

**ORDINANCE NO. 02-2024  
BOROUGH OF SEA GIRT**

**ORDINANCE AMENDING CHAPTER 17 “ZONING”, SECTION 17.5 GENERAL REGULATIONS, CREATING A NEW SECTION 17-5.26.1 ESTABLISHING MANDATORY AFFORDABLE HOUSING SET ASIDE FOR FIVE OR MORE NEW RESIDENTIAL UNITS**

**WHEREAS**, the Borough was the subject of a Mount Laurel exclusionary zoning suit filed in the Superior Court of New Jersey entitled 501 Washington Blvd, LLC, 503 Washington Blvd., LLC, Sea Girt Fifth Avenue LLC, Sitco Sea Girt, LLC v. Borough of Sea Girt, Borough Council of Sea Girt, and Sea Girt Planning Board, (the plaintiffs shall be collectively referred to as the “Developer”), Docket No. MON-L-000102-20, seeking to compel the Borough to provide a realistic opportunity for the construction of housing affordable to low and moderate-income households and their fair share of the housing region’s need for such housing, (“Builder’s Remedy Action”); and

**WHEREAS**, the Borough instituted a declaratory judgment action entitled In the Matter of the Application of the Borough of Sea Girt, Superior Court of New Jersey, Law Division-Monmouth County, Docket No. L-2312-2020 (the “D/J Action”) wherein the Borough sought a declaration as to its affordable housing obligation and the opportunity to develop a plan to meet its constitutional obligation to provide for its fair share of affordable housing; and

**WHEREAS**, the Borough and the Borough Planning Board entered into a Settlement Agreement with the Developer in the Builder’s Remedy Action and the Court approved the Settlement Agreement after conducting a Fairness Hearing on June 3, 2021 finding it fair, reasonable and adequately protecting the interests of very low, low and moderate-income households in the region; and

**WHEREAS**, the Borough entered into a Settlement with Fair Share Housing Center to resolve the D/J Action which the Court approved on October 3, 2023 and a condition of the Settlement Agreement requires the Borough to implement and adopt a mandatory affordable housing set aside ordinance obligating an owner or developer of residential property with an approval for five or more residential units to provide a twenty percent set aside.

**WHEREAS**, the Borough Council of the Borough of Sea Girt, County of Monmouth, State of New Jersey finds it is in the best interest of the Borough to comply with the Settlement Agreement by creating a Mandatory Affordable Housing Set Aside ordinance.

**NOW THEREFORE BE IT ORDAINED** by the Borough Council of the Borough of Sea Girt, County of Monmouth, State of New Jersey, that it hereby creates a new section, Chapter 17, Section 5.26.1 entitled “Mandatory Affordable Housing Set-Aside Ordinance as follows:

**Section 5.26.1**

- a. **Background.** This Ordinance is required by the implementation of the Settlement Agreement with Fair Share Housing Center in the matter captioned In the Matter of the Application of the Borough of Sea Girt, Superior Court of New Jersey, Law Division-Monmouth County, Docket No. L-2312-2020.
- b. **Affordable Housing Set-Aside.** A mandatory 20% on-site affordable housing set-aside requirement shall apply beginning with the effective date of this ordinance to any residential development, including the residential portion of a mixed-use project, which consists of five (5) or more new residential units at six (6) units per acre or higher, or equivalent, which results, in whole

or in part, from: (i) a municipal rezoning or zoning amendment adopted after the effective date of this Ordinance; (ii) any variance pursuant to N.J.S.A. 40:55D-70(d), including but not limited to any use variance or a density variance increasing the permissible density; and (iii) the adoption of a new or amended redevelopment plan or rehabilitation plan.

c. **Other Terms Applicable.** The following terms shall apply to any residential development subject to the mandatory affordable housing set-aside:

1. All subdivision and site plan approvals of qualifying developments shall be conditioned upon compliance with the provisions of the mandatory affordable housing set-aside.
2. No subdivision shall be permitted or approved for the purpose of avoiding compliance with the mandatory affordable housing set-aside. A developer may not, for example, subdivide a project into two lots and then plan each of them to produce a number of units below the threshold. The approving authority may impose any reasonable conditions to ensure such compliance.
3. In the event the number of affordable housing units to be provided includes a fraction, the number shall be rounded up if the fractional amount is 0.5 or greater and rounded down if the fractional amount is less than 0.5. For inclusionary projects, the developer shall provide a payment in lieu of constructing affordable units for the fraction of a unit less than 0.5. The payment in lieu shall be based on the amounts established in N.J.A.C. 5:97-6.4(c).
4. All affordable units created shall fully comply with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et seq. ("UHAC"), including but not limited to the required bedroom and income distribution, with the sole exception that at least thirteen percent (13%) of the affordable units shall be required to be restricted for very-low-income households earning thirty percent (30%) or less of the median income pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301, et seq. ("FHA").
5. At least fifty percent (50%) of the affordable units within each bedroom distribution shall be affordable to low-income households, inclusive of the at least thirteen percent (13%) of units affordable to very-low-income households.
6. The very-low-income affordable units shall be proportionately distributed within each bedroom distribution. In a family non-age-restricted development, at no time shall the number of efficiency/one-bedroom very-low-income units exceed the number of three-bedroom very-low-income units.
7. Affordable units shall be integrated with the market-rate units on-site, and the affordable units shall not be concentrated in separate building(s) or in separate area(s) or floor(s) from the market-rate units. In buildings with multiple dwelling units, this shall mean that the affordable units shall be generally distributed within each building with market-rate units. The affordable units shall also be of the same type as the market-rate units (e.g., if the market-rate units are non-age-restricted family units, the affordable units shall be non-age-restricted family units as well). The residents of the affordable units shall have full and equal access to all of the amenities, common areas, and recreation areas and facilities as the residents of the market-rate units.
8. Affordable units shall be subject to affordability controls of at least thirty (30) years from the date of initial occupancy and affordable deed restrictions as otherwise provided for by UHAC, with the sole exception that very low income shall be defined as at or below thirty percent (30%) of median income pursuant to the Fair Housing Act, and the affordability controls shall remain unless and until the municipality, in its sole discretion, takes action to extend or release the unit from such controls after at least thirty (30) years. In the event the municipality chooses to release the controls on rental affordable units after at least thirty

(30) years, the controls shall remain in effect until the voluntary departure of the occupant household in accordance with N.J.A.C. 5:80-26.11(b).

9. Construction of the affordable and market units shall be phased in compliance with N.J.A.C. 5:93-5.6(d).
10. Affordable units shall be affirmatively marketed in accordance with UHAC and applicable law. The affirmative marketing shall include posting of all affordable units on the New Jersey Housing Resource Center website in accordance with applicable law.
11. The mandatory affordable housing set-aside shall not give any developer the right to any rezoning, variance, redevelopment designation or redevelopment or rehabilitation plan approval, or any other such relief, or establish any obligation on the part of the municipality to grant such rezoning, variance, redevelopment designation, redevelopment or rehabilitation plan approval, or other such or further relief.
12. No developer may make a payment in lieu of constructing affordable units on site, except for fractional units as noted in Paragraph 3, above.
13. Nothing in this Ordinance precludes the Borough of Sea Girt from imposing an affordable housing set-aside in accordance with applicable law in a development not required to have a set-aside pursuant to this Ordinance in accordance with N.J.S.A. 52:27D-311(h) and applicable law.

d. **Severability.** If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect and shall be deemed valid and effective.

e. **Inconsistencies.** In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the municipality, the provisions hereof shall be determined to govern and those inconsistent provisions shall be repealed to the extent of such inconsistency.


f. **Referral to Planning Board.** A copy of this Ordinance shall be referred to the Planning Board following its introduction for review pursuant to N.J.S.A. 40A:55D-26A.

g. **Effective Date and Scope.** This Ordinance shall immediately take effect upon its passage and publication, and as otherwise provided for by law. The provisions of this Ordinance shall be applicable within the entire municipality upon final adoption and shall become a part of the Code once completed and adopted.

Introduced: February 7, 2024

Adopted: March 13, 2024

Attest:   
Dawn Harriman  
Municipal Clerk

Approves:   
Donald Fetzer  
Mayor