including both the principal single-family building on the site and all accessory buildings on the site, which shall be certified by a Licensed New Jersey Architect.
- (5) The creation of an accessory apartment shall not create a non-conforming condition on the site regarding applicable zoning requirements. An accessory apartment that is detached from the principal dwelling shall conform to all of the accessory building requirements of the zone.
- (6) There shall be no more than one (1) accessory apartment located on any (1) lot.
- (7) Off-street parking shall be provided for the occupants of the affordable accessory apartment in conformance with Chapter 250-34, Off-street parking requirements,

which shall be depicted on the submitted sketch or site plan.

- (8) Any construction relative to the creation of an accessory apartment shall be architecturally consistent with the appearance of other structures on the same site. Accessory apartments shall be designed to blend and harmonize new construction with the existing exterior architectural design of the original dwelling unit using similar materials, colors and details. The present exterior architectural design of the original dwelling unit shall be maintained to preserve the residential character of the neighborhood.
- (9) Any dwelling unit created or designated as an accessory apartment pursuant to this section shall be and shall remain permanently accessory to the primary use of the property as a single-family dwelling, and shall in no way confer upon the property owner any future rights to subdivide the existing lot in order to place the accessory dwelling on a separate lot from the principal dwelling.
- (10) 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 program, all of the requirements of this Ordinance and all requirements of the U.C.C. shall apply.
- (11) Any existing code deficiencies in the portion of the building to be devoted to the accessory apartment unit shall be corrected, and the unit shall be brought up to code standard. The standard for evaluating any rehabilitation activity on an existing dwelling unit shall be N.J.A.C. 5:23-2.4 and 5:23-2.5. The evaluation shall be undertaken and certified by a Licensed New Jersey Architect prior to the issuance of a construction permit.
- (12) The owner of any accessory apartment as part of this program shall agree, by written contract, to comply with all of the requirements of Section 250-87, Affordable Housing Board Regulations, of the Borough Code, Section 250-7.5, Affordable Housing Regulations, and the Accessory Apartment Manual.
- (13) The owner shall agree to rent the accessory apartment unit only to a moderate or low-income tenant.
- (14) The owner shall agree that prior to the issuance of a Construction Permit and 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. A sample deed restriction and/or loan agreement prepared by the Borough Attorney shall be supplied to the applicant.

- (15) The owner shall agree that prior to the issuance of a Construction Permit and Certificate of Occupancy for the initial tenant of the accessory apartment, that a separate deed restriction shall be recorded for any property containing an accessory apartment created pursuant to this section specifying that such unit(s) shall remain permanently accessory to the principal dwelling and shall not in the future be subdivided and placed on a separate lot from the principal dwelling.

E. Administration.

- (1) Affirmative marketing plan.
- (a) The accessory apartments created shall be affirmatively marketed in accordance with the Borough's Affirmative Marketing Plan.
 - (b) Notification of the availability of funds for the creation of accessory apartments shall be accomplished through the circulation of flyers describing the accessory apartments program, as described in the Accessory Apartment Manual adopted by the Borough, and making information and application packets available to interested owners upon request and free of charge.
 - (c) Before any rental or re- rental of an accessory apartment, the unit shall be affirmatively marketed by the Borough's Affordable Housing Administrative Agent to households throughout the housing region (consisting of Union, Morris, Essex, and Warren Counties) in a manner consistent with the affirmative marketing requirements of the New Jersey Council on Affordable Housing.
- (2) Housing Administrator or Borough Administrative Agent. The Borough Council shall designate a Housing Administrator, who may be the Borough Housing Liaison, or the Borough Administrative Agent, to manage the Accessory Apartment Program, whose duties may include all or some of the following:
- (a) Preparing an Accessory Apartment Program Operating Manual consisting of the following:
 - (i) Implementing the Affirmative Marketing Plan adopted by the Borough;
 - (ii) Criteria for determining eligibility of properties and accepting applications from interested households to determine their

eligibility;

