

RESOLUTION # 2019-313

BE IT RESOLVED by the Township Council of the Township of Marlboro that an Ordinance entitled:

ORDINANCE # 2019-12

AN ORDINANCE REPEALING AND REPLACING IN ITS ENTIRETY CHAPTER 70, ARTICLE III AND ARTICLE IV, OF THE "CODE OF THE TOWNSHIP OF MARLBORO" REGARDING AFFORDABLE HOUSING DEVELOPMENT FEES, TO ADDRESS THE REQUIREMENTS OF THE FAIR HOUSING ACT AND THE UNIFORM HOUSING AFFORDABILITY CONTROLS (UHAC) AND TO COMPLY WITH THE TOWNSHIP'S THIRD ROUND AFFORDABLE HOUSING OBLIGATIONS

be introduced and passed on first reading and that the same be advertised according to law; and


BE IT FURTHER RESOLVED that the same be considered for final passage on December 12, 2019 at 7:00 p.m. at the Marlboro Municipal Complex, 1979 Township Drive, Marlboro, New Jersey, at which time all persons interested will be given an opportunity to be heard concerning said ordinance.

OFFERED BY: MAZZOLA

AYES: 5

SECONDED BY: METZGER

NAYS: 0


ALIDA MANCO,
MUNICIPAL CLERK
11/14/2019


SCOTT METZGER,
COUNCIL PRESIDENT

CERTIFICATION

I hereby certify the above to be a true and exact copy of a Resolution adopted by the Township Council of the Township of Marlboro at a meeting held on 11-14-2019.


Township Clerk

ORDINANCE #2019-12

AN ORDINANCE REPEALING AND REPLACING IN ITS ENTIRETY CHAPTER 70, ARTICLE III AND ARTICLE IV, OF THE "CODE OF THE TOWNSHIP OF MARLBORO" REGARDING AFFORDABLE HOUSING DEVELOPMENT FEES, TO ADDRESS THE REQUIREMENTS OF THE FAIR HOUSING ACT AND THE UNIFORM HOUSING AFFORDABILITY CONTROLS (UHAC) AND TO COMPLY WITH THE TOWNSHIP'S THIRD ROUND AFFORDABLE HOUSING OBLIGATIONS

WHEREAS, the Marlboro Township Planning Board adopted a 2019 Housing Element and Fair Share Plan, which plan was subsequently endorsed by the Mayor and Council of the Township of Marlboro; and

WHEREAS, this ordinance is intended to implement and incorporate the adopted and endorsed Housing Element and Fair Share Plan and addresses the requirements of N.J.A.C. 5:93-1 et seq., as amended and supplemented, N.J.A.C. 5:80-26.1 et seq. as amended and supplemented, and the New Jersey Fair Housing Act of 1985;

NOW THEREFORE, BE IT ORDAINED by the Mayor and Council of the Township of Marlboro, in Monmouth County, New Jersey, as follows:

Section 1. Chapter 70, Article III repealed and replaced.
Chapter 70, "Affordable Housing" in the "Code of the Township of Marlboro" ("Code"), Article III (Development Fees), is hereby repealed and replaced in its entirety with the following new ordinance chapters:

Article II Development Fees

§70-27. Purpose.

- A. In Holmdel Builder's Association v. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules.

B. Pursuant to P.L. 2008, c. 46, § 8 (N.J.S.A. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 40:55D-8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from nonresidential development.

C. In Re: Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015), also known as the Mount Laurel IV decision, the Supreme Court remanded COAH's duties to the Superior Court. As a result, affordable housing development fee collections and expenditures from the municipal affordable housing trust funds to implement municipal Third Round Fair Share Plans through July 1, 2025 are under the Court's jurisdiction and are subject to approval by the Court.

D. This article establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance with P.L. 2008, c. 46, §§ 8 and 32 through 38. Fees collected pursuant to this article shall be used for the sole purpose of providing low- and moderate-income housing. This article shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. § 5:93-8.

§70-28. Basic requirements.

This section shall become effective at such time that the Superior Court approves the Township's development fee ordinance in accordance with N.J.A.C. 5:93-8.

§70-29. Definitions.

The following terms, as used in this article, shall have the following meanings:

AFFORDABLE HOUSING DEVELOPMENT

A development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an

inclusionary development, a municipal construction project or a one-hundred-percent-affordable development.

