

NOT ADOPTED

NOT ADOPTED

[amended 10/23/23]

**BERNARDSVILLE BOROUGH
ORDINANCE #2023-1981**

**MAKING DETACHED ACCESSORY DWELLING UNITS A PERMITTED
ACCESSORY USE IN THE R-1 AND R-1-10 ZONES AND SUPPLEMENTING AND
AMENDING ARTICLE 12 OF THE BOROUGH LAND DEVELOPMENT
REGULATIONS ENTITLED “ZONING”**

WHEREAS, the Borough Planning Board in its Resolution #2023-14 finding that Ordinance No. 2023-1974 is not inconsistent with the master plan went on to recommend that “the Borough Council consider, from a policy perspective, whether it desires to continue treating detached accessory dwelling units as conditional uses, which requires Planning Board application even for fully conforming conditional uses, or alternatively to designate same as permitted accessory uses, which would only require a land use board application in the event of some other relief being necessitated by the development project”; and

WHEREAS, the governing body has determined that detached accessory dwelling units should be a permitted accessory use in the R-1 and R-1-10 zones;

NOW THEREFORE, BE IT ORDAINED by the Council of the Borough of Bernardsville in the County of Somerset, State of New Jersey that Article 12 of the Borough Land Regulations entitled “Zoning” are hereby amended as follows:

Section 1. Section LD-12-5.1 entitled “Permitted Primary Use [in the R-1 Residence District] is hereby amended as follows:

§ LD-12-5 R-1 RESIDENCE DISTRICT.

§ LD-12-5.1 Primary Intended Use.

This zone district is designed for single family residential use but permits:

f. Accessory Dwelling Units, Detached.

Accessory Dwelling Unit, Detached. Accessory dwelling units created pursuant to

this section shall comply with the provisions of the New Jersey Uniform Construction Code (N.J.A.C. 5:23). For purposes of this section, "living area" shall mean all rooms and enclosed floor space within a dwelling unit used or designed to be used for living, sleeping, cooking or eating purposes, including bathrooms, laundries, pantries, foyers, communicating corridors, closets and storage space, excluding unfinished basements, garages, unfinished storage areas and other unfinished areas. The following conditions shall be met:

1. A detached accessory dwelling unit shall only be permitted on lots containing at least double the minimum area required by Subsection 12-5.3g.
2. There shall be no more than one principal residence and one detached accessory dwelling unit on any one property.
3. The detached accessory dwelling unit shall not be occupied by more than four persons.
4. The living area of a newly constructed or converted detached accessory dwelling unit shall not exceed 1,500 square feet.
5. A newly constructed accessory dwelling unit or proposed conversion of an existing building to an accessory dwelling unit must meet the setback requirements of a principal building.
6. No lot containing a principal residence and a detached accessory dwelling unit shall be subdivided unless each resulting lot with its improvements complies in all respects with the requirements of this section and the requirements of the R-1 Residence District.
9. Prior to issuance of a building permit for the detached accessory dwelling unit, a new deed shall be recorded in the Somerset County Clerk's Office containing a restriction stating that the detached accessory dwelling unit must be used in strict compliance with this section.

~~g.h.~~ Conditional Uses pursuant to § 12-25, limited to the following:

~~6. Accessory Dwelling Unit, Detached.~~

Section 2. Section LD-12-6.1 entitled "Permitted Primary Use [in the R-1A Residence District] is hereby amended as follows:

§ LD-12-6 **R-1A RESIDENCE DISTRICT.**

§ LD-12-6.1 **Primary Intended Use.**

This zone district is designed for single family residential use but permits any use as permitted and regulated in R-1 Residence District, except for detached accessory dwelling units, including conditional uses pursuant to § 12-25 limited to the following:

§ LD-12-6.2 **Prohibited Uses.**

*Any use other than those permitted in Subsection ~~12-5.1~~ **12-6.1** is prohibited.*

Section 4. Section LD-12-22.1 entitled “Permitted Primary Uses [in the R-1-10 Residence District] is hereby amended as follows:

§ LD-12-22 **R-1-10 RESIDENCE DISTRICT.**

§ LD-12-22.1 **Primary Intended Uses.**

This zone district is designed for single family residential use but permits:

f. Accessory Dwelling Units, Detached.

Accessory Dwelling Unit, Detached. Accessory dwelling units created pursuant to this section shall comply with the provisions of the New Jersey Uniform Construction Code (N.J.A.C. 5:23). For purposes of this section, "living area" shall mean all rooms and enclosed floor space within a dwelling unit used or designed to be used for living, sleeping, cooking or eating purposes, including bathrooms, laundries, pantries, foyers, communicating corridors, closets and storage space, excluding unfinished basements, garages, unfinished storage areas and other unfinished areas. The following conditions shall be met:

- 1. A detached accessory dwelling unit shall only be permitted on lots containing at least double the minimum area required by Subsection 12-22.3g.*
- 2. There shall be no more than one principal residence and one detached accessory dwelling unit on any one property.*
- 3. The detached accessory dwelling unit shall not be occupied by more than four persons.*

4. The living area of a newly constructed or converted detached accessory dwelling unit shall not exceed 1,500 square feet.