- (iii) Creating and maintaining a waiting list of applicant households;
 - (iv) The amount of money currently available for accessory apartment conversions or additions;
 - (v) Ensuring compliance with permissible rents and annual rent increases;
 - (vi) Procedures for review and approval of work, including interim inspections of work;
 - (vii) Establishing and maintaining effective communication with owners and sending out annual mailings about restrictions including allowable rent increases; and
 - (viii) The length and terms of affordability controls.
- (b) Preparing information packets to be distributed to interested owners.
 - (c) Developing the necessary application forms to be used by owners interested in applying for participation in the accessory apartments program. The application form shall clearly state that any owner who utilizes the provisions of this program shall agree to place a deed restriction and a lien on his or her property. In addition, the application form shall require proof of ownership, insurance and other general information on the property in question. The content shall be pursuant to the Accessory Apartment Program Operating Manual.
- (3) The Affordable Accessory Apartment shall be subject to inspection by the appropriate Sub Code Officials and Construction Official in the normal course of his/her responsibilities, upon the submission of a construction permit.
 - (4) Funding.
 - (a) Funding for the accessory apartments program shall come from the Borough's Affordable Housing Trust Fund, as designated in the Borough's approved Spending Plan. The money expended on the accessory apartments program shall be exempt from the limitations on final appropriations imposed pursuant to P.L. 1976, c. 68 (N.J.S.A. 40A:4-45.1 et seq.).

- (b) The Borough shall provide ten (10) year forgivable loans to fund the creation of up to ten (10) accessory apartments, Borough-wide in the amount up to \$25,000 per unit.
- (c) A minimum of \$10,000 and up to a maximum of \$20,000 shall be provided for each moderate-income accessory apartment unit to be created, or \$25,000 for each low-income accessory apartment created. The property owner shall be obligated for any additional costs. The \$20,000 or \$25,000 subsidy shall be applied to the construction costs of the accessory apartment unit and/or to provide compensation for reduced rental costs.
- (d) Recommendations for funding shall be sent by the Housing Administrator or Borough Administrative Agent to the Borough Clerk for inclusion on the agenda of the Borough Council. If all program criteria and zoning requirements have been met and certified by both the Housing Administrator/Administrative Agent and Zoning Officer in writing, the Committee shall approve the funding of the improvements from the funds reserved for the program and shall authorize the Borough Attorney to prepare an accessory apartment loan agreement and deed restriction so as to ensure that a lien position may be held the Borough. The recommendation for funding shall include all capital costs and an estimate of the soft costs/administrative expenses to be budgeted (such as the inspection costs, attorney's fees, and processing expenses incurred by the Borough Clerk).
- (e) Funding will be provided to the approved accessory apartment owner as follows:
 - (i) Twenty percent will be provided once the lien and deed restrictions are recorded.
 - (ii) Twenty percent will be provided at the issuance of the building permit.
 - (iii) Twenty percent will be provided after the project passes the framing inspection.
 - (iv) Twenty percent will be provided at the issuance of the Certificate of Occupancy or the Certificate of Approval.

- (v) Twenty percent will be provided when the lease is executed with the initial prospective tenant.
- (f) All subsidy monies shall be refunded to the Borough should the affordable accessory apartment not be occupied by a qualified family or tenant within one (1) year of the granting of the subsidy.

F. General procedures for application, review, and approval.

- (1) Owner Application, Eligibility, and Review.
 - (a) Interested owners will be able to secure information and application packets from the designated Housing Administrator or Borough Administrative Agent.
 - (b) Interested owners will submit a completed application form to the Housing Administrator or Borough Administrative Agent. The Housing Administrator or Borough Administrative Agent will be available to assist the owner in the completion of the application form.
 - (c) Interested owners who submit applications for the accessory apartments program shall not be required to pay application fees. Any necessary Construction fees or permitting are not waived.
 - (d) The Housing Administrator or Borough Administrative Agent will review the application for completeness and, if the application is complete, determine that the applicant has signed a binding contract stating his or her willingness to rent the accessory apartment unit to a qualified low-income or moderate household.
- (2) Zoning Approval Procedure.
 - (a) Approved 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. The application shall include, but may not be limited to, the following:
 - (i) A plot plan (survey) including the location of the proposed construction and demonstration of conformity to the applicable bulk requirements of the zone.