COAH or THE COUNCIL

The New Jersey Council on Affordable Housing established under the Fair Housing Act which previously had primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the state. Pursuant to the opinion and order of the New Jersey Supreme Court dated March 10, 2015, in the matter of "In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing (M-392-14) 067126," any reference to COAH or the Council shall be understood to refer to the Superior Court of New Jersey, Law Division-Morris County.

DEVELOPMENT FEES

Funds paid by a developer for the improvement of property as permitted in N.J.A.C. 5:93-8.

DEVELOPER

Any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land proposed to be included in a proposed development including the holder of an option to contract or purchase, or other person having an enforceable proprietary interest in such land.

EQUALIZED ASSESSED VALUE

The assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with §§ 1, 5, and 6 of P.L. 1973, c. 123 (N.J.S.A. 54:1-35a through 54:1-35c).

GREEN BUILDING STRATEGIES

Those strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

§70-30. Residential development fees.

A. Imposed fees.

- 1) Within all zone districts, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1.5% of the equalized assessed value for residential development, provided no increased density is permitted.
- 2) When an increase in residential density pursuant to N.J.S.A. 40:55D-70.d (5) (known as a "d" variance) has been permitted, developers shall be required to pay a development fee of 6% of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.
- 3) Within the Stream Corridor Preservation Residential Zone ("SCPR"), a density bonus is permitted for the cluster development option provided for in this zone. Residential developers within this zone shall pay a development fee of 6% of the equalized assessed value for each additional unit permitted as a result of the density bonus under the cluster development option. On the remaining units, the developer shall pay a development fee of 1.50% of equalized assessed value. Under the cluster development option in the SCPR Zone District, a maximum density of 0.8 lot per gross acre is permitted as a density bonus. In non-cluster developments, the maximum density in the SCPR Zone District is 0.43 lot per gross acre. (The density bonus equals a net of 0.37 lot per gross acre.) If a variance is granted permitting development in the SCPR Zone District pursuant to N.J.S.A. 40:55D-70d(5) (referred to as a "d" variance or density variance), then the developer shall be subject to a bonus development fee of 6% of the equalized assessed value per unit on each additional residential unit realized above that which is permitted by right under the existing zoning. On the remaining units, the developer shall be subject to a development fee of 1.50% of the equalized assessed value per unit. However, if the zoning on a site has changed during the two-year period preceding the filing of the "d" variance application, then the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two

years preceding the filing of the "d" variance application.

- 4) Within the R-60/15 Residential District, a density bonus is permitted for the cluster development option provided for in this residential district. Residential developers within this residential district shall pay a development fee of 6% of the equalized assessed value for each additional unit permitted as a result of the density bonus under the cluster development option. On the remaining units, the developer shall pay a development fee of 1.50% of the equalized assessed value. Under the cluster development option in the R-60/15 Residential District, a maximum density of one lot per gross acre is permitted as a density bonus. In non-cluster developments, the maximum density in this residential district is 0.58 lot per gross acre. (The density bonus equals a net of 0.42 lot per gross acre.) If a variance is granted permitting development in the R-60/15 Zone District pursuant to N.J.S.A. 40:55D-70d(5) (referred to as a "d" variance or density variance), then the developer shall be subject to a bonus development fee of 6% of the equalized assessed value per unit on each additional residential unit realized above that which is permitted by right under the existing zoning. On the remaining units, the developer shall be subject to a development fee of 1.50% of the equalized assessed value per unit. However, if the zoning on a site has changed during the two-year period preceding the filing of the "d" variance application, then the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two years preceding the filing of the "d" variance application.
- 5) For residential developments in the R-40/30 Residential District which are located on properties that are not included within the consent order identified in § 220-50C of the Code of the Township of Marlboro, New Jersey, residential developers shall pay a development fee in the amount of 6% of the equalized assessed value for each additional unit permitted as a result of rezoning from the R-80 Residential District. On the remaining units, the developer shall pay a development fee of 1.50% of the equalized assessed value. Under the R-40/30 Residential District, a maximum density of 0.87 unit per acre is permitted. Under the previous R-80 Residential District,

a maximum density of 0.43 unit per acre is permitted. If a variance is granted permitting development in the R-40/30 Zone District pursuant to N.J.S.A. 40:55D-70d(5) (referred to as a "d" variance or density variance), then the developer shall be subject to a bonus development fee of 6% of the equalized assessed value per unit on each additional residential unit realized above that which is permitted by right under the existing zoning. On the remaining units, the developer shall be subject to a development fee of 1.50% of the equalized assessed value per unit. However, if the zoning on a site has changed during the two-year period preceding the filing of the "d" variance application, then the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two years preceding the filing of the "d" variance application.

