

**ADOPTED AMENDED ORDINANCE O-22-27
TOWNSHIP OF MONTCLAIR**

AN ORDINANCE TO AMEND MONTCLAIR CODE CHAPTER 347: ZONING TO PERMIT ACCESSORY DWELLING UNITS AS AN ACCESSORY USE FOR ONE-, ~~AND TWO-, AND THREE-~~FAMILY DWELLINGS IN THE R-O, R-O(A), R-1 AND R-2 ZONES

September 28, 2022 (date of introduction)

October 25, 2022 (date of public hearing)

January 24, 2023 (date of amendment and re-introduction)

February 21, 2023 (date of second public hearing)

WHEREAS, the Township of Montclair is an aspirational and diverse community with numerous parks and recreational opportunities, a wide variety of transportation options offering easy access to New York City, an abundance of cultural activities and restaurants, a well-regarded school system, and a wide range of municipal services; and

WHEREAS, those very same qualities have put considerable financial pressure on many residents as housing costs rise and the competition for available homes and apartments remains high which has made it difficult for low-, moderate-, and middle-income households to find housing that is attainable and sustainable over time; and

WHEREAS, older residents living on a fixed income are especially at risk and face the possibility of having to leave the township, taking with them a lifetime of experiences that benefit the entire community; and

WHEREAS, people with disabilities face considerable challenges when finding adaptive housing and risk having to live away from family and trusted support networks in order to find appropriate living environments; and

WHEREAS, accessory dwelling units (ADU) are a partial but important solution to these challenges that require no or little investment by the Township and no additional municipal infrastructure development and will increase options available to tenants, provide additional income for homeowners, create additional living options for residents aging in place, offer more options for caregivers and increase tax revenue.

NOW, THEREFORE BE IT ORDAINED by the Township Council of the Township of Montclair, Essex County, New Jersey, that Montclair Township Code §347 Zoning is hereby amended to establish new requirements for accessory dwelling units:

1. Article II General Use Regulations and Conditional Uses 347-8 Additional dwelling units for parents is deleted and replaced with the following:

§347-8 Accessory Dwelling Units

A. **Purpose and Intent.** The Montclair Township Council finds and declares that the purpose of this ordinance is to:

1. Provide citizens with the opportunity to retain their homes, ~~and to~~ age in place.

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and create adaptive living environments for people living with disabilities.

2. Increase the supply of attainable housing within developed properties while putting minimal pressure on town services such as schools and infrastructure.
3. Integrate these housing units, subject to the terms described herein, within existing neighborhoods respecting the character of the neighborhood.
4. Provide flexible housing options for residents, in keeping with the goals of the Master Plan, that respond to changing family needs, smaller households, and increasing housing costs.
5. Codify the requirements and process to ensure that existing accessory dwelling units are legal and meet the town's safety codes.

B. Definitions

“**Accessory Dwelling Unit**” (ADU) means a residential living unit on the same parcel as a one- ~~or~~; two-~~;~~ ~~or three~~-family dwelling with complete independent living facilities, including a kitchen and bathroom, for one or more persons. It may take various forms: a detached unit; a unit that is part of an accessory structure, such as a detached garage; or a unit that is part of an expanded or remodeled dwelling.

“**Living Area**” means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

“**Primary Dwelling Unit**” means the original living unit in a one-~~family home and the larger living unit in a~~; two-~~;~~ ~~or three~~-family home. The permissible size of an ADU will be based on the size of the primary dwelling unit.

“**Zoning Officer**” means the local official who is responsible for processing and approving or denying applications to develop ADUs.

C. **Where Permitted.** ADUs shall be a permitted accessory use on lots containing one-~~and~~, two-~~;~~ ~~and three~~-family dwellings in the R-O, R-O(a), R-1 and R-2 zone districts.

D. **Standards.** ~~Only one~~ ADU shall be a permitted on a lot located in the R-O, R- O(a) R-1 and R-2 zones in the Township. ~~The, if the~~ Zoning Officer must find that the following conditions have been met:

1. Either the ADU or the Primary Dwelling Unit shall be the primary domicile of the person(s) who or entity that own(s) the property. In the case of a multi-family structure two-family home, the primary domiciles of the owner must be one of the dwelling units or the ADU.
2. ~~No more than three (3) persons shall occupy an ADU.~~
3. In no case shall the ADU's living area be more than 40% of that of the Primary Dwelling Unit up to a maximum of 800 square feet; nor less than 300 square feet; ~~nor have more than two (2) bedrooms and no more than three rooms, excluding the kitchen and bathroom.~~

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4. Detached ~~ADU's~~ADUs shall comply with the requirements for accessory structures in the applicable zone district and the requirements of Montclair Code §347-22.
5. All ~~ADU's~~ADUs shall comply with existing Township Ordinances, Zoning Ordinances, and the New Jersey Uniform Construction Code (UCC).
6. There shall be no more than one ADU per lot.
7. The ADU shall be used only for residential purposes for one family. ("Family" is defined under Montclair Zoning Ordinance 347.2 Definitions of Terms.)
8. For adaptive reuse projects, ~~ADU's~~ADUs that are fully handicapped accessible under New Jersey's Barrier Free Sub Codes shall be granted an increase of 5% of the total maximum floor area allowed for the ADU.
9. For new construction, adherence to the New Jersey Barrier Free Sub Codes is required.
10. An ADU that is attached to the principal one- ~~or~~ two- ~~or three~~ family dwelling shall utilize ~~the same~~complementary exterior materials and colors as the principal single-family dwelling. The ADU shall harmonize with the architectural and landscaping character of its neighborhood.
11. With respect to new construction, the external entrance to the ADU shall not face the same street as the external entrance to the principal dwelling unit if such external entrance to the ADU is visible from the street.
12. ~~Short term rentals shall not be permitted in ADUs. A short term rental is defined as a rental of all or part of a residential dwelling for a duration of occupancy of less than 30 days. A minimum rental term of 6 months is required for tenants in ADUs.~~
- ~~13.~~At least one off-street parking space shall be provided for an ADU. ~~13.14.~~
~~— A three family dwelling with an ADU, whether it be detached or~~
~~13. attached, shall be deemed a four family dwelling subject to rent control under Montclair Code Chapter 237, Rent Regulation,~~
~~14. No window in a ADU that faces another residential property may be located within six feet of a property line.~~

E. Procedures.

1. A new ADU may not be created nor can an existing ADU be legalized until the Zoning Officer determines that it meets the following requirements for designation:
 - a. An application for a Zoning Permit on a form prescribed by the Montclair Township Department of Planning and Community Development is submitted with pertinent data such as the names and

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addresses of the owners, and an identification, by street number and lot and block designation, of the residence involved.

- b. For detached ~~ADU's~~ ADUs and ADUs that involve construction of an addition, the application shall be accompanied by a recent survey of the property, prepared by a licensed engineer or land surveyor, depicting the boundaries of the lot and all existing structures and improvements on the property. Older surveys are acceptable for attached ~~ADU's~~ ADUs.
- c. The application shall also be accompanied by a proposed floor plan which shall be drawn by a licensed architect or engineer, if reasonably required by the Construction Official, depicting all proposed interior and exterior changes to the residence and ADU, including the relation of the ADU to the primary dwelling unit, the location of any proposed additional exterior doors, and any proposed modifications to the existing sanitary disposal system or water lines. All proposed changes and/or additions must comply with the Uniform Construction Code (UCC).
- d. Within 10 business days after the application for an ADU is deemed complete, the Zoning Officer shall schedule a meeting with the applicant. Within ten (-10) business days from the meeting with the applicant, the Zoning Officer shall render a final decision and notify the applicant by regular mail and email whether the proposed ADU may be deemed permitted.

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2. All ADUs must file a deed notice with Essex County clearly indicating the presence of the ADU and the limitations of its use. A Certificate of Occupancy cannot be issued until the deed notice is filed.

3. If the Zoning Officer approves the proposed ADU the applicant must commence construction within two years of the Zoning Officer's determination, or the Zoning Officer may revoke the Permit. ~~An applicant unable to commence construction of an ADU within two years of the Zoning Officer's determination may appeal to the Zoning Officer for an extension of time for one year for good cause shown.~~

~~2.4.~~ If the Zoning Officer denies the proposed ADU, the applicant may appeal the decision of the Zoning Officer to the Township Zoning Board of Adjustment within forty-five (45) days of the receipt of the denial from the Zoning Officer. Thereafter, the appeal shall be deemed untimely.

~~3.1. An applicant unable to commence construction of an ADU within two years of the Zoning Officer's determination may appeal to the Zoning Officer for an extension of time for one year for good cause shown.~~

~~4. Construction of the ADU must be substantially completed within one hundred and eighty (180) days year of the issuance of the ADU permit. The Construction Official may grant reasonable extensions based upon extraordinary circumstances.~~

5. Construction of the ADU.

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- a. The applicant constructing an approved ADU must comply with all existing procedures established by the Building Office and the Department of Planning and Community Development regarding applications, permits, fees, and inspections, except that the applicant must schedule a final inspection with the Construction Official and the Fire Official within twenty (20) days from when construction of the ADU is complete. A copy of the lease must be provided if the ADU is being rented.
 - b. The Construction Official and Fire Official shall conduct a physical inspection of the Primary Dwelling Unit and the ADU to determine whether the construction complies with the terms on which the approval was given. If the Construction Official and Fire Official determine that the construction complies with Township Ordinances and the Uniform Construction Code, (s)he shall issue a Certificate of Occupancy for the ADU upon the payment of a fee based on the current fee schedule for such issuance. If the construction does not comply with the terms of the approval, within 48 hours the applicant shall be sent written notification describing the non-compliance. The applicant may cure the non-compliant items and submit proof of compliance to the Construction Official and the Fire Official for reconsideration.
6. Owner's Annual Affidavit of Continued Compliance
- a. On or before January 1 of every year, starting with the first January following the issuance of the initial Certificate of Occupancy for an ADU, the Owner to whom the Certificate of Occupancy was issued shall file an affidavit in the form prescribed by the Montclair Township Department of Planning and Community Development, stating that there has been no change in the conditions upon which the ADU was originally approved ~~and that the owner continues to reside in either the Primary Residence or the ADU.~~
 - b. If the Owner fails to file the affidavit as herein required, the Certificate of Occupancy issued for the ADU shall automatically be revoked within 30 days, and the Construction Official shall so notify the Owner and the tenant, if any, in writing, of the revocation.
 - c. Any continued occupancy of the ADU following notice of revocation of the Certificate of Occupancy shall subject the Owner to a fine of two hundred fifty (\$250) for the first thirty (30) days in which the ADU continues to be occupied. Thereafter, the fine shall be up to one hundred (\$100) dollars per day for each day that the ADU continues to be occupied, subject to a maximum of three thousand (\$3,000) dollars for each subsequent 30-day period following the first month.
 - d. The Certificate of Occupancy for the ADU may be reinstated once the required affidavit is filed and approved by the Department of Planning and Community Development.
7. Transfer of the Property Lot

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- a. If the Owner of the property in which an ADU is permitted transfers title to the Property, the new Owner shall apply, as herein, for a Certificate of Continued Use of the ADU upon the terms and conditions contained herein. Such new application shall be filed within sixty (60) days of the transfer of the Property.
 - b. Upon the Construction Official determining that there have been no changes in condition, the Construction Official shall issue a new Certificate of Continued Use for the ADU upon the payment of a fee based on the current fee schedule for such issuance.
 - c. An ADU may not be sold independent of the Primary Residence.
 - d. When listing the Property for sale with an approved ADU, the owner of the Property shall disclose to all prospective buyers that the property contains an approved ADU. The Township shall confirm same on the Certificate of Continued Use.
8. Inspections. Before the Certificate of Occupancy for the ADU is granted, the Construction Official and Fire Official shall have the right to conduct inspections to determine compliance with the provisions of this Ordinance.

~~2. Article II General Use Regulations and Conditional Uses, §347-9 Use of carriage houses is deleted in its entirety.~~

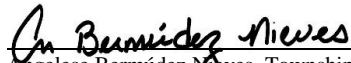
~~3-2.~~ Article III, General Lot and Building Regulations, §347-20 Number of dwellings on lot is amended to read as follows:

§347-20 Number of dwellings on lot.

For one-, ~~and two-~~ ~~and three-~~ family dwellings, there shall be no more than one principal building per lot. However, as provided in §347-8, one- and two-family dwellings may have one-, except for accessory dwelling on such lot. units as provided in §347-8, and Each lot shall front on a public street.

ROLL CALL VOTE ON ADOPTION						
COUNCIL MEMBER	MOVANT	SECOND	YES	NO	ABSTAIN	ABSENT
Councilor Cummings			✓			
Deputy Mayor Hurlock			✓			
Councilor Price Abrams		✓	✓			
Councilor Russo						✓
Councilor Schlager			✓			
Councilor Yacobellis			✓			
Mayor Spiller	✓		✓			

I HEREBY CERTIFY the foregoing to be a true copy of ordinance O-22-27 adopted as amended by the Mayor and Council of the Township of Montclair, in the County of Essex, at its meeting held on February 21, 2023.


Angelese Bermúdez Neves, Township Clerk