- (ii) A sketch of floor plan(s) and site plan(s) signed and sealed plan by a licensed New Jersey Architect 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 demonstration of compliance with the applicable requirements of this Ordinance.
 - (iii) Elevations showing modification of any exterior building façade to which changes are proposed.
 - (iv) 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 zone requirements. All denials shall be made in writing with the reasons clearly stated.
- (b) The Zoning Officer's determination shall be submitted in writing to the Housing Administrator or Borough Administrative Agent. Funding shall be requested and administered according to the schedule required by Section E(4) of this Chapter.
- (c) Any new construction or renovation of an accessory apartment shall require construction permits which submitted to the Construction Official with the appropriate forms and fees. The Construction Official shall review the plans in the normal course of business and issue the appropriate permits when warranted.
- (d) Before a Construction Permit and a Certificate of Occupancy may be issued:
 - (i) The applicant shall have entered into and recorded an Agreement with the Borough of Florham Park specifying that the proposed accessory apartment shall be constructed, occupied, and maintained in a manner that complies with all of the requirements of the New Jersey Council on Affordable Housing, including the minimum ten-year length of the affordable housing deed restriction, the necessity of affirmatively marketing the unit, the basis for calculating the maximum permitted rent and all incremental increases in the permissible rent; the method and timing of payments/subsidies by the Borough and any other relevant matters consistent with the intent and purpose of this section and the affordable housing program in general;

- (ii) All of the necessary agreements shall be signed by the applicant and the Housing Administrator or Borough Administrative Agent;
 - (iii) The lien shall be filed and recorded with the County Clerk;
 - (iv) The deed restriction for the 10-year affordability control shall be filed and recorded with the County Clerk; and
 - (v) A separate permanent deed restriction establishing the permanent accessory status of the accessory apartment shall be filed and recorded with the County Clerk.
- (e) All subsidy monies shall be refunded to the Borough should the affordable accessory apartment not be occupied by a qualified family or tenant within one (1) year of the granting of the subsidy. Should the Affordable Accessory Apartment not be produced or rented to a qualified low or moderate-income household, the subsidy shall be returned to the Borough and deposited in the Housing Trust Fund. All escrow and/or permitting fees shall not be refunded. The Affordable Accessory Apartment shall only be rented to a qualified household.

G. Affordability controls.

- (1) Liens on property. An owner who receives financial assistance under the provisions of the subsidized accessory apartments program shall be required to place a lien on his or her property. The following requirements shall apply to such liens:
- (a) The Borough shall be specified as the lienholder.
 - (b) The lien shall specify that the value of the lien equals the amount of the monetary benefits received by the applicant under the accessory apartments program.
 - (c) A record of the lien will be kept on the property tax record, in the County Clerk's files, in the Housing Administrator's or Borough Administrative Agent's records, and notification to the tax collector with the deed and with the insurance policy, as required by this program.
 - (d) The owner shall notify the Housing Administrator or Borough Administrative Agent, in writing, of the intent to sell a property that has

benefitted from the accessory apartments program, if the accessory apartment is still under the affordability controls and restrictions required by this program.

- (e) Each time the unit is re-rented, the Housing Administrator or Borough Administrative Agent will verify that the unit will continue to be occupied by a qualified moderate or low-income household and that the rent charged meets the affordability guidelines of the program.
 - (f) All properties shall be periodically checked for liens, and any suspected violations of the program shall be reported to the Housing Administrator or Borough Administrative Agent for further investigation.
 - (g) At the termination of the affordability controls, the loan shall be forgiven and the lien shall be discharged by way of a Notice of Lien Discharged filed with the County Clerk.
- (2) Length of affordability. Owners who utilize the provisions of the accessory apartments program shall accept a deed restriction on the property. The deed restriction shall state that only a moderate or low-income tenant, as determined by the Housing Administrator or Borough Administrative Agent, shall occupy the accessory apartment unit. The deed restriction shall be recorded with the County Clerk, and a copy of the recorded deed shall be forwarded to the Housing Administrator or Borough Administrative Agent. The deed restriction shall go into effect as soon as a certificate of occupancy has been issued and shall apply for a period of at least ten (10) years until the Borough elects to release the unit from the requirements of the deed restriction. Any sale of the subject property shall not affect the length or terms of the deed restriction.
- (3) Pricing. The Housing Administrator or Borough Administrative Agent and owner(s) of a deed-restricted accessory apartment unit must follow the rental guidelines set forth below:
- (a) Gross rents, including a utility allowance consistent with the utility allowance approved by HUD for use in New Jersey, shall be set so as not to exceed thirty percent (30%) of the gross monthly income for the appropriate household size and income level. Maximum rents for each household size and income level shall be calculated based on the regional weighted average of the current uncapped Section 8 income limits published by HUD and adopted by COAH.
 - (b) The following criteria shall be used to calculate applicable rents for the

