



CITY OF OCEAN CITY
ORDINANCE NO. 20-09
Master Plan Consistency Report

Introduction.

Ordinance 20-09 “An Ordinance Amending, Revising and Supplementing the Affordable Housing Provisions of Chapter XXV of the Revised General Ordinances of the City of Ocean City, New Jersey (**Elevating Nonconforming Buildings**)” was introduced and adopted on first reading by City Council on May 14, 2020 and will be advertised according to law and scheduled for second reading and public hearing on June 4, 2020.

The “Municipal Land Use Law” provides the Planning Board with thirty-five (35) days from the referral date (May 15, 2020) to prepare, review, adopt and transmit their consistency report regarding Ordinance 20-09 to City Council. NJSA 40:55D-26 describes the Planning Board’s responsibility regarding the master plan consistency review as follows:

“... the planning board shall make and transmit to the governing body, within 35 days after referral, a report including identification of any provisions in the proposed development regulation, revision or amendment which are inconsistent with the master plan and recommendations concerning those inconsistencies and any other matters as the board deems appropriate.”

The statute requires that every zoning ordinance must “either be substantially consistent with the land use plan element and the housing plan element of the master plan, or designed to effectuate such plan element.” NJSA 40:55D-62a.

While formerly only zoning ordinances and amendments thereto were required to be submitted to the planning board, it is now clear from the wording in NJSA 40:55D-26 that all “development regulations” must be referred to the planning board for comment and report. The statute requires that every zoning ordinance must “either be substantially consistent with the land use plan and housing plan of the master plan, or designed to effectuate such plan elements.” The “Master Plan” referred to herein is the City of Ocean City Master Plan adopted February 3, 1988, and as subsequently amended.

Ordinance Summary.

Ordinance 20-09 updates Section 25-105.3.a.4 of the City Code by allowing for limited exemptions from any development regulation when raising any structure that existed on October 28, 2012 to meet State or federal flood elevation standards. The exemption is available only to the extent that raising the structure, or constructing a staircase or other attendant structure necessitated by such raising, would otherwise result in a violation of the development regulation. A person would also be exempt from any requirement to apply for a variance from a development regulation for such purposes.

The exemption would not be available for any new construction other than the reconstruction of a structure damaged by Hurricane Sandy. Finally, the exemption would not be available in situations where the need for the exemption is wholly or partially the result of alterations made or to be made to the dimensions of the structure after October 28, 2012.

The full text of Ordinance 20-09 as introduced by City Council is attached to this Report.

Analysis and Conclusion.

As noted above the Planning Board's responsibility in terms of the master plan consistency review is to evaluate the ordinance with regard to the land use plan and housing plan and (1) identify any provisions in the proposed ordinance which are inconsistent with the Master Plan, and (2) make recommendations concerning those inconsistencies and any other matters as the Board deems appropriate.

In defining "substantial consistency" the Supreme Court in *Manalapan Realty v. Township Committee* made it clear that some inconsistency is permitted "provided it does not substantially or materially undermine or distort the basic provisions and objectives of the Master Plan."

Ordinance 20-09 will advance the following Master Plan Goals and Objectives:

- *To encourage municipal actions which will guide the long-range appropriate use and development of lands within the City of Ocean City in a manner which will promote the public health, safety, and general welfare of present and future residents.*
- *To secure safety from fire, flood, panic and other natural and man-made disasters.*
- *To provide sufficient space and facilities in appropriate locations within the City for residential, business, office, public, quasi-public uses and parking in a manner, which will provide for balanced City growth and development.*
- *To support the upgrading of substandard housing in the City through code enforcement, housing improvement loans, technical assistance, education, grants, and*

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the provision of public improvements such as new streets, sidewalks, street lighting, street trees, drainage and sanitary sewage collection facilities.