5. A newly constructed accessory dwelling unit or proposed conversion of an existing building to an accessory dwelling unit must meet the setback requirements of a principal building.

6. No lot containing a principal residence and a detached accessory dwelling unit shall be subdivided unless each resulting lot with its improvements complies in all respects with the requirements of this section and the requirements of the R-1 Residence District.

9. Prior to issuance of a building permit for the detached accessory dwelling unit, a new deed shall be recorded in the Somerset County Clerk's Office containing a restriction stating that the detached accessory dwelling unit must be used in strict compliance with this section.

f.g. Other accessory uses customarily incident to the above uses provided they do not include any activity commonly conducted for gain unless specifically permitted in this Article.

g.h. Conditional Uses pursuant to § 12-25, limited to the following:

6. Accessory Dwelling Unit, Detached.

Section 5. Paragraph "m" of is hereby repealed:

§ LD-12-25.2 Conditional Uses Permitted.

m. [Reserved]

Accessory Dwelling Unit, Detached. Accessory dwelling units created pursuant to this chapter shall comply with the provisions of the New Jersey Uniform Construction Code (N.J.A.C. 5:23). For purposes of this section, "living area" shall mean all rooms and enclosed floor space within a dwelling unit used or

designed to be used for living, sleeping, cooking or eating purposes, including bathrooms, laundries, pantries, foyers, communicating corridors, closets and storage space, excluding unfinished basements, garages, unfinished storage areas and other unfinished areas. The following conditions shall be met:

1. — A detached accessory dwelling unit shall only be permitted in the R-1 and R-1-10 Residence Districts on lots containing at least double the minimum area required by Subsections 12-5.3g and 12-22.3g.

2. — There shall be no more than one principal residence and one detached accessory dwelling unit on any one property.

3. — The detached accessory dwelling unit shall be for the sole use of the on-site domestic employees, members of the immediate family or nonpaying short-term guests of the resident of the principal residence, except when the Owner is approved to rent units under the Borough's Accessory Apartment Program. In any event, the detached accessory dwelling unit shall not be occupied by more than four persons.

4. — The living area of a newly constructed or converted detached accessory dwelling unit shall not exceed 1,500 square feet.

5. — A newly constructed accessory dwelling unit or proposed conversion of an existing building to an accessory dwelling unit must meet the setback requirements of a principal building.

6. — The dwelling structure shall comply with the Uniform Construction Code and Uniform Fire Code Requirements to the extent required by the Construction Official.

7. — No lot containing a principal residence and a detached accessory dwelling unit shall be subdivided unless each resulting lot with its improvements complies in all respects with the requirements of this section and the requirements of the R-1 Residence District or R-1-10 District.

8. — The applicant shall submit at the time of seeking conditional use approval, and annually thereafter, a certification on forms provided by the Borough, as follows:

(a) — That the detached accessory dwelling unit is occupied by on-site domestic employees of the residents of the principal residence or by members of the immediate family or short-term, nonpaying guest of the residents of the principal residence, except when the Owner is approved to rent units under the Borough's Accessory Apartment Program. In any

event, the detached accessory dwelling unit shall be occupied by no more than four persons.

(b) — That the detached accessory dwelling unit is not a rental unit and no rent is paid on account of the occupancy of the accessory apartment, except when the Owner is approved to rent units under the Borough's Accessory Apartment Program.

(c) — That the living area of the detached dwelling unit is not a rental unit and no rent is paid on account of the occupancy of the accessory apartment, except when the Owner is approved to rent units under the Borough's Accessory Apartment Program.

(d) — That upon any violation of this section or the certification, determined by the appropriate Borough official, the violation shall be abated and the owner shall be subject to the penalties set forth in Article 16 of this Code.

9. — Prior to issuance of a building permit for the detached accessory dwelling unit, a new deed shall be recorded in the Somerset County Clerk's Office containing a restriction stating that the detached accessory dwelling unit must be used in strict compliance with this section.

Section 6. Any or all other ordinances or parts thereof in conflict or inconsistent with any of the terms hereof are hereby repealed to such extent as they are so in conflict or inconsistent.

Section 7. In case any article, section or provision of this ordinance shall be held invalid in any court of competent jurisdiction, the same shall not affect any other article, section or provision of this ordinance except insofar as the article, section or provision so declared invalid shall be inseparable from the remainder or any portion thereof.

Section 8. This ordinance shall become effective immediately upon final passage and publication as required by law.

COUNCIL OF THE BOROUGH OF
BERNARDSVILLE IN THE COUNTY
OF SOMERSET

ATTEST:

Anthony Suriano, Borough Clerk

By: _____
Mary Jane Canose, Mayor

1st Reading and Introduction:

1st Publication:

Referral to Planning Board: _____

Amended: _____

Notice to County Planning Board Prior to Adoption:

*Notice to Clerks of Adjoining Municipalities (if
required):* _____

Notice to Affected Property Owners (if required):

2nd Reading of Ordinance as Amended and Adoption:

2nd Publication:

Filing with County Planning Board: