

Egg Harbor Township

Ordinance No. 12

2018

An ordinance to amend Chapter 225 of the Code of the Township of Egg Harbor, entitled “Zoning” to provide for Affordable Housing needs within the RG-4 and RG-5 Residential Districts, as amended

BE IT ORDAINED, by the Township Committee of the Township of Egg Harbor, County of Atlantic and State of New Jersey as follows:

SECTION 1: Chapter 225 of the Code of the Township of Egg Harbor is hereby amended by adding a new section as follows:

§225-46.1

Affordable Housing Requirements for RG-4 and RG-5 Residential Districts

A. Purpose

- (1) The Township of Egg Harbor uses its zoning code to meet affordable housing needs by requiring residential development in certain districts in the Pinelands area of the Township to provide affordable housing, as is required by the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.)(hereinafter “Fair Housing Act”). Consistent with Section 329.9 of the Fair Housing Act, this ordinance requires all residential development within the RG-4 and RG-5 zoning districts to provide a twenty percent (20%) affordable housing set-aside.
- (2) It is the specific purpose and intent of this section to meet affordable housing requirements required by Section 329.9 of the Fair Housing Act, in the RG-4 and RG-5 districts of the Pinelands area of the Township. This ordinance also implements Section 8 of the Settlement Agreement between the Township of Egg Harbor and Fair Share Housing Center (hereinafter “FSHC”) in the case entitled In the Matter of the Application of the Township of Egg Harbor, County of Atlantic, Docket No: ATL-L-1506-15. The Settlement Agreement was entered into between the parties on August 16, 2017, and was approved by the Court during a properly noticed Fairness Hearing held on October 17, 2017, which was later memorialized by an order entered by the Court on November 27, 2017.

B. Applicability

- (1) This subsection of the land use regulations of Egg Harbor Township sets forth mechanisms by which developers shall provide affordable housing based on residential development taking place within certain Pinelands Areas of Egg Harbor Township.
- (2) Residential Development. Except as exempted in subsection Section 2, all residential development in the RG-4 and RG-5 districts of the Township that results in the construction of new market-rate dwelling units shall be subject to the provisions of this ordinance.

C. Exemption

- (1) Residential Development that has received preliminary or final approval before the effective date of this ordinance shall not be required to comply with this ordinance

unless the approvals expire, or approvals related to the development are amended to reflect a substantial change to the general terms and conditions on which preliminary approval was granted, including but not limited to use; layout of streets, curbs and sidewalks; lot size; yard dimensions and off-tract improvements; and, in the case of a site plan, any conditions peculiar to site plan approval.

D. Definitions

- (1) The following terms, as used in this ordinance, shall have the following meanings:
 - (a) "Affordable" means a sales price or rent within the means of a very low, low or moderate income household as defined in N.J.A.C. 5:80-26.2 and the Fair Housing Act.
 - (b) "Affordable housing development" means a development included in the Township of Egg Harbor's Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.
 - (c) "COAH" means the New Jersey Council on Affordable Housing.
 - (d) "DCA" means the New Jersey Department of Community Affairs.
 - (e) "Developer" means any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land proposed to be included in a proposed development including the holder of an option to contract or purchase, or other person having an enforceable proprietary interest in such land.
 - (f) "Development" means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to N.J.S.A. 40:55D-1 et seq.
 - (g) "Fair Housing Act" means the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.)
 - (h) "Housing unit" means a house, apartment, room or group of rooms occupied or intended to be occupied by a household living independently of other households. The term shall also mean and include a unit occupied or intended to be occupied by a household in an alternative living arrangement.
 - (i) "Judgment of compliance and repose or JOR" is an order entered by the Superior Court approving a municipality's Housing Element and Fair Share Plan after a properly noticed Compliance Hearing is held, which also provides immunity from all Mount Laurel lawsuits, including builder's remedy lawsuits, for a certain period of time from the entry of the JOR.
 - (j) "Low income housing" means housing affordable according to Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

- (k) "Moderate income housing" means housing affordable according to Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to more than 50 percent but less than 80 percent of the median gross household income for households of the same size within the housing region in which the housing is located.
- (l) "Set-aside" means the percentage of housing units devoted to very low, low and moderate income households within an inclusionary development.
- (m) "UHAC" means the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 et seq.
- (n) "Very Low income housing" means housing affordable according to Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 30 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

E. Residential Provisions

- (1) All residential development in the RG-4 and RG-5 zone districts that result in the construction of new residential housing units shall set-aside twenty percent (20%) of the new units for low and moderate income households. Fifty percent (50%) of the low and moderate income units shall be set aside for low income households, including thirteen percent (13%) of the low income units for very low income households.

- (a) On-site affordable housing construction. Any developer of residential housing in the RG-4 and RG-5 zone districts proposing new residential development shall construct, on its site, a twenty percent (20%) affordable housing set aside for low and moderate income households. Fifty percent (50%) of the low and moderate income units shall be set aside for low income households, including a thirteen (13%) set-aside of the low income units for very low income households. The thirteen percent (13%) very low income requirement will not apply to developments that produce less than eight (8) affordable units.

As an example, if a residential developer seeks to construct five (5) units, four (4) of the units may be sold at market rate, and one (1) unit must be designated as "affordable" for a low income household.

As an example, if a residential developer seeks to construct twenty (20) units, sixteen (16) of the units may be sold at market rate, two (2) units must be designated as "affordable" for moderate income households, and two (2) units must be designated as "affordable" for low income households.

As an example, if a residential developer seeks to construct one-hundred (100) units, eighty (80) of the units may be sold at market rate, ten (10) units must be designated as "affordable" for moderate income households, seven (7) units must be designated as "affordable" for low income households, and three (3) units must be designated as "affordable" for very low income households.

- (b) Densities. The Township's residential zoning across the Pinelands Regional Growth Area was based on the Pinelands Commission's requirements of 2.5

dwelling units per acre base density with an increase to a maximum of 3.75 dwelling units per acre through the acquisition of Pinelands Development Credits. The densities within the RG-4 and RG-5 zones, which exceed the base densities, are as follows:

Zoning District	Density
RG-4	6.0 du/acre
RG-5	7.5 du/acre

- (c) Pinelands Development Credit Requirements. Pinelands Development Credits shall be required for twenty five percent (25%) of all units in the RG-4 and RG-5 Zones, excluding those units which are made affordable for very low, low and moderate income households. One-quarter of a Pinelands Development Credit (i.e., one right) shall be purchased and redeemed for every four non-income restricted units, rounded up to the next highest increment of a quarter Pinelands Development Credit.
- (d) Application Fees for Municipal Subdivision / Site Plan Approvals. Application fees for Municipal Planning / Zoning Board approvals which provide affordable housing units shall be based on the non-income restricted units only.
- (e) Example of the Affordable Housing, Bonus Density, Application Fees and Pinelands Development Credit Requirements.

As an example, if a residential developer seeks to develop on ten (10) acres in the RG-5 Zone the following would apply:

Units permitted = 75 units.

Number of affordable units required = 15 units.

Units for which fees and Pinelands Development Credits are calculated = 60 market rate units.

Application Fees Required:

For Subdivisions:

Preliminary Major Subdivision: $\$400 + 60 \text{ lots} @ \$30 / \text{lot} = \$2,200.00.$

Final Major Subdivision: $\$400 + 60 \text{ lots} @ \$30 / \text{lot} = \$2,200.00.$

For Site Plans:

Preliminary Major Site Plan: $\$1,000 + 60 \text{ units} @ \$25 / \text{unit} = \$2,500.00.$

Final Major Site Plan: 50% of preliminary application fees = $\$1,250.00.$

Pinelands Development Credits Required: 25% of 60 market rate units = 15 units or 3.75 PDCs.

F. General Provisions for Constructing Affordable Units.

- (1) Affordable housing units being constructed on-site shall be in conformance with the Fair Housing Act, all applicable COAH and UHAC regulations, the Township's Affordable Housing Ordinance, applicable settlement or development agreements, and any applicable Court Orders (including any JOR orders and JOR condition follow up orders). Such requirements shall include, but are not limited to, requirements regarding phasing schedule, controls on affordability, low/moderate income split, heating source, maximum rent and/or sales prices, affordability average, bedroom distribution, and affirmative marketing.
- (2) Projects which contain less than twenty (20) total affordable units shall have the units dispersed throughout the developments and shall be located within buildings designed to be architecturally indistinguishable from the market-rate units otherwise being constructed within the development. Projects which contain twenty (20) or more affordable units shall have the option of providing one hundred percent (100%) affordable buildings that meet the requirements for garden apartments at a location on-site. Regardless of how the units are provided, the scale, massing, roof pitch and architectural detailing (such as the selection of exterior materials, doors, windows, etc.) of the buildings containing the affordable housing units shall be similar to and compatible with that of the market-rate units.

