

ORDINANCE NO. O-23-14

AN ORDINANCE AMENDING §18-4.7 MF-2 MULTI-FAMILY-2 RESIDENTIAL OVERLAY ZONE AND CHAPTER 26 AFFORDABLE HOUSING REGULATIONS IN THE BOROUGH OF WEST LONG BRANCH

WHEREAS, the Borough, as a result of a builder's remedy action filed several years ago under the caption WLBVP Inc. vs. West Long Branch, adopted several ordinances in conformance with the court's order; and

WHEREAS, the Borough has considered the other land use developments in the Borough involving either multi-family developments or single-family homes developments, and has also reviewed the MF-2 (Multi-Family -2) residential overlay zone, which was last amended in Ordinance O-12-20 adopted on December 5, 2012; and

WHEREAS, the Planning Board has studied the same and has made a recommendation to the governing body to make certain changes with respect to the MF-2 zone requirements, such changes including revisions to the minimum building height, clarifying recreational facilities, eliminating the requirement for a club house and eliminating the maximum number of 3-bedroom units, including provisions for common open space to be maintained and operated by a homeowner's association and submitted to the Planning Board and Borough Attorney prior to site plan approval; and

WHEREAS, any proposed development on this property will be required to provide for affordable housing;

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of West Long Branch that the following amendments to Ordinance §18-14.7 and Chapter 26 – Affordable Housing Regulations are hereby adopted:

SECTION 1

CHAPTER 18 ZONING

§18-4 ZONE USE REGULATIONS

§18-4.7. MF-2 Multi-Family—2 Residential Overlay Zone.

[Ord. #O-08-7, S VIII; Ord. #O-11-1, S 6; Ord. #O-12-20, S 6]

MF-2 Residential Overlay Zone shall be subject to the following regulations:

- a. Permitted Uses – (No Changes)
- b. Permitted Accessory Uses – (No Changes)
- c. Area, Yard, Building (Bulk) and Unit Requirements. As specified in Subsection 18-5.1 of this Chapter.

Note: The attached “Schedule of Area, Yard, Building (Bulk) and Unit Requirements” is revised to modify principal building height requirement from 30 to 35 feet in the Multi-Family 2 Overlay HC/MF-2 zone and include footnote #12 that reads as follows: “(12) Within side yard setbacks the following are permitted: roof overhangs (up to one foot); privacy”

fences (pursuant to fence regulations §18-7.2 of this Chapter); and steps to grade and patios at grade up to 13 feet. The required 25' foot planted buffer shall not include any structures.

d. Other Provisions and Requirements.

1. As specified in Section 18-6 of this Chapter.
2. As specified in Section 18-7 of this Chapter
 - a) Parking shall be in accordance with §18-7.4a.8. – “Off-Street Parking, Loading and Unloading Regulations” subsection (a) “Residential uses shall conform with parking requirements in N.J.A.C. 5:21, Residential Site Improvement Standards (RSIS).” The Borough recognizes unique circumstances of the subject zone, including location, access to New Jersey State Highway Route 36, and other site specific factors which present very limited opportunity for overflow parking areas adjacent to the zone. Due to these unique circumstances the Borough acknowledges and permits residential parking standards to be exceeded pursuant to N.J.A.C. 5:21-3.6 – “Agreement to Exceed Standards,” which sets forth rules whereby RSIS standards may be exceeded under specific circumstances of a residential development upon agreement of both the developer and municipal approving authority. The Borough also recognizes N.J.A.C. 5:21-3.2 – “Waiver Request,” in which the Borough, the developer, or jointly the Borough and developer, may in connection with a specific development within the zone request a waiver of a site improvement standard adopted under RSIS in accordance with N.J.S.A. 40:55D-40.4(c) if adherence to the standard would jeopardize the public health and safety.
3. As specified in Section 18-8 of this Chapter.
4. As specified in Section 18-9 of this Chapter.
5. As specified in Section 18-13 of this Chapter.
- ~~6. A club house or community room of not less than 10 square feet per dwelling unit.~~
7. ~~7.~~ Common area recreation facilities shall be provided such as a swimming pool, picnic area facilities, tennis, shuffleboard, bocce ball, tot lot, or other such similar facilities. ~~ete.~~ Common recreation facilities shall total not less than 50 square feet per dwelling unit.

~~8. The maximum number of three bedroom market housing units shall not exceed 15% of the total number of market housing units.~~

~~7. 9-~~ The number of bedrooms for affordable housing units shall be distributed in accordance with Uniform Housing Affordability Controls (UHAC) in N.J.A.C.

5:80- 23.3, Affordability Average; Bedroom Distribution

8. Affordable housing buildings and/or units shall be dispersed among market rate buildings and/or units within the development. No two (2) affordable buildings shall be adjacent to one another.

9. The site shall contain an emergency access route.

rear 10. 10- A twenty-five (25') foot planted buffer shall be provided along the side and yards except in those areas directly abutting existing vegetation within a delineated wetlands area or regulated transition area.

11. 11- Residential structures along front, side, and rear yards areas shall not exceed two stories.