accessory apartment units:

- (i) Efficiency units shall be affordable to one-person households;
 - (ii) One-bedroom units shall be affordable to one-and-one-half-person households;
 - (iii) Two-bedroom units shall be affordable to three-person households.
- (c) The rent level of each subsidized accessory apartment shall be affordable to an appropriately sized household, as set forth in Subsection C(2), above, earning not more than fifty percent (50%) of the regional median income for that size household for low-income residents and between fifty (50%) percent and eighty (80%) percent of the regional median income for that size household for moderate-income residents. The Housing Administrator or Borough Administrative Agent shall establish the maximum rent level for each subsidized accessory apartment based upon these criteria.
- (4) Annual indexed increases. The rents of the accessory apartment units may be increased annually in accordance with N.J.A.C. 5:93-9.15.

H. Program compliance.

- (1) The provisions of this chapter notwithstanding, the accessory apartments program will comply with all of the regulations of the Council on Affordable Housing, Uniform Housing Affordability Controls, and with the requirements of the Chapter 250, Section 7.5, Affordable Housing Regulations. When references to the New Jersey Administrative Code (N.J.A.C.) made herein are superseded, the successor correlative regulations are intended to be referred to.
- (2) Violations, defaults, and remedies. In the event of a threatened breach of any of the regulations governing the affordable unit by an Owner of an accessory apartment, the Administrative Agent shall have all the remedies provided at law or equity, including the right to seek injunctive relief or specific performance, it being recognized by both parties that it will cause irreparable harm to the municipality, in light of the public policies set forth in the Fair Housing Act and the obligation for the provision of low- and moderate-income housing.

Upon the occurrence of a breach of any of the regulations governing the affordable units by an Owner of an accessory apartment, the Borough shall have all remedies provided at law or equity, including but not limited to foreclosure, acceleration of all sums due under a mortgage, recoupment of any funds from a

sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.

SECTION 2. Severability. The provisions of this ordinance are hereby declared to be severable. Should any section, paragraph, subparagraph, provision, sentence, or part hereof be declared invalid or unconstitutional, said finding shall not affect any other section, paragraph, subparagraph, provision, sentence, or part thereof.

SECTION 3. Repealer. All ordinances or parts of ordinances of the Borough of Florham Park which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 4. Prior actions. All actions of the Borough of Florham Park taken prior to the date of adoption hereof contemplated by this Ordinance are hereby ratified and approved.

SECTION 5. Effective Date. This Ordinance shall take effect immediately upon final passage and publication according to law.

I HEREBY CERTIFY this to be a true and correct Ordinance of the Mayor and Borough Council of the Borough of Florham Park introduced on February 7, 2019 and will be further considered for adoption after Public Hearing held on February 21, 2019 at 7:00 p.m. in the Municipal Building located at 111 Ridgedale Avenue.

INTRODUCED: February 7, 2019

ADOPTED: February 21, 2019

Mark Taylor, Mayor

ATTEST:

Sheila A. Williams, R.M.C., Municipal Clerk

Date of First Reading: _____

Consideration by Planning Board: _____

Recommendation of Planning Board: _____

Date of Notice to Property Owner: _____

Method of Notice to Property Owner: _____

Person who mailed Notice: _____

Date of Second Reading: _____

Newspaper of Publication: _____

Date(s) of Newspaper Publication: _____