G. Other regulations are as follows:

- (1) Every residential development applicant shall be required to submit a proposed Affordable Housing Production Plan (AHPP) at the time the application is made. The AHPP shall be a condition of the "completeness" determination. Each AHPP shall be the subject of review for consistency with the Fair Housing Act, applicable COAH and UHAC regulations, the Township's Housing Element and Fair Share Plan, the Township's Affordable Housing Ordinance, applicable settlement and development agreements, Court Orders (including any JOR orders and JOR condition satisfaction orders), this Ordinance and such other rules and regulations as may be applicable. This review shall be conducted by the Township Planner and/or by such other person or entity as shall be designated to administer the Township's affordable housing matters.
- (2) The AHPP shall provide, at a minimum, the following items:
 - (a) Calculation of the affordable housing obligation resulting from the construction of residential units to be sold at market rate;
 - (b) Description of how the obligation shall be satisfied;
 - (c) Site plan and floor plan, the location of all market and affordable units; and
 - (d) The following information must be provided for each affordable unit:
 - (i) What income level the unit will be available to: moderate income household, low income household or very low income household;
 - (ii) Whether the unit will be for-sale or for-rent; and
 - (iii) Number of bedrooms.
- (3) The AHPP shall be approved by the Board hearing the development application. The Board shall consider the impacts of the proposal relative to its consistency with the Fair Housing Act, applicable COAH and UHAC regulations, the Township's Housing Element and Fair Share Plan, the Township's Affordable Housing Ordinance,

applicable settlement and development agreements and any Court Orders (including any JOR orders and JOR condition satisfaction orders).

- (4) Compliance with the Fair Housing Act, applicable COAH and UHAC regulations, the Township's Housing Element and Fair Share Plan, the Township's Affordable Housing Ordinance, applicable settlement and development agreements, Court Orders (including any JOR orders and JOR condition satisfaction orders) with the approved AHPP shall be a condition of the Board's resolution of approval.
- (5) It shall be the developer's responsibility, at its sole cost and expense, to contract with an experienced entity for the initial and ongoing administration of the controls on affordability so as to ensure full compliance with the Fair Housing Act, applicable COAH and UHAC regulations, the Township's Housing Element and Fair Share Plan, the Township's Affordable Housing Ordinance, applicable settlement and development agreements and any Court Orders (including any JOR orders and JOR condition satisfaction orders). By February 1st of each year, the designated administrative entity shall file with the Township appointed Administrative Agent and the Township Clerk of the Township of Egg Harbor such certifications, reports and/or monitoring forms as will be required by COAH or the Court to verify the continuing compliance of each affordable unit with the aforementioned applicable rules, regulations, agreements and Court orders. If such an administrative entity is not the same Administrative Agent utilized by the Township, said entity will cooperate with the Township's Administrative Agent and make all certifications, reports and/or monitoring forms available for review and approval upon request.

SECTION 2: Chapter 225-47 of the Code of the Township of Egg Harbor is hereby amended by deleting it in its entirety and replacing it as follows:

§225-47 RG-4 Residential District.

A. Permitted principal uses shall be:

- (1) Single-family detached dwellings.
- (2) Public parks, playgrounds, active and passive recreation.
- (3) Two-family dwellings.
- (4) Single-family attached dwellings, provided that:
 - (a) Minimum tract size of three acres.
 - (b) No single-family attached dwellings will front on a public street.
 - (c) There should be a ten-foot-wide buffer area around the perimeter of the site.
 - (d) Adequate sight distances for entrance onto public roads is required.
 - (e) No more than eight single-family attached dwellings shall be contained in any one continuous structure.
 - (f) Public sewerage shall be provided.

B. Permitted accessory uses shall be:

- (1) Uses customary and incidental to the principal uses.
 - (2) Professional home office, provided that not more than twenty five percent (25%) of the gross floor area of the principal building is used for office purposes.
- C. Area, yard and building requirements shall be as specified in § 225-7.
- D. Permitted modifications and conditional uses shall be:
- (1) Home occupations subject to the conditions contained in § 225-44D(1).
 - (2) Public and private schools, churches, chapels, synagogues or similar houses of worship subject to § 225-46D(2).
 - (3) Planned adult communities pursuant to § 225-73.
- E. Density. The density of housing in any development hereafter constructed shall be not more than six dwelling units per one acre.
- F. Pinelands Development Credit Requirements. Pinelands Development Credits shall be required for 25% of all units, excluding those units which are made affordable for very low, low and moderate income households. One-quarter of a Pinelands Development Credit (i.e., one right) shall be purchased and redeemed for every four non-income restricted units, rounded up to the next highest increment of a quarter Pinelands Development Credit.
- G. Site plan review. All development pursuant to § 225-47D(2) shall be subject to Chapter 198 of the Code of the Township of Egg Harbor.
- H. Subdivision review. All development pursuant to § 225-47A and B shall be subject to Chapter 198 of the Code of the Township of Egg Harbor.
- I. Parking area requirements. All development shall be subject to Article VII of this chapter.
- J. Buffer requirements. All development pursuant to § 225-47D(2) shall be subject to § 94-8 of the Code of the Township of Egg Harbor.
- K. Lighting requirements. All development pursuant to § 225-47D(2) shall be subject to § 94-23 of the Code of the Township of Egg Harbor.
- L. Landscaping requirements. All development pursuant to § 225-47D(2) shall be subject to § 94-22 of the Code of the Township of Egg Harbor.
- M. Signs. All development pursuant to § 225-47D(2) shall be subject to Article VIII of this chapter.

SECTION 3: Chapter 225-48 of the Code of the Township of Egg Harbor is hereby amended by deleting it in its entirety and replacing it as follows:

§ 225-48 RG-5 Residential District.

- A. Permitted principal uses shall be:

- (1) Single-family detached dwellings.
- (2) Public parks, playgrounds, active and passive recreation.
- (3) Two-family dwellings.
- (4) Single-family attached dwellings subject to the following conditions:
 - (a) Minimum tract size of three acres.
 - (b) No single-family attached dwellings will front on a public street.
 - (c) There should be a ten-foot-wide buffer area around the perimeter of the site.
 - (d) Adequate sight distances for entrance onto public roads is required.
 - (e) No more than eight single-family attached dwellings shall be contained in any one continuous structure.
 - (f) Public sewerage shall be provided.

B. Permitted accessory uses shall be:

- (1) Uses customary and incidental to the principal uses.
- (2) Professional home office, provided that not more than twenty five percent (25%) of the gross area of the principal building is used for office purposes.

C. Area, yard and building requirements shall be as specified in § 225-7.

D. Permitted modifications and conditional uses shall be:

- (1) Home occupations subject to the conditions contained in § 225-44D(1).
- (2) Public and private schools, churches, chapels, synagogues or similar houses of worship subject to § 225-46D(2).
- (3) Planned adult communities pursuant to § 225-73.
- (4) Garden apartments, subject to the following conditions:
 - (a) Minimum tract size shall be 7 acres.
 - (b) No garden apartment will front on a public street.
 - (c) A buffer area 20 feet in width shall be provided around the perimeter of the tract.
 - (d) Adequate sight distances for entrance onto public roads is required.

- (e) Each garden apartment shall be limited to a maximum of 20 dwelling units and a length of 180 feet. Such structures shall be grouped in clusters of consistent architectural design. A minimum of two feet of building offset for every two ground floor dwelling units, or a minimum of four feet of offset for every five ground floor units, shall be provided.
 - (f) An outdoor private living space for each ground floor unit shall be provided. Adequate visual screening of such living space from all other neighboring dwelling units, outdoor living spaces, parking areas and roadways shall be provided.
 - (g) A variety of building heights between three- and four-story structures within a single project is recommended.
- (5) Mix-use planned development option subject to the following conditions:
- (a) Residential components shall be in accordance with the permitted and conditional uses in the RG-5 Zone. All conditional residential components of mixed-use developments must comply with all conditions as specified in Chapter 225 for the particular use.
 - (b) Commercial components shall be in accordance with the permitted uses in the General Commercial (GC) Zone.
 - (c) Minimum tract size of 25 acres.
 - (d) Minimum frontage of 150 feet on a public street.
 - (e) No residential units shall front on an existing public street.
 - (f) There shall be a fifty-foot-wide buffer area around the perimeter of the site.
 - (g) Minimum lot depth. All residential units shall have a minimum depth of 100 feet if parking is located on individual lots, or 80 feet if parking is located off site.
 - (h) Mix of uses.
 - [1] The maximum amount of land to be designated for residential development may not exceed eighty percent (80%).
 - [2] The maximum amount of land to be designated for commercial development may not exceed thirty percent (30%).
 - (i) There shall be a direct pedestrian linkage between the commercial and residential components of the project.
 - (j) Recreational facilities must be provided as part of the mixed-use development in accordance with § 225-73. The Planning Board may

accept an in-lieu contribution towards the required recreation, provided that the applicant can demonstrate that the recreational needs can be met by existing Township facilities.

- (k) A homeowners' association shall be formed in accordance with § 94-31 of this Code. All common open spaces including, stormwater management facilities shall be owned and maintained by the association. The association may be affiliated with an overall development association or may be a separate association.
- (6) Assisted living or independent living facilities subject to the density requirements of Subsection E below, provided that the following conditions are met:
- (a) Minimum lot size shall be one acre.
 - (b) Minimum parking setbacks: 35 feet from any county right-of-way; 20 feet from a municipal right-of-way or rear property line; and zero feet where cross easements for parking are maintained.
 - (c) The Planning Board may impose more restrictive conditions or any further reasonable conditions to the effect of noise, traffic movement and volume, lighting and/or intensity of such conditional activities on adjacent land uses and may require a sufficient guarantee to ensure compliance with such restrictions or conditions.
 - (d) All utilities shall be located underground.
- E. Density. The density of housing in any development hereafter constructed shall not be more than 7.50 dwelling units per one acre. For mixed-use developments, the permitted densities shall be based on the total acreage designated for residential uses.
- F. Pinelands Development Credit Requirements. Pinelands Development Credits shall be required for twenty five percent (25%) of all units, excluding those units which are made affordable for very low, low and moderate income households. One-quarter of a Pinelands Development Credit (i.e., one right) shall be purchased and redeemed for every four non-income restricted units, rounded up to the next highest increment of a quarter Pinelands Development Credit.
- G. Site plan review. All development pursuant to Section D shall be subject to Chapter 198 of the Code of the Township of Egg Harbor.
- H. Parking area requirements. Off-street parking shall be pursuant to Article VII of Chapter 225 of the Code of the Township of Egg Harbor.
- I. Subdivision review. All development pursuant to Section A shall be subject to Chapter 198 of the Code of the Township of Egg Harbor.
- J. Buffer requirements. All development pursuant to Section D shall be subject to § 94-8 of the Code of the Township of Egg Harbor.
- K. Lighting requirements. All development pursuant to Section D shall be subject to § 94-23 of the Code of the Township of Egg Harbor.

- L. Landscaping requirements. All development pursuant to Section D shall be subject to § 94-22 of the Code of the Township of Egg Harbor.
- M. Signs. All development pursuant to Section D shall be subject to Article VIII of Chapter 225 of the Code of the Township of Egg Harbor.

SECTION 4: All ordinances and parts of Ordinances inconsistent with the provisions of this ordinance are, to the extent of such inconsistency, hereby repealed.

SECTION 5: Should any section, clause, sentence, phrase or provision of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the remaining portions of this ordinance.

SECTION 6. This Ordinance shall become effective immediately upon final adoption and publication according to law.

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE TOWNSHIP COMMITTEE OF EGG HARBOR TOWNSHIP, IN THE COUNTY OF ATLANTIC, STATE OF NEW JERSEY, HELD MARCH 21, 2018 AND WILL BE FURTHER CONSIDERED FOR FINAL PASSAGE AFTER A PUBLIC HEARING THEREON AT A REGULAR MEETING OF SAID TOWNSHIP COMMITTEE TO BE HELD IN THE TOWNSHIP HALL, IN SAID TOWNSHIP ON APRIL 18, 2018.

Dated: March 21, 2018

Eileen M. Tedesco, RMC
Township Clerk