- *To encourage coordination of the numerous regulations and activities which influence land development with a goal of producing efficient uses of land with appropriate development types and scale.*
- *To preserve existing single-family neighborhoods.*
- *To improve the quality of life of both residents and tourists.*
- *To maintain and upgrade the City's housing stock.*

Having considered the content of Ordinance 20-09, the Municipal Land Use Law and the City Master Plan, it is my professional opinion that Ordinance 20-09 is substantially consistent with the Master Plan, and will serve to advance the Master Plan Goals and Objectives identified herein.

Respectively submitted,



Randall E. Scheule, PP/AICP

New Jersey Professional Planner License No. LI003666

May 18, 2020

ORDINANCE NO. 20-09

AN ORDINANCE AMENDING AND SUPPLEMENTING
CHAPTER XXV, ZONING AND LAND DEVELOPMENT OF
THE REVISED ORDINANCES OF THE CITY OF OCEAN CITY
(Elevating Nonconforming Buildings)

BE IT ORDAINED by the Mayor and Council of the City of Ocean City, County of Cape May, State of New Jersey, as follows:

Section 1

Section 25-105.3.a Nonconforming Structures, Uses, and Lots of Volume II of the Revised General Ordinances of the City of Ocean City, New Jersey is hereby amended as follows:

4. Elevating nonconforming buildings. ~~Buildings that are noneonforming by virtue of the area and yard standards of this Ordinance may be elevated to comply with BFE requirements, provided the existing building footprint is not enlarged, that such building conforms to the permitted building height and is a conforming use. This section applies to the existing habitable and nonhabitable areas of principal buildings including porches, decks (provided the existing deck is at an elevation not more than one foot (1') below the elevation of the adjacent habitable space), and stairs.~~

As used in this section:

“Existing structure” means any structure that existed on October 28, 2012.

“Highest applicable flood elevation standard” means the new FEMA base flood elevation plus an additional three feet, or any applicable flood elevation standard required pursuant to N.J.A.C. 7:13-1.1 et seq. and adopted by the Department of Environmental Protection pursuant to the “Flood Hazard Area Control Act,” P.L.1962, c. 19 (C.58:16A-50 et seq.), whichever is higher.

“New and appropriate elevation” means any elevation to which a structure is raised, or is to be raised, that is equal to or higher than the applicable new FEMA base flood elevation, provided, however, in no case shall the new and appropriate elevation exceed the “highest applicable flood elevation standard.”

“New FEMA base flood elevation” means any base flood elevation proposed or adopted after October 28, 2012, by the Federal Emergency Management Agency.

“Original dimensions” means the exact vertical and horizontal dimensions of a structure as it existed on October 28, 2012.

“Sandy-damaged structure” means any structure that existed on October 28, 2012 and was damaged or destroyed by Hurricane Sandy.

“Structure” means any dwelling or building; however, in the case of attached townhouses or row houses for which title to each townhouse or row house building, including the roof and other structural elements, is held in fee simple, “structure” means a single townhouse or single row house.

“Structure” shall not include a unit which is part of a condominium as defined in P.L.1969, c. 257 (C.46:8B-1 et seq.).

a. (1) Notwithstanding the provisions of any other law to the contrary, except as otherwise provided pursuant to paragraph (2) of this subsection, a person shall be exempt from any development regulation, including any requirement to apply for a variance therefrom, that otherwise would be violated as a result of raising an existing structure to a new and appropriate elevation, or constructing a staircase or other attendant structure necessitated by such raising, provided, however, this exemption shall apply only to the minimum extent or degree necessary to allow the structure to meet the “new and appropriate elevation” with adequate means of ingress and egress.

