

ORDINANCE NO. 2008-13

AN ORDINANCE AMENDING AND SUPPLEMENTING
CHAPTER XL DEVELOPMENT REGULATIONS, ARTICLE 6 CONDITIONAL USES,
CONVERSION OF SECONDARY DWELLING STRUCTURES TO AGE-RESTRICTED
ACCESSORY DWELLING UNITS
OF THE REVISED GENERAL ORDINANCES OF
THE BOROUGH OF BELMAR, IN THE COUNTY OF MONMOUTH,
NEW JERSEY

WHEREAS, the Borough of Belmar desires to enact regulations to permit the conversion of existing accessory dwelling units to age-restricted housing units under certain conditions; and

WHEREAS, the Borough of Belmar finds that these regulations will increase the availability of housing opportunities for senior citizens;

NOW, THEREFORE, BE IT ORDAINED by the Borough of Belmar, County of Monmouth, New Jersey, that Chapter XL Development Regulations, of the Borough of Belmar Revised General Ordinances is hereby amended and supplemented as follows:

SECTION I. Chapter XL Development Regulations, Article 6 Conditional Uses, is hereby amended as follows:

40-6.14 CONVERSION OF SECONDARY DWELLING STRUCTURES TO AGE-RESTRICTED ACCESSORY DWELLING UNITS.

40-6. 14.1. Purpose and Intent.

Over the past decade, Belmar has experienced a notable decline (approximately 25 percent) in its population of residents between ages 60-74. Borough officials expect this trend to continue due to rising rents, the elimination of non-conforming rental units resulting from the renovation of homes to single-family uses, conversions of apartment complexes to condominium forms of ownership, conversions of individual condominium units from rental to owner-occupied, and the overall continued increase in demand for second homes within the Borough, which is helping to drive the foregoing trends. To address this issue, it is the purpose and intent of the Borough and this Section to encourage the conversion of existing accessory dwelling units to age-restricted accessory dwelling units.

It is common throughout the Borough to find a larger main house at the front of a property with an accessory dwelling structure at the rear of the property containing one or more accessory dwelling units. Often these accessory dwelling units are limited to use as summer rentals because they lack heat or insulation. Because the predominate residential zoning classification in Belmar is single-family residential homes, these accessory seasonal dwelling structures are non-conforming uses and cannot be converted to year-round use without a use variance. These units may also be deteriorated. Belmar's land use boards have not granted variances to permit the conversion of such units to year-round use because of the difficulty in

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establishing proofs to permit the expansion of a non-conforming use Belmar intends to permit these accessory dwelling units to be converted to year-round occupancy, but subject to deed restrictions limiting them to long-term use as age-restricted or affordable age-restricted housing units, and prohibiting their rental for any other purpose. In addition, Belmar's intent is to permit year-round accessory dwelling units, which are non-conforming uses under Belmar's current zoning, to convert to age-restricted accessory dwelling units.

Owners of accessory dwelling units eligible to be converted to age-restricted accessory dwelling units may also be eligible for rehabilitation subsidies from County agencies to fund the cost of the conversion. The Borough will provide information and other assistance to owners of eligible accessory dwelling units concerning County grants, if any. Additionally, the Borough will also seek grants and other subsidies to encourage the inclusion of high-efficiency and alternative energy systems in these units, so that the utility costs are affordable as well.

40-6.14.2 Definitions.

Terms not defined shall have their usual and customary meanings, unless a different meaning clearly appears from the context. The following terms whenever used or referred to in this section shall have the following respective meanings:

Accessory Dwelling Structure shall mean a structure containing not more than one dwelling unit that is located on the same lot as a Main Dwelling Structure. It is irrelevant for purposes of this section whether or not the use of, or size of, the Accessory Dwelling Structure was approved by the Planning Board, Zoning Board or is a prior non-conforming use.

Accessory Dwelling Unit shall mean a habitable residential dwelling unit contained in an Accessory Dwelling Structure.

Age-Restricted Accessory Dwelling Unit shall mean an Accessory Dwelling Unit that has been determined by the Director as meeting the construction and design criteria of the Council on Affordable Housing ("COAH") for a dwelling unit, and the Adaptability and Visit ability Code of the Borough of Belmar, and is restricted by deed to occupancy by persons 62 years of age or older in accordance with the Federal Fair Housing Act and related regulations.

Director shall mean the Borough's Director of Code Enforcement.

Main Dwelling Structure shall mean a single-family residential structure on the property that is clear from its size and location that is clear from its size, location, and its proximity to street frontage, that it is the principal structure on the property.

40-6.14.3 Areas Where Age-Restricted Accessory Dwelling Units Are Permitted as Conditional Uses; Qualification of Units

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and Conditions of Conversion.

