

ORDINANCE NO. 04-39

AN ORDINANCE TO FURTHER AMEND AND SUPPLEMENT THE
LAND DEVELOPMENT ORDINANCE OF THE TOWNSHIP OF
NEPTUNE BY ADDING A FAIR SHARE/AFFORDABLE HOUSING
SECTION IN ACCORDANCE WITH THE PROVISIONS OF THE
COUNCIL ON AFFORDABLE HOUSING

BE IT ORDAINED, by the Township Committee of the Township of Neptune that the Land Development Ordinance of the Township of Neptune be and is hereby amended to include Article XII – “Affordable Housing” as follows:

SECTION 1.

- A. Purpose. This section of the Township of Neptune Code sets forth regulations regarding low- and moderate-income housing units in the Township of Neptune that are consistent with the provisions of N.J.A.C. 5:93 et. seq. as effective on June 6, 1994. These rules are pursuant to the Fair Housing Act of 1985 and the Township of Neptune’s constitutional obligation to provide for its fair share of low- and moderate-income housing.
- B. Township of Neptune’s fair share obligation will be divided equally between low- and moderate-income households as per N.J.A.C. 5:93-2.20.
- C. Except for inclusionary developments constructed pursuant to low-income tax credit regulations:
 - 1. at least half of all units within each inclusionary development will be affordable to low-income households; and
 - 2. at least half of all rental units will be affordable to low-income households; and
 - 3. at least one-third of all units in each bedroom distribution pursuant to N.J.A.C. 5:93-7.3 will be affordable to low-income households.
- D. Inclusionary developments that are not age-restricted will be constructed in conjunction with realistic market demands so that:
 - 1. the combination of efficiency and one bedroom units is at least 10 percent and no greater than 20 percent of the total low- and moderate-income units; and
 - 2. at least 30 percent of all low- and moderate-income units are two bedroom units; and
 - 3. at least 20 percent of all low- and moderate-income units are three bedroom units; and

4. low- and moderate-income units that are age-restricted may utilize a modified bedroom distribution. At a minimum, the number of bedrooms will equal the number of age-restricted low- and moderate-income units within the inclusionary development.
- E. In conjunction with realistic market information, the following criteria will be used in determining maximum rents and sale prices:
1. efficiency units will be affordable to a one person household; and
 2. one bedroom units will be affordable to 1.5 person households; and
 3. two bedroom units will be affordable to three person households; and
 4. three bedroom units will be affordable to 4.5 person households; and
 5. median income by household size will be established by a regional weighted average of the uncapped Section 8 income limits published by HUD as per N.J.A.C. 5:93-7.4(b); and
 6. the maximum sales prices of low- and moderate-income units within each inclusionary development will be affordable to households earning no more than 70 percent of median income. In averaging an affordability range of 55 percent for sales units, the municipal ordinance will require moderate-income sales units to be available for at least three different prices and low-income sales units to be available for at least two different prices.
 7. for both owner-occupied and rental units, the low- and moderate-income units will utilize the same heating source as market units within an inclusionary development; and
 8. low-income units will be reserved for households with a gross household income less or equal to 50 percent of the median income approved by COAH; moderate-income units will be reserved for households with a gross household income less than 80 percent of the median income approved by COAH as per N.J.A.C. 5:93-7.4 (g); and
 9. the regulations outlined in N.J.A.C. 5:93-9.15 and 9.16 will be applicable for purchased and rental units.
- F. For rental units, developers and/or municipal sponsors may:
1. establish one rent for a low-income unit and one for a moderate-income unit for each bedroom distribution; and
 2. gross rents, including an allowance for tenant-paid utilities, will be established so as not to exceed 30 percent of the gross monthly income of the appropriate

household size as per N.J.A.C. 5:93-7.4 (f). The tenant-paid utility allowance will be consistent with the utility allowance approved by HUD for use in New Jersey.

3. the maximum rents of low- and moderate-income units within each inclusionary development will be affordable to households earning no more than 60 percent of median income. In averaging an affordability range of 52 percent for rental units, developers and/or municipal sponsors of rental units may establish one rent for a low-income unit and one rent for a moderate-income unit for each bedroom distribution.

G. For sale units:

1. the initial price of a low- and moderate-income owner-occupied for-sale housing unit will be established so that after a downpayment of five percent, the monthly principal, interest, homeowner and private mortgage insurance, property taxes (based on the restricted value of the low- and moderate-income unit) and condominium or homeowner fee do not exceed 28 percent of the eligible gross monthly income; and
2. master deeds of inclusionary developments will regulate condominium or homeowner association fees or special assessments of low- and moderate-income purchasers so that low- and moderate-income purchasers shall pay fifty percent (50%) of those fees and special assessments paid by market purchasers. This fifty percent (50%) percentage is consistent with the requirements of N.J.A.C. 5:93-7.4(e). Once established within the master deed, the fifty percent (50%) percentage will not be amended without prior approval from COAH; and
3. Township of Neptune will follow the general provisions concerning uniform deed restriction liens and enforcement through certificates of occupancy or reoccupancy on sale units as per N.J.A.C. 5:93-9.3; and
4. The Township of Neptune will require a certificate of reoccupancy for any occupancy of a low- or moderate-income sales unit resulting from a resale as per N.J.A.C. 5:93-9.3(c); and
5. municipal, state, nonprofit and seller options regarding sale units will be consistent with N.J.A.C. 5:93-9.5 – 9.8. Municipal rejection of repayment options for sale units will be consistent with N.J.A.C. 5:93-9.9; and
6. the continued application of options to create, rehabilitate or maintain low- and moderate-income sale units will be consistent with N.J.A.C. 5:93-9.10; and
7. eligible capital improvements prior to the expiration of controls on sale units will be consistent with N.J.A.C. 5:93-9.11; and
8. the regulations detailed in N.J.A.C. 5:93-9.12 – 9.14 will be applicable to low- and moderate-income units that are for sale units.