(2) The exemption established pursuant to paragraph (1) of this subsection shall not be available to a person who has altered the original dimensions of a structure if, had the alteration not been made, the structure could have been raised to meet the new and appropriate elevation either without the exemption or with an exemption of lesser degree than is needed with the alteration.

b. (1) Notwithstanding the provisions of any other law to the contrary, except as otherwise provided pursuant to paragraph (2) of this subsection, a person shall be exempt from any development regulation, including any requirement to apply for a variance therefrom, that otherwise would be violated as a result of using a new and appropriate elevation when lawfully repairing or reconstructing a Sandy-damaged structure, or constructing a staircase or other attendant structure necessitated by use of the new and appropriate elevation, provided, however, this exemption shall apply only to the minimum extent or degree necessary to allow the Sandy-damaged structure to meet the new and appropriate elevation with adequate means of ingress and egress.

(2) The exemption established pursuant to paragraph (1) of this subsection shall not be available to a person whose repair or reconstruction plan would alter the original dimensions of a

structure when, if not for the alteration, the structure could otherwise be raised to meet the new and appropriate elevation either without the exemption or with an exemption of lesser degree than is needed with the alteration.

c. Notwithstanding the provisions of any other law to the contrary, any deed restriction or agreement, no matter when entered into or made, that prohibits or has the effect of prohibiting any otherwise lawful raising or constructing of a structure to a new and appropriate elevation is contrary to public policy and therefore shall be unenforceable, except that all other covenants, easements, and restrictions of a common interest community shall remain in force, and costs associated with the construction, repair, or other related improvements to neighboring properties and common elements shall be borne solely by the owner of the structure which will be raised or constructed to a new elevation.

Section 2

All ordinances or portions thereof inconsistent with this Ordinance are repealed to the extent of such inconsistency.

Section 3

If any portion of this Ordinance is declared to be invalid by a Court of competent jurisdiction, it shall not affect the remaining portions of this Ordinance which shall remain in full force and effect.

Section 4

This Ordinance shall take effect in the time and manner prescribed by law.

Jay A. Gillian, Mayor

Peter V. Madden, Council President

The above Ordinance was passed by the Council of Ocean City, New Jersey, at a meeting of said Council held on the ___ day of , **2020**, and was taken up for a second reading and final passage at a meeting of said Council held on the ___ day of , 2020, in Council Chambers, City Hall, Ocean City, New Jersey, at seven o'clock in the evening.

Melissa G. Rasner, City Clerk

Ordinance summary

Section 1 – The current ordinance permitting owners to elevate a nonconforming building is deleted and new definitions are added.

This ordinance provides a person with a limited exemption from any development regulation when raising certain structures to meet State or federal flood elevation standards. The exemption would be available only to the extent that raising the structure, or constructing a staircase or other attendant structure necessitated by such raising, would otherwise result in a violation of the development regulation. A person would also be exempt from any requirement to apply for a variance from a development regulation for such purposes.

The exemption would be available for raising any structure that existed on October 28, 2012, or for using a raised elevation when lawfully repairing or reconstructing a structure damaged by Hurricane Sandy.

In particular, the exemption would allow a person to raise the structure to a “new and appropriate elevation.” The ordinance provides that the new and appropriate elevation, to which a structure may be raised in keeping with the exemption, shall not exceed the “highest applicable flood elevation standard,” which is defined to be the higher of two standards: (1) the new Federal Emergency Management Agency (FEMA) base flood elevation plus three additional feet, or (2) any applicable flood elevation standard required pursuant to rules and regulations adopted by the Department of Environmental Protection (DEP) pursuant to the “Flood Hazard Area Control Act.”

Raising a structure to a new and appropriate elevation may, in certain cases, violate development regulations, such as a maximum height restriction or a setback restriction. This ordinance would allow a property owner to raise a structure to a new and appropriate elevation without violating such development regulations or needing to apply for a variance from them. However, the exemption would apply only to the minimum extent or degree necessary to meet the new and appropriate elevation with adequate means of ingress and egress.

The exemption would not be available for any new construction other than the reconstruction of a structure damaged by Hurricane Sandy. Finally, the exemption would not be available in situations where the need for the exemption is wholly or partially the result of alterations made or to be made to the dimensions of the structure after October 28, 2012.

May 4, 2020