B. Eligible exactions, ineligible exactions and exemptions for residential development.

- (1) Affordable housing developments shall be exempt from development fees. All other forms of new construction shall be subject to development fees unless exempted below.
- (2) Developers of low- and moderate-income units shall be exempt from paying development fees.
- (3) Developments that have received preliminary or final approval prior to the effective date of the Township's amended development fee ordinance shall be subject to the law in effect at the time of such approval, unless the developer seeks a substantial change in the approval.
- (4) All single-family residential additions, renovations and accessory structures shall be exempt; however, all new residential dwelling units shall be subject to a development fee.
- (5) All multi-family additions, renovations and accessory structures not requiring site plan approval shall be exempt; however, all new residential dwelling units shall be subject to a development fee.

- (6) Homes replaced as a result of a natural disaster (such as fire or flood) shall be exempt from the payment of a development fee.

§70-31. Nonresidential development fees.

A. Imposed fees.

- (1) Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to 2.5% of the equalized assessed value of the land and improvements, for all new nonresidential construction on an unimproved lot or lots.
- (2) Nonresidential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to 2.5% of the increase in equalized assessed value resulting from any additions to existing structures to be used for nonresidential purposes.
- (3) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the preexisting land and improvement and the equalized assessed value of the newly improved structure, i.e., land and improvement at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the nonresidential development fee shall be zero.

B. Eligible exactions, ineligible exactions and exemptions for nonresidential development.

- (1) The nonresidential portion of a mixed-use inclusionary or market rate development shall be subject to the 2.5% development fee, unless otherwise exempted below.
- (2) The 2.5% fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
- (3) The 2.5% fee shall not apply to developers of any not-for-profit use; federal, state and municipal government

uses; churches and other places of worship; and public schools.

- (4) Nonresidential developments shall be exempt from the payment of nonresidential development fees in accordance with the exemptions required pursuant to P.L. 2008, c. 46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" form. Any exemption claimed by a developer shall be substantiated by that developer.
- (5) A developer of a nonresidential development exempted from the nonresidential development fee pursuant to P.L. 2008, c. 46 shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the nonresidential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the nonresidential development, whichever is later.
- (6) If a property which was exempted from the collection of a nonresidential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid nonresidential development fees under these circumstances may be enforceable by the Township as a lien against the real property of the owner.

§70-32. Collection of fees.

- A. Upon the granting of a preliminary, final or other applicable approval for a development, the applicable approving authority shall direct its staff to notify the Construction Official responsible for the issuance of a building permit.
- B. For nonresidential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption," to be completed as per the instructions provided. The Developer of a nonresidential development shall complete Form N-RDF as per the instructions provided. The Construction Official shall verify the information submitted by the nonresidential developer as per the instructions provided in the Form N-RDF. The Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.

- C. The Construction Official responsible for the issuance of a building permit shall notify the local Tax Assessor of the issuance of the first building permit for a development which is subject to a development fee.
- D. Within 90 days of receipt of that notice, the Municipal Tax Assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
- E. The Construction Official responsible for the issuance of a final certificate of occupancy notifies the local Assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- F. Within 10 business days of a request for the scheduling of a final inspection, the Municipal Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- G. Should the Township fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b of § 37 of P.L. 2008, c. 46 (N.J.S.A. 40:55D-8.6).
- H. Fifty percent (50%) of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the building permit and that determined at issuance of the certificate of occupancy.
- I. Appeal of development fees.
- (1) A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest-bearing escrow account by the Township. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days

after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

- (2) A developer may challenge nonresidential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by Township. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

§70-33. Affordable Housing Trust Fund.

A. There is hereby created a separate, interest-bearing affordable housing trust fund to be maintained by the Chief Financial Officer for the purpose of depositing development fees collected from residential and nonresidential developers and proceeds from the sale of units with extinguished controls.

B. The following additional funds shall be deposited in the affordable housing trust fund and shall at all times be identifiable by source and amount:

- (1) Payments in lieu of on-site construction of affordable units;
- (2) Developer-contributed funds to make 10% of the adaptable entrances in a townhouse or other multistory attached development accessible;
- (3) Rental income from municipally operated units;
- (4) Repayments from affordable housing program loans;
- (5) Recapture funds;
- (6) Proceeds from the sale of affordable units; and
- (7) Any other funds collected in connection with the Township's affordable housing program.

C. In the event of a failure by the Township of Marlboro to comply with trust fund monitoring and reporting requirements or to submit accurate monitoring reports; or a failure to comply with the conditions of the judgment of compliance or a revocation of the judgment of compliance; or a failure to implement the approved Spending Plan and to expend funds within the applicable required time period as set forth in In re Tp. of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563); or the expenditure of funds on activities not approved by the Court; or for other good cause demonstrating the unapproved use(s) of funds, the Court may authorize the State of New Jersey, Department of Community Affairs, Division of Local Government Services (LGS), to direct the manner in which the funds in the Affordable Housing Trust Fund shall be expended, provided that all such funds shall, to the extent practicable, be utilized for affordable housing programs within the Township of Marlboro, or, if not practicable, then within the County or the Housing Region.

Any party may bring a motion before the Superior Court presenting evidence of such condition(s), and the Court may, after considering the evidence and providing the municipality a reasonable opportunity to respond and/or to remedy the non-compliant condition(s), and upon a finding of continuing and deliberate non-compliance, determine to authorize LGS to direct the expenditure of funds in the Trust Fund. The Court may also impose such other remedies as may be reasonable and appropriate to the circumstances.

D. Interest accrued in the Affordable Housing Trust Fund shall only be used to fund eligible affordable housing activities approved by the Court.

§70-34. Use of funds.

A. The expenditure of all funds shall conform to a spending plan approved by the court. Funds deposited in the housing trust fund may be used for any activity approved by the court to address the Township's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to, preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing nonresidential buildings to create new

affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:93-8 and specified in the approved spending plan.

B. Development fee revenues shall not be expended to reimburse the Township for past housing activities.

C. At least 30% of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30% or less of median income by region.

(1) Affordability assistance programs may include down payment assistance, security deposit assistance, low-interest loans, rental assistance, assistance with homeowners' association or condominium fees and special assessments, and assistance with emergency repairs.

(2) Affordability assistance to households earning 30% or less of median income may include buying down the cost of low- or moderate-income units in the third-round Municipal Fair Share Plan to make them affordable to households earning 30% or less of median income. The use of development fees in this manner shall entitle the Township to bonus credits pursuant to N.J.A.C. 5:94-4.22.

(3) Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.

D. The Township may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:94-7.

E. No more than 20% of all revenues collected from development fees may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20% of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with the monitoring requirements for the affordable housing in in compliance with the Housing Element and Fair Share Plan. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

§70-35. Monitoring.

On the first anniversary of the order of the Superior Court in the matter of in Re: In the Matter of the Application of the Township of Marlboro for a Declaratory Judgement, Docket No. MON-L-2121-15, and every anniversary thereafter through the end of the repose period, the Township shall provide annual reporting of trust fund activity to the New Jersey Department of Community Affairs ("DCA"), COAH, or Local Government Services ("LGS"), or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the DCA, COAH, or LGS. This reporting shall include an accounting of all housing trust fund activity, including the collection of development fees from residential and nonresidential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier-free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with the Township's housing program, as well as to the expenditure of revenues and implementation of the plan approved by the court.

§70-36. Ongoing collection of fees.

The ability for the Township to impose, collect and expend development fees shall expire with its judgment of compliance unless the Township has filed an adopted Housing Element and Fair Share Plan with the court or other appropriate jurisdiction, has filed a Declaratory Judgment action and has

received court approval of its development fee ordinance. If the Township fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance and Repose, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to Section 20 of P.L. 1985, c. 222 (N.J.S.A. 52:27D-320). The Township shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its Judgment of Compliance and Repose, nor shall the Township retroactively impose a development fee on such a development. The Township shall not expend development fees after the expiration of its substantive certification or Judgment of Compliance and Repose.

Section 2. Repealer. All ordinances or parts thereof inconsistent herewith are repealed as to such inconsistencies.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 4. Effective Date. This ordinance shall take effect upon its passage, publication, filing with the County of Monmouth, and entry of final judgement of compliance and repose.

PASSED: November 14, 2019

ADOPTED:

ALIDA MANCO
MUNICIPAL CLERK

JONATHAN L. HORNIK
MAYOR

DATED _____