H. In zoning for inclusionary developments the following is required:

1. low- and moderate-income units will be built in accordance with N.J.A.C. 5:93-5.6(d):

Minimum Percent of Low/Moderate Income Units Completed	Percent of Market Housing Units Completed
0	25
10	25 plus one unit
50	50
75	75
100	<u>90</u>
	100

2. a design of inclusionary developments that integrates low- and moderate-income units with market units is encouraged as per N.J.A.C. 5:93-5.6 (f)

I. Development Fee Ordinance. A development fee ordinance was approved by COAH on April 6, 2004 and adopted by the Township of Neptune Committee on June 14, 2004 (by Ord. #04-22).

J. Controls on Affordability and Length of Controls. To provide assurances that low- and moderate-income units are created with controls on affordability over time and that low- and moderate-income households occupy these units, the Township of Neptune will designate The Township Administrator with the responsibility of ensuring the affordability of sales and rental units over time:

1. The Township Administrator will be responsible for those activities detailed in N.J.A.C. 5:93-9.1(a); and,
2. In addition, The Township Administrator will be responsible for utilizing the verification and certification procedures outlined in N.J.A.C. 5:93-9.1(b) in placing households in low- and moderate-income units; and,
3. Regarding newly constructed low- and moderate-income sales units:
 - a) newly constructed low- and moderate-income sales units will remain affordable to low- and moderate-income households for at least ten years pursuant to N.J.A.C. 5:93-9.2(b); and,
 - b) The Township Administrator will require all conveyances of newly constructed units to contain the deed restriction and mortgage lien adopted by COAH and referred as Technical Appendix E as found in N.J.A.C. 5:93; and
 - c) housing units created through the conversion of a nonresidential structure will be considered a new housing unit and will be subject to a minimum ten-year control on affordability pursuant to N.J.A.C. 5:93-9.2(b). The

Township Administrator will require COAH's appropriate deed restriction and mortgage lien.

4. Regarding rehabilitated units:
 - a) rehabilitated owner-occupied single family housing units that are improved to code standard will be subject to affordability controls for at least six (6) years, except that this minimum duration of affordability control shall be increased in accordance with the minimum required duration specified in future rounds/cycles of COAH's rules, if applicable; and,
 - b) rehabilitated renter-occupied housing units that are improved to code standard will be subject to affordability controls for at least ten (10) years; and
 - c) The Township Administrator will require COAH's appropriate deed restriction and mortgage lien.

5. Regarding newly constructed and/or gut rehabilitated rental units:
 - a) newly constructed and/or gut rehabilitated low- and moderate-income rental units will remain affordable to low- and moderate-income households for at least ten years pursuant to N.J.A.C. 5:93-9.2(e). The Township Administrator will require the deed restriction and lien and deed of easement referred as Technical Appendix H as found in N.J.A.C. 5:93; and,
 - b) affordability controls in accessory apartments will be for a period of at least 10 years, except if the apartment is to receive a rental bonus credit pursuant to N.J.A.C. 5:93-5.15, then the controls on affordability will extend for 30 years (N.J.A.C. 5:93-5.9); and,
 - c) alternative living arrangements will be controlled in a manner suitable to COAH, that provides assurances that such a facility will house low- and moderate-income households for at least 10 years except if the alternative living arrangement is to receive a rental bonus credit pursuant to N.J.A.C. 5:93-5.15, then the controls on affordability will extend for 30 years (N.J.A.C. 5:93-5.8).

- K. Section 14(b) of the Fair Housing Act N.J.S.A. 52:27D-301 et. seq. incorporates the need to eliminate unnecessary cost generating features from the Township of Neptune's land use ordinances. Accordingly the Township of Neptune will eliminate development standards that are not essential to protect the public welfare and to expedite or fast track municipal approvals/denials on certain affordable housing developments. The Township of Neptune will adhere to the components of N.J.A.C. 5:93-10.1 –10.3.

L. Applicability. The Township of Neptune has a fair share obligation of twenty-three (23) units, of which zero (0) units is new construction. This ordinance shall apply to:

1. the Township of Neptune’s rehabilitation program, the purpose of which is to rehabilitate substandard housing units occupied by low- and moderate-income households;
2. any and all developments that contain proposed low- and moderate-income units; and,
3. any public lands, with or without improvements, determined to be no longer needed for municipal purposes pursuant to N.J.S.A. 40A:12-21, which permits private sales to certain organizations for a nominal consideration, when such land will be conveyed from The Township of Neptune to:
 - a) any duly incorporated nonprofit organization for the purpose of building or rehabilitating residential property for resale pursuant N.J.S.A. 40A:12-21(j); or
 - b) any duly incorporated nonprofit housing corporation or any limited-dividend housing corporation or housing association organized pursuant to P.L.1949, c.184 (C.55:16-1 et seq.) for the purpose of constructing housing for low- or moderate-income persons or families or handicapped persons pursuant to N.J.S.A. 40A:12-21(l).

SECTION 2.

Article XII in the Township’s Land Development Ordinance entitled Amendment, Severability, Interpretation, Repealer & Enactment” shall be renumbered as Article XIII.

APPROVED ON FIRST READING: September 13, 2004

APPROVED, PASSED, AND ADOPTED: September 27, 2004

Richard J. Cuttrell,
Municipal Clerk

Thomas J. Catley,
Mayor