- A. The creation of Age-Restricted Accessory Dwelling Units shall be Conditional Uses and shall be subject to the conditions and standards set forth herein and upon a Site Plan Application to, and approval by, the Planning Board. As a part of the Site Plan review of the construction of and/or conversion of an existing Age-Restricted Accessory Dwelling Unit, the Applicant must show that the finish, appearance and aesthetics of the Age-Restricted Accessory Dwelling Unit is similar in character to the Main Dwelling Structure and/or consistent with the aesthetics of the neighboring properties and/or neighborhood.
- B. Existing Accessory Dwelling Structures in all single-family residential zoning districts within the Borough of Belmar are eligible to be converted to Age-Restricted Accessory Dwelling Units.
- C. Any Accessory Dwelling Unit proposed to be an Age-Restricted Accessory Dwelling Unit must, prior to the conversion and occupancy of same, be brought into conformance with all applicable Building Codes and the Borough's Adaptability and Visit ability Code then in effect.
- D. Because the cost of renovating existing Accessory Dwelling Structures may be greater than new construction, nothing contained here shall be construed to prohibit the owner of a property with an Accessory Dwelling Structure, in lieu of converting and rehabilitating such a structure for use as an age-restricted accessory dwelling unit, from demolishing and replacing the said structure with a newly constructed Accessory Dwelling Structure that meets the following criteria:
- i. The newly constructed Accessory Dwelling Structure must contain not more than one Accessory Dwelling Unit, regardless of the number of the Accessory Dwelling Units contained in Accessory Dwelling Structure that it is to replace, and all applicable Building Codes and the Borough's Adaptability and Visibility Code then in effect.
 - ii. The newly constructed Accessory Dwelling Structure must be designed, constructed and equipped as a highly energy efficient dwelling unit that satisfies at a minimum the standards for being an Energy Star Qualified Home, in accordance with the criteria established by the U.S. Environmental Protection Agency and the U.S. Department of Energy, or such other standards as the Mayor & Council may from time to time adopt by resolution.
 - iii. The newly constructed Accessory Dwelling Structure shall meet the following bulk requirements:

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- a. A minimum 5-foot setback from property boundaries;
- b. A minimum 10-foot distance between the Accessory Dwelling Structure and the Main Residential Structure or other accessory structures on the property, unless the Director of Code Enforcement determines that practical conditions or other limitations relating to the site permit a smaller setback, and that such a deviation will not negatively affect the visual appearance of the property.
- c. The square footage of the newly constructed Accessory Dwelling Structure shall not exceed the greater of 650 square feet or the square footage of the footprint of the demolished Accessory Dwelling Structure as determined by the Director, exclusive of any garage area; however in no case may the square footage of the new Accessory Dwelling Structure exceed more than 10% of the lot area, provided, however, that the Director may permit a newly constructed Accessory Dwelling Structure to deviate from this requirement by up to 15% of such area, when in the Director's opinion such a deviation is reasonably necessary to accommodate a more efficient design or layout.
- d. There shall only be two (2) structures on the property, the Main Dwelling Structure and the Accessory Dwelling Structure, however if there is another existing structure on the property, such as a detached garage, the Accessory Dwelling Structure must be constructed as an addition to the other existing structure.
- e. The Accessory Dwelling Structure shall be one (1) story in height. The maximum permitted height shall be 12 feet, measured from the average grade along the foundation to the eaves. The eaves, for purposes of this section, shall be the top of the fascia at the first course of roof shingles or other roofing material.
- f. Attics without a fixed/permanent set of stairs are permitted provided that they are not used for habitable space.
- g. Basements are permitted provided that they are not used for habitable space, are unfinished and have only an exterior means of access.
- iv. The lot upon which the newly constructed

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Accessory Dwelling Structure is to be located must contain at least 4,000 square feet.

E. No additional parking demand shall be deemed created, and no additional off-street parking shall be required, as a result or condition of the conversion of an Accessory Dwelling Unit to an Age-Restricted Accessory Dwelling Unit Accessory Dwelling Unit.

F. If the Main Dwelling Structure contains more than one (1) dwelling unit, it shall be converted into a single family residential structure and the Property Owner shall also relinquish all prior non-conforming rights, and rights by variance or similar approvals, in relation to the multi-family use of the Main Dwelling Structure.

40-6.14.4 Developer's Agreement, Deed and Other Occupancy Restrictions.

