

**BOROUGH OF CAPE MAY POINT  
COUNTY OF CAPE MAY  
STATE OF NEW JERSEY  
ORDINANCE NO. 04-2026**

**AN ORDINANCE AMENDING THE CODE OF THE BOROUGH OF CAPE MAY POINT,  
CHAPTER 150, SECTION 150-11 "PERMITTED USES"**

**WHEREAS**, the New Jersey Supreme Court and New Jersey Legislature have recognized and mandated in So. Burl. Co. NAACP v. Mount Laurel, 92 N.J. 158 (1983) ("Mount Laurel II") and the Fair Housing Act, N.J.S.A. 52:27D-301, et seq. ("FHA") that every municipality in New Jersey has an affirmative obligation to facilitate the provision of very low-, low- and moderate-income housing; and

**WHEREAS**, the Board of Commissioners of the Borough of Cape May Point ("Borough"), Cape May County, is desirous of ensuring the proper implementation of the FHA and associated rules through the adoption of affordable housing regulations; and

**WHEREAS**, the Borough seeks to implement laws and policies established by the New Jersey Supreme Court and consistent with the provisions of P.L. 2024, c. 2, the amended FHA at N.J.S.A. 52:27D-301 et seq., as well as the New Jersey Department of Community Affairs, Division of Local Planning Services at N.J.A.C. 5:99, et seq., statutorily upheld existing regulations of the now-defunct Council on Affordable Housing at N.J.A.C. 5:93-1 and N.J.A.C. 5:97-1, the Uniform Housing Affordability Controls ("UHAC") at N.J.A.C. 5:80-26.1 et seq., and as reflected in the adopted municipal Fourth Round Housing Element and Fair Share Plan; and

**WHEREAS**, the Board of Commissioners recognizes the need to amend the provisions of the Borough's existing affordable accessory apartment program to comply with new rules and regulations promulgated by the State of New Jersey and to implement the Fourth Round Housing Element and Fair Share Plan; and

**WHEREAS**, the Board of Commissioners formally referred this Ordinance to the Planning Board for examination, discussion, and recommendations in accordance with N.J.S.A. 40:55D-26 for consistency with the adopted Master Plan; and

**WHEREAS**, the Planning Board has determined this Ordinance to be consistent with the adopted Master Plan and Fourth Round Housing Element and Fair Share Plan pursuant to N.J.S.A. 40:55D-26;

**BE IT ORDAINED** by the Board of Commissioners of the Borough of Cape May Point, County of Cape May, State of New Jersey, that Chapter 150 "Zoning" of the Code of the Borough of Cape May Point is hereby amended as follows (deletions in ~~strike through~~ and additions in underline):

**Section 1.**

150-11 PERMITTED USES

- I. Accessory Apartments; Affordable Housing; Special Permits. It is the specific purpose and intent of this section to allow accessory apartments on parcels of minimum size in conformance with the specific zoning district minimum lot size requirement to provide the opportunity for the development of affordable housing units. It is also the purpose of this limited, special-use provision to allow more efficient use of the Borough's existing stock of dwellings and the

Borough's existing stock of accessory buildings, to allow residents the opportunity to remain in large, underutilized houses by virtue of the added income for them from an accessory apartment, allow accessory apartments in new attached and/or detached structures and to protect and preserve property values in the Borough of Cape May Point. No new approvals of special permits for accessory apartments will be issued whenever a total of six special permits have been approved. To help achieve these goals to promote the other objectives of this chapter and of the Master Plan, the following specific standards and limitations are set forth for such accessory apartment use.

1. Location and Number of Units.

- (a) An accessory apartment may be located in the principal building or in an existing permitted accessory building, such as a barn or garage, and may include existing and/or expanded structure construction.

