BORDENTOWN TOWNSHIP
PLANNING BOARD

APPLICATION #ZB-2019-1
RESOLUTION #P-2020-16

RESOLUTION MEMORIALIZING THE ACTION OF THE PLANNING BOARD ON APPLICATION OF G&S REALTY CORP. FOR A ONE YEAR EXTENSION OF APPROVAL S FOR THE PROPERTY DESIGNATED AS BLOCK 137.01, LOT 1, 11.03 ON THE BORDENTOWN TOWNSHIP TAX MAP, MORE COMMONLY KNOWN AS OLD YORK ROAD BUSINESS PARK

WHEREAS, the Applicant, G&S Realty Corp. ("the Applicant") previously filed an Application before the Bordentown Township Zoning Board ("Board") as Application #ZB-(UV)-2019-1 seeking Approval of a Use Variance, Conditional Use Variance and Design Waivers to construct two (2) single pole, double-faced billboard signs on a portion of the property designated as Block 137.01, Lot 1, 11.03 on the Bordentown Tax Map, more commonly known as Old York Road Business Park; and

WHEREAS, on May 23, 2019, the Board heard and granted the Application which was memorialized on June 27, 2019, by Resolution #ZB-2019-14; and

WHEREAS, the billboard use for the property authorized by the Resolution has yet to commence; and

WHEREAS, The Bordentown Township Land Use Ordinance (the "Ordinance"), § 25.709.A, provides that "[a] use variance for which the use has not actually commenced within one year after the date of publication of the decision granting the variance shall expire and be considered to have been abandoned." However, Ordinance § 25.709.B.3 provides that "[a] variance granted in conjunction with the approval of a site plan shall expire and shall be treated as having been abandoned on the same date that the approval of a site plan shall expire as provided by law."

WHEREAS, the Applicant, by way of letter from counsel dated June 4, 2020, requested (i) an interpretation pursuant to § 70(b) of the MLUL that the Approvals granted by the Board are vested and do not expire until two years after the date of adoption of the Resolution, which is June 27, 2021, or, (ii) in the alternative, for the grant of an initial one-year extension of the Approvals until June 27, 2021, and

WHEREAS, on July 1, 2020, the Governor signed into law, PL. 2020, c. 53, known as the Permit Extension Act of 2020, which provided in pertinent part:

> "4a. For any government approval in existence on March 9, 31 2020, the running of the period of approval is automatically suspended for the COVID-19 extension period, except as otherwise provided hereunder; however, the tolling provided for herein shall not extend the government approval more than at least six months beyond the conclusion of the COVID-19 extension period ...."

WHEREAS, the Permit Extension Act of 2020, PL. 2020, c. 53, defines the "COVID-19 extension period as follows:

> "...the period beginning March 9, 2020 and continuing for as long as a public health emergency pursuant to the "Emergency Health Powers Act", PL. 2005, c. 222 (C.26:13-1, *et.seq.)* or a state of emergency pursuant of PL. 1942, c. 251 (C.App.A 9-33, *et. seq.*) or both, that has been declared by the Governor in response to COVID-19, is in effect."

WHEREAS, the Planning Board of the Township of Bordentown has jurisdiction over the within variance application pursuant to the provisions of N.J.S.A. 40:55D-70 (c) and LDO 25:702.C, as amended by Township Ordinance 2020-01.

WHEREAS, a hearing on the application for extension was conducted at the regular meeting of the Board on July 9, 2020, during which time the following documents, submissions, witnesses and exhibits were presented to the Board:

a) Documents and Submissions:

1) Correspondence from Steven P. Gouin, Esquire of the law firm of Giordano, Halleran & Ciesla, P.C., dated June 4, 2020, requesting an interpretation of LDO provisions or an extension of a prior approvals.

WHEREAS, due to the health emergency and limitations imposed by Executive Orders 103 and 107, the meeting conducted using the ZOOM video conferencing platform which permitted members of the public to attend via video conference, telephone conference call and e-mail. Members of the public were in attendance at the meeting. Those in attendance offered no questions or comments on the Application when the meeting was opened to the public; and

WHEREAS, in reaching its decision, the Board relied on the submissions, exhibits and witness testimony identified above and the basis for the Board's action is set forth in the following findings and conclusions regarding the applicant:

1. The Planning Board of the Township of Bordentown has jurisdiction to hear and consider Applications for Extension of Prior Approvals pursuant to N.J.S.A. 40:55D-52(a) and LDO 25:702.C, as amended by Township Ordinance 2020-01.

2. Under LDO Section 25:805(D), the Board has jurisdiction to hear and grant Applications for Extension of Prior Approvals based upon findings with respect to economic conditions for extending the approvals; and

3. Notice of the Application by publication and certified mail was not required.

4. The Applicant was represented by Steven P. Gouin, Esquire of the law firm of Giordano, Halleran & Ciesla, P.C., as required by law.

5. The Board heard the matter during the course of one (1) session on July 9, 2020 and determined it has jurisdiction to hear the matter.

6. The meeting was opened to the public concerning the application and there was no comment.

7. The Board declines to resolve the apparent conflict between LDO 25.709A and LDO 25.709.B3 as it is a matter that should be determined by the Township Committee.

8. After reviewing the matter, the Board found that the Applicant had demonstrated that it was working diligently to satisfy all of the conditions of the underlying approvals.

9. The Board determined that there were sufficient proofs to grant the extension of the prior Preliminary and Final Site Plan Approval, Conditional Use Approval for the subject property consistent with the Municipal Land Use Law ("MAUL") and the Bordentown Township Land Development Ordinance.

10. All of the procedural and jurisdictional requirements necessary to grant the Application for a one-year extension of the Use Variance and Conditional Use Approval for the subject property have been satisfied, subject to the findings of fact, conclusions, and the additional general Conditions as stated herein, all of which are incorporated herein and expressly made conditions to approval.

11. The extension granted herein will expire concurrently with the expiration of the time period to perfect the Applicant's site plan approval.

12. The Applicant must comply with all existing conditions of the original site plan approval, as outlined Resolution ZB-2029-14, as a condition of this approval.

A motion was made by Ms. Esser, and seconded by Vice Chairman Hirschfeld, to grant a one-year extension of the Use Variance and Conditional Use Variance approval for the subject property for a period of one-year after the expiration of the original approval as extended by the

Permit Extension Act of 2020, and voted upon as follows:

Ayes (9):	Mayor Benowitz, Deputy Mayor Holliday. Vice Chairman Hirschfeld, Bowyer, Esser, Fairlie, Grayson, Holston and Chairman Chidley
Nays (0):	None
Abstentions(0):	None
Absent (1):	D'Angelo
Not Voting(1):	Schiano

This is a Resolution to memorialize the action taken by the Planning Board of Adjustment of the Township of Bordentown at a regular meeting held on July 9, 2020.

_____
GEORGE CHIDLEY, *Chairman*

Attest:

_____
MICHAEL THEOKAS, *Board Secretary*

Date Adopted : July 9, 2020
Date Memorialized : August 13, 2020
Motion:
Second:
For Adoption:
Against:
Abstentions:
Absent:
Not Voting:

CERTIFICATION

I hereby certify that the foregoing is a true copy of a resolution duty adopted by the Bordentown Township Planning Board at a public meeting on August 13, 2020.

_____
Michael Theokas, *Board Secretary*

BORDENTOWN TOWNSHIP
PLANNING BOARD

APPLICATION NO. ZB 2020-01
RESOLUTION NO. PB-2020-17

A RESOLUTION OF THE PLANNING BOARD OF BORDENTOWN TOWNSHIP DEEMING THE APPLICATION OF CHRIS AND THERESA UPMANIS FOR BLOCK 49.01, LOT 14 TO BE INCOMPLETE.

WHEREAS, Chris and Teresa Upmanis (the "Applicant") submitted an application to the Bordentown Township Zoning Board of Adjustment (the "Board") for setback variance relief for an existing 20' x 11' concrete patio that is within one (1') foot of a property line where five (5') feet is required for the property known as Block 49.01, Lot 14 on the Tax Map of the Township of Bordentown, more commonly known as 885 East Drive (the "Property" or "Subject Property"); and

WHEREAS, the Planning Board of the Township of Bordentown has jurisdiction to hear and consider setback variances and other traditional Zoning Board applications pursuant to N.J.S.A. 40:55D-52(a) and LDO 25:702.C, as amended by Township Ordinance 2020-01; and

WHEREAS, the Applicant is the owner of the Subject Property; and

WHEREAS, the application submitted substantially complies with the Land Development Application Checklist ("Checklist") of the procedural requirements necessary to review necessary the application pursuant to the Bordentown Township Land Development Ordinance ("LDO") Section 25:807; and

WHEREAS, in support of the application, the Applicant submitted a Boundary Retracement & Partial Topographical Survey of Tax Map Lot 14, Block 49.01, prepared by Teunisen Surveying & Planning Co., Inc, dated May 18, 2020, which was deficient as it did not identify the dimensions of the variance sought; and

WHEREAS, the application was previously scheduled for hearings at the Board's regular meetings on June 25, 2020 and July 9, 2020, which were adjourned at the request of the

Applicant for the purpose of providing the Board with a revised plan; and

WHEREAS, the Application was rescheduled to be heard at the Board's regular meeting on July 23, 2020; and

WHEREAS, at the time of the July 23, 2020 regular