- A. No bulk variances or site plan approvals shall be required unless and to the extent that the Director determines that the proposed conversion of an Accessory Dwelling Structure requires deviations from the requirements of Section 3(iii) that exceed the Director's discretion to grant. In such event, the relief shall be sought by minor site plan application to the Zoning Board of Adjustment, with variances from the design standards set forth in Section 3(iii) above.
- B. The following conditions, in addition to any other conditions that may be imposed by the Board, shall be required if the application is granted:
1. A deed restriction relinquishing all prior non-conforming rights, and rights by variance or similar approvals, in relation to the use of the Accessory Dwelling Structure, and agreeing to continue the use of the Accessory Dwelling Structure as an Age-Restricted Accessory Dwelling Units for not less than 10 years and that during the 10 year period it must be rented in accordance with this section. After the expiration of the 10-year period, nothing contained herein shall preclude the use of the Age-Restricted Accessory Dwelling Unit as a guest room or other living quarters, provided that under no circumstances may any rent be charged to, or other consideration paid by, the occupants of the dwelling. The deed restriction shall also contain the following additional provisions:
 - i. a provision prohibiting in perpetuity the rental or lease of the Age-Restricted Accessory Dwelling Unit, except to a person 62 years of age or older in accordance with the Federal Fair Housing Act and related regulations;

- ii. a provision prohibiting the expansion of the Age-Restricted Accessory Dwelling Unit;
 - iii. a provision providing that the Age-Restricted Accessory Dwelling Unit may be demolished at any time after the expiration of the initial 10-year period;
- C. If the Main Dwelling Structure contains more than one (1) dwelling unit, and is converted into a single family residential structure as provided herein, the Property Owner shall record a deed restriction relinquishing all prior non-conforming rights, and rights by variance or similar approvals, in relation to the multi-family use of the Main Dwelling Structure.
- D. All deed restrictions and like recordings required herein shall be recorded at the Property Owner's sole cost and expense. Further, all deed restrictions and like recordings required herein shall be reviewed and approved by the Planning Board Attorney and/or the Borough's COAH compliance officer prior to recording. Recorded copies of all deed restrictions and like recordings shall be provided to the Borough.
- E. All Age-Restricted Accessory Dwelling Units shall be inspected each year to ensure compliance pursuant to the Certificate of Inspection provisions of the Borough Ordinances. In addition, the principal owner of the property shall be required to annually submit an affidavit to the Zoning Officer verifying that the accessory structure continues to be occupied by an eligible resident and/or identify any changes in residency at the property. The cost of the yearly inspection shall be \$75.00. Inspections shall continue for the life of the Age-Restricted Accessory Dwelling Unit to ensure compliance with this section.

40-6.14.5 Effect of Conversion on Other Non-Conformities, and Timing of Same

- A. Notwithstanding anything contained in the Development Regulations of the Borough of Belmar to the contrary, a property containing a Main Residential Structure and an Age-Restricted Accessory Dwelling Unit shall constitute a conforming use in any single-family zone. In the event that at the time of a development application to the Board of Adjustment or Planning Board, an Accessory Dwelling Unit on the subject property has not yet been certified by the Zoning Officer as an Age-Restricted Accessory Dwelling Unit, the Planning Board or Board of Adjustment, as the case may be, may grant relief subject to the owner's obtaining certification.
- B. Upon the construction of and/or conversion of an existing Age-Restricted Accessory Dwelling Unit, the

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property in that it contains an Age-Restricted Accessory Dwelling Unit and a Main Dwelling Structure shall be deemed conforming as to use only and future physical expansion or modification of the Main Dwelling Structure shall not require a variance pursuant to N.J.S.A. 40:55D-70(d)(3) provided that the Age-Restricted Accessory Dwelling Unit continues to exist in accordance with this section.

- C. Upon the construction of and/or conversion of an existing Age-Restricted Accessory Dwelling Unit the square footage associated with the Accessory Dwelling Structure shall not count towards the calculation of floor area ratio, building coverage or impervious coverage of the whole property. The square footage associated with the Accessory Dwelling Structure shall not count towards storm water requirements of the Borough Ordinances, however storm water mitigation measures shall be provided, by way of example, dry wells and bio-retention basins (rain gardens).
- D. Should the Age-Restricted Accessory Dwelling Unit ever be demolished, the property shall be released from the conditions set forth herein and shall lose the conforming status as set forth in Section 40-6.14.5(B) and shall lose the benefit of the exclusion of the square foot attributable to the Age-Restricted Accessory Dwelling Unit as set forth in Section 40-6.14.5(c).

40-6.14.6 Violations.

Violation of any provision of this section shall be subject to a fine, upon conviction of \$750.00. All tickets shall require a Court appearance. In addition, the Borough reserves all rights to compel compliance with this section and any and all rights available to it, in the Superior Court of New Jersey or other court of competent jurisdiction.

SECTION VI. If any section, paragraph, subdivision, clause or provision of this ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision so adjudged and the remainder of the Ordinance shall be deemed valid and effective.

SECTION VII. All Ordinances or parts of ordinances inconsistent with or in conflict with the ordinance are hereby repealed to the extent of such inconsistency.

SECTION VIII. This Ordinance shall take effect 20 days after final passage, adoption and publication according to law.