2. Size.

- (a) The minimum floor area for an accessory apartment ~~located within a principal structure shall be 300 square feet~~ shall be the minimum unit size pursuant to the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4, but in no case shall it exceed the gross floor area of the existing principal dwelling on the lot.
- ~~(b) For an accessory apartment located in an existing accessory building, the minimum floor area shall be 300 square feet.~~

3. Other Requirements.

- (a) Exterior appearance. Principal buildings containing an accessory apartment shall have only one front or principal entry to the building, and the accessory apartment shall be located, designed, constructed, and landscaped so as to preserve the appearance of the principal building to the maximum extent feasible and further to enhance and not detract from the character of the principal building and the surrounding neighborhood. An accessory apartment shall have a separate, distinct entry, which does not detract from the character of the principal building.
- (b) Approval of utilities. Prior to the issuance of a building permit for the establishment of an accessory apartment in a principal dwelling or the conversion of an existing accessory building to an accessory apartment use, all septic systems and well (if applicable) must be approved by the governing agency.
- (c) The occupant must meet the established income limitations for low- and moderate-income households as specified by ~~the rules and regulations of the Council on Affordable Housing (COAH) as N.J.A.C. 5:97 et seq.~~
- (d) Accessory apartments shall comply with all applicable statutes and regulations of the State of New Jersey in addition to all local building codes.
- (e) The accessory apartment must meet the adaptability law at P.L. 2005, c. 350, if applicable.
- (f) Rents of accessory apartments shall be affordable to low- and moderate-income households as per ~~COAH regulations~~ N.J.A.C. 5:97 et seq.
- (g) There shall be a recorded deed or declaration of covenants and restrictions applied to the property upon which the accessory apartment is located running with the land and limiting its subsequent rental or sale within the affordable housing requirements stated herein.
- (h) Each accessory apartment shall have living/sleeping space, cooking facilities, a kitchen sink and complete sanitary facilities for the exclusive use of its

occupants. It shall consist of no less than two rooms, one of which shall be a full bathroom.

- (i) The accessory apartment shall have a separate door with direct access to the outdoors.
- (j) The accessory apartment shall be affirmatively marketed to the housing region in accordance with ~~COAH regulations N.J.A.C. 5:97 et seq~~ and the Uniform Housing Authority Affordability Controls at N.J.A.C. 5:80-26.1 et seq.

4. Administration.

- (a) Cape May Point Borough shall designate an administrative entity by municipal resolution to administer the accessory apartment program.
- (b) The administrative agency shall administer the accessory apartment program including advertising, income qualifying prospective renters, setting rents and annual rental increases, maintaining a waiting list, distributing the subsidy, overseeing the securing of certificates of occupancy, qualifying properties, handling application forms, oversetting the filing deed restriction, filing monitoring reports and affirmatively marketing the accessory apartment program.
- (c) In accordance with ~~COAH requirements N.J.A.C. 5:97-6.8(b)2~~, the Borough shall provide at least \$20,000.00 for moderate income units ~~(total of \$60,000.00)~~ and \$25,000.00 ~~(total of \$75,000.00)~~ for low income units, as set forth in the Borough's court-approved spending plan, to subsidize the physical creation of an accessory apartment conforming to the requirements of this section and ~~COAH requirements, N.J.A.C. 5:97 et seq~~. Prior to the grant of such subsidy, the property owner shall enter into a written agreement with the Borough insuring that the subsidy shall be used to create the accessory apartment and the apartment shall meet the requirements of this paragraph and ~~COAH requirements N.J.A.C. 5:97 et seq~~.
- (d) Applicants for the creation of an accessory apartment shall submit to the administrative agent:
  - (1) A sketch of floor plans showing the location, size and relationship of both the accessory apartment and the primary dwelling within the building or in another structure;
  - (2) Rough elevations showing the modification of any exterior building façade to which changes are proposed; and
  - (3) A site development sketch showing the location of the existing dwelling and other existing buildings; all property lines; proposed addition, if any, along with the minimum building setback lines; the required parking spaces for both dwelling units and any man-made conditions which might affect construction.

**Section 2.** All ordinances or Code provisions or parts thereof inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency. Should any portion of this Ordinance be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or repeal the remainder of this Ordinance.

**Section 3.** This ordinance shall take effect upon its passage and publication, as required by law.

<b>Final Adoption</b>	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT
Geiger						
vanHeeswyk						
Yunghans						

ATTEST:

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Elaine L. Wallace, Borough Clerk

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Elise Geiger, Commissioner

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Anita vanHeeswyk, Mayor

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Suzanne Yunghans, Commissioner

FIRST READING: February 10, 2026  
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 PUBLIC HEARING  
 AND ADOPTION: March 10, 2026  
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