12. Common open space, recreational and/or other common facilities shall be owned, operated and maintained by a Homeowners Association comprised of all the owners of the individual units.

13. All proposed restrictive covenants, articles of incorporation or other documents related to the creation of a Homeowners Association or other documents providing for ownership and maintenance of common property and facilities shall be submitted to the Planning Board Attorney and Borough Attorney prior to final site plan approval.

14. Affordable units shall be in accordance with Chapter 26 – Affordable Housing Regulations

SECTION 2

CHAPTER 26 AFFORDABLE HOUSING REGULATIONS

§ 26-1. PURPOSE.

The purpose of this Chapter of the Borough Code is to set forth regulations and fees regarding the very-low, low- and moderate-income housing units in the Borough consistent with the following provisions:

- ~~a-~~ Applicable rules of the New Jersey Council on Affordable Housing, ~~N.J.A.C. 5:96 and 5:97 et seq.~~
- ~~b-~~ Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq.
- ~~e-~~ P.L. 2008, c. 46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7).

~~d.~~ Borough's constitutional obligation to provide a fair share of affordable housing for low- and moderate- income households.

e. New Jersey Fair Housing Act and applicable court/legal decisions

These regulations are also intended to provide assurances that very-low, low- and moderate- income units (the "affordable units") are created with controls on affordability over time and that very-low, low- and moderate- income households occupy these units.

These regulations shall apply except where inconsistent with applicable law.

§ 26-2. DEFINITIONS.

** Note all other definitions within this section shall remain unless otherwise revised below.

ACT - Shall mean the Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.) as has been subsequently amended.

ADMINISTRATIVE AGENT - Shall mean the entity responsible for the administration of affordable units in accordance with this section, applicable COAH regulations, N.J.A.C. 5:96, N.J.A.C. 5:97 and UHAC (N.J.A.C. 5:80-26.1 et seq.).

AFFORDABLE UNIT - Shall mean a housing unit proposed or created pursuant to ~~the Act,~~ credited pursuant to N.J.A.C. 5:97-4, applicable COAH regulations, and/or funded through an affordable housing trust fund.

AGENCY or HMFA - Shall mean the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1 et seq.).

CERTIFIED HOUSEHOLD - Shall mean a household that has been certified by an Administrative Agent as a very low income household, low-income household or moderate-income household.

MEDIAN INCOME - Shall mean the median income by household size for the applicable housing region, as adopted annually by The Department, COAH.

THE DEPARTMENT - The Department of Community Affairs of the State of New Jersey, that was established under the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.).

§ 26-3. PHASING SCHEDULE FOR INCLUSIONARY ZONING.

(No changes)

§ 26-4. NEW CONSTRUCTION.

a. Low/Moderate Split and Bedroom Distribution of Affordable Housing Units.

1. The fair share obligation shall be divided equally between low- and moderate- income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit.

At least 13% of all restricted rental units within each bedroom distribution shall be very-low-income units (affordable to a household earning 30% or less of regional median income by household size). The very-low-income units shall be counted as part of the required number of low-income units within the development and shall be rounded to the nearest whole number if a fraction occurs (a fractional number of 0.5 or greater rounds up).

2. In each affordable development, at least 50% of the restricted units within each bedroom distribution shall be ~~low-income units.~~ very-low- or low-income units including that 13% shall be very-low-income.
3. (No changes)
4. (No changes)

b. Accessibility Requirements.

1. The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7. ~~and N.J.A.C. 5:97-3.14.~~
2. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:

(a) – (e) (No changes)

⌘ An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-31 1a, et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7 ~~and N.J.A.C. 5:97-3.14~~, or evidence that West Long Branch has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:

(1) – (4) (no changes)

(5) Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, ~~and N.J.A.C. 5:97-3.14~~, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough's Affordable Housing Trust Fund in care of the Borough Treasurer who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately earmarked.

Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is "site impracticable" to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7. ~~and N.J.A.C. 5:97-3.14.~~

c. Design.

1. In inclusionary developments, to the extent possible, very-low, low- and moderate- income units shall be integrated with the market units.
2. In inclusionary developments, very-low, low- and moderate-income units shall have access to all of the same common elements and facilities as the market units.

d. Maximum Rents and Sales Prices.

1. In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC, utilizing ~~the regional income limits established by COAH.~~ the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD and by the Affordable Housing Professionals of New Jersey.
2. (no change)
3. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for low-income, moderate- income and very low units. At least 13% of all low- and moderate-income rental units shall be affordable to very low-income households earning no more than 30% of median income, which very-low-income units shall be part of the low-income requirement.
4. – 8. (no change)
9. The price of owner-occupied very-low, low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the Administrative Agent be lower than the last recorded purchase price.

10. The rent of very-low, low- and moderate-income units may be increased annually based on the permitted percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed nine (9%) percent in any one year. Rents for units constructed pursuant to low-income housing tax credit regulations shall be indexed pursuant to the regulations governing low-income housing tax credits.

§26-5. UTILITIES.

(No changes)

§26-6. OCCUPANCY STANDARDS.

(No changes)

§26-7. CONTROL PERIODS FOR RESTRICTED OWNERSHIP UNITS AND ENFORCEMENT MECHANISMS.

(no changes)

§26-8. PRICE RESTRICTIONS FOR RESTRICTED OWNERSHIP UNITS, HOMEOWNERS' ASSOCIATION FEES AND RESALE PRICES.

(no changes)

§ 26-9. BUYER INCOME ELIGIBILITY.

a. Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50% of median-income and moderate-income ownership units shall be reserved for households with a gross household income less than 80% of median income utilizing the most recently published Affordable Housing Regional Income Limits by Household Size published by HUD and by the Affordable Housing Professionals of New Jersey.

~~b. Notwithstanding the foregoing, however, the Administrative Agent may, subject to COAH's approval, permit moderate income purchasers to buy low income units in housing markets determined by COAH to have an insufficient number of eligible low income purchasers to permit prompt occupancy of the units. All such low income units to be sold to moderate income households shall retain the required pricing restrictions for low income units.~~

~~b. e.~~ A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to a certified household for a period not to exceed one year.

~~c. d.~~ The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowners' association fees, as applicable) does not exceed 33% of the household's eligible monthly income.

§26-10. LIMITATIONS ON INDEBTEDNESS SECURED BY OWNERSHIP UNIT;
SUBORDINATION.

(no changes)

§26-11. CAPITAL IMPROVEMENTS TO OWNERSHIP UNITS

(no changes)

§26-12. CONTROL PERIODS FOR RESTRICTED RENTAL UNITS.

(no changes)

§26-13. RENT RESTRICTIONS FOR RENTAL UNITS; LEASES.

(no changes)

§26-14. TENANT INCOME ELIGIBILITY.

(no changes)

§26-15. ADMINISTRATIVE AGENT.

a. The Administrative Agent shall perform the duties and responsibilities of an Administrative Agent as set forth in UHAC, including those set forth in Section 5:80-26.14, 16 and 18 thereof, which includes:

1. Affordability Controls. (No changes)

2. Resales and Rerentals.

(a) (No changes)

(b) Instituting and maintaining an effective means of communicating information to very-low, low- and moderate-income households regarding the availability of restricted units for resale or rental.

3. Processing Requests from Unit Owners (No changes)

4. Enforcement (No changes)

§26-16. ENFORCEMENT OF AFFORDABLE HOUSING REGULATIONS.

- a. (No changes)
- b. After providing written notice of a violation to an owner, developer or tenant of a low- or moderate-income unit and advising the owner, developer or tenant of the penalties for such violations, the Borough may take the following action(s) against the owner, developer or tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
 1. The Borough may file a court action pursuant to N.J.S.A. 2A:58-1 1 alleging a violation or violations of the regulations governing the affordable housing unit. If the owner, developer or tenant is adjudged by the Court to have violated any provision of the regulations governing affordable housing units the owner, developer or tenant shall be subject to one or more of the following penalties, at the discretion of the Court:
 - (a) A fine of not more than ~~\$500~~ \$2,000 per day or imprisonment for a period not to exceed 90 days, or both, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense;
 - (b) In the case of an owner who has rented a very-low, low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Borough of West Long Branch Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - (c) In the case of an owner who has rented a very-low, low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the Court.
 2. The Borough may file a court action in the Superior Court seeking a judgment that would result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any such judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the very-low, low- or moderate- income unit.
 - (a) The judgment shall be enforceable, at the option of the Borough, by means of an execution sale by the Sheriff, at which time the very-low, low- and moderate- income unit of the violating owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the Borough, including attorney's fees.

The violating owner shall have his right to possession terminated as well as his title conveyed pursuant to the Sheriff's sale.

- (b) The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the very-low, low- and moderate-income unit. The excess, if any, shall be applied to reimburse the Borough for any and all costs and expenses incurred in connection with either the Court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the Borough in full as aforesaid, the violating owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs incurred by the Borough in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the Borough for the owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the owner shall make a claim with the Borough for such. Failure of the owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the Borough. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the Borough, whether such balance shall be paid to the owner or forfeited to the Borough.
- (c) Foreclosure by the Borough due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the very-low, low- or moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.

- (d) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the Borough may acquire title to the very-low, low- or moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the very-low, low- or moderate-income unit could have been sold under the terms of the regulations governing affordable housing units.

This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
- (e) Failure of the very-low, low- or moderate-income unit to be either sold at the Sheriff's sale or acquired by the Borough shall obligate the owner to accept an offer to purchase from any qualified purchaser which may be referred to the owner by the Borough, with such offer to purchase being equal to the maximum resale price of the very-low, low- or moderate-income unit as permitted by the regulations governing affordable housing units.
- (f) The owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the owner.

§26-17. APPEALS.

(no changes)

26-18. AFFORDABLE HOUSING MANUAL AND MARKETING.

(no changes)

SECTION 3

This Ordinance shall take effect immediately upon passage and publication according to law.

[Any ~~crossed-out~~ language represents existing ordinance language being removed. Any underlined language is being added.]

Introduced: September 6, 2023
 Passed: September 20, 2023
 Adopted: September 20, 2023

MAYOR

BOROUGH CLERK

