

ARTICLE VII  
**Affordable Accessory Apartments**  
**[Added 5-29-2019 by Ord. No. 6-19<sup>1</sup>]**

**§ 245-39. Applicability and purpose.**

- A. Applicability. This article applies to the establishment of accessory apartments in the Borough, in any Residential District and in the A Business District. Until passage of this article, only single-family housing has been allowed in Residential Districts.
- B. Purpose. It is the purpose of this program to help meet a portion of the Borough's fair share housing obligation and provide a realistic opportunity for the development of affordable housing through creation of up to five accessory apartments for occupancy by very-low-income, low-income, or moderate-income households.

**§ 245-40. 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.

APPLICANT — The person or persons applying to establish an accessory apartment in accordance with the provisions of this chapter.

CONTRIBUTING DWELLING — One of the dwellings covered under Borough Ordinance Chapter 40, Article VI, Historic Preservation, that was constructed on or before December 31, 1938, is listed as "contributing buildings" within the Mountain Lakes Historic District in the National Register of Historic Places Registration Form for the Mountain Lakes Historic District, and has not been demolished; and such other structures as are designated as "contributing dwellings" by ordinance upon the recommendation of the Mountain Lakes Historic Preservation Committee or successor entities and the Planning Board.

**§ 245-41. Minimum standards.**

- A. An accessory apartment shall be permitted in an existing structure on a property which is in conformity with the regulations of the zoning district in which it is located, including

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1. Editor's Note: This article also repealed former Art. VII, Municipal Housing Liaison.

minimum required lot area, lot frontage, lot width, lot depth, maximum floor area ratio (FAR), maximum impervious lot coverage (ILC) and all setback and other bulk requirements. An accessory apartment shall also be permitted in a preexisting nonconforming property as long as it does not require an additional bulk variance.

- B. Creation of any accessory apartment shall require a building permit prior to construction of additions and/or alterations and issuance of a certificate of occupancy prior to signing a lease with a tenant.
- C. An accessory apartment shall be created within the existing footprint of the existing dwelling or the existing footprint of the existing accessory structure (e.g., detached garage). A new entry door, landing, or covered porch, dormers and modifications to the roof-lines that are architecturally consistent with the details, materials, windows, massing and scale of the existing structure shall be permitted. All additions shall comply with the bulk requirements of the zone.
- D. An accessory apartment may be created within an existing contributing dwelling and shall be eligible for bulk incentives as specified in the latest adopted version of the Borough Ordinance 40-47, "Establishing a Historic Preservation Committee and Establishing Special Zoning Requirements for Contributing Dwelling." Any accessory apartment provided within a contributing dwelling shall utilize the Historic Mountain Lakes Restoration and Renovation Handbook Design standards.
- E. 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 private entrance. The ceiling height for habitable spaces shall be no less than seven feet.
- F. The potable water supply and sewage disposal system for the accessory apartment shall be adequate as evidenced by approval of the Borough Water and Sewer Utility.
- G. The creation of an accessory apartment shall not create a nonconforming 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.

- H. There shall be no more than one accessory apartment located on any lot unless the property is in the A Business Zone and has more than one preexisting apartment.
- I. Off-street parking shall be provided for the occupants of the affordable accessory apartment in conformance with Chapter 245: Zoning; Article IV, Use Regulations; § 245-15(L), Supplementary Use Regulations, and shall be depicted on the submitted sketch or site plan.
- J. Any renovation 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 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. Any accessory apartment provided within a contributing dwelling shall utilize the Historic Mountain Lakes Restoration and Renovation Handbook design standards.
- K. 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, and shall in no way confer upon the property owner any future rights to subdivide the existing lot.
- L. In the case of an accessory apartment created without proper permits, which the property owner desires to designate as an accessory apartment under this program, all of the requirements of this article and all requirements of the U.C.C. shall apply.
- M. 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.
- N. Any accessory apartment created within an existing dwelling or an accessory structure (e.g. if provided above a detached garage) shall be fire-separated vertically and/or horizontally from the existing structure in accordance with the New Jersey Uniform Construction Code Rehabilitation Subcode, N.J.A.C. 5:23-6 6(e)12.

- O. The owner shall agree to rent the accessory apartment unit only to a moderate- low- or very-low-income tenant.
- P. The owner shall agree that prior to the issuance of a 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 ten-year period. A sample deed restriction and/or loan agreement prepared by the Borough Attorney shall be supplied to the applicant.
- Q. The accessory apartments shall adhere to all current building code requirements of the latest adopted editions of the International Residential Code New Jersey Edition and the New Jersey Uniform Construction Code.

**§ 245-42. Affordability controls.**

- A. Liens on property. An owner who receives financial assistance under the provisions of the accessory apartments program shall be required to place a lien on his or her property. The following requirement shall apply to such liens:
  - (1) The Borough shall be specified as the lienholder.
  - (2) 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.
  - (3) A record of the lien will be kept on the property tax record, in the County Clerk's files, in the administrative agent's records, and notification to the tax collector with the deed and with the insurance policy, as required by this program.
  - (4) The owner shall notify the administrative agent, in writing, of the intent to sell a property that has benefited from the accessory apartments program, if the accessory apartment is still under the affordability controls and restrictions required by this program.
  - (5) Each time the unit is rerented, the administrative agent will verify that the unit will continue to be occupied by a qualified moderate- low-income or very-low-income household and that the rent charged meets the affordability guidelines of the program.

- (6) All properties shall be periodically checked for liens, and any suspected violations of the program shall be reported to the administrative agent for further investigation.
  - (7) 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.
- B. 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, low income, or very-low-income tenant, as determined by the 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 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 10 years.
- C. Pricing.
- (1) 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 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.
  - (2) Rents of accessory apartments shall be affordable to very-low, low-, or moderate-income households as per the FHA, COAH or its successor agency, and UHAC regulations.
  - (3) 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.

**§ 245-43. Program compliance.**

- A. The Borough shall designate an administrative agent to administer the accessory apartments program. The administration agent's responsibilities shall include advertising the accessory apartments, income qualifying prospective renters, setting rents and annual rent increases, maintaining a waiting list, distributing subsidies as applicable, securing certificates of occupancy, qualifying properties, handling application forms,

filing deed restrictions, monitoring reports, and affirmatively marketing the affordable accessory apartment program in accordance with the UHAC.

- B. The administrative agent shall only deny an application for an accessory apartment if the project is not in conformance with the requirements N.J.A.C. 5:93-1 et seq., and/or the provisions of this article. All denials shall be in writing with the reasons clearly stated.
- C. 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 very-low-, low- and moderate-income housing.

**§ 245-44. Sunset clause.**

The provisions of this article permitting accessory apartments shall become null and void, having no further force or effect, upon the issuance of a certificate of occupancy for the fifth accessory apartment within the Borough of Mountain Lakes. The administrative provisions shall remain in full force and effect until the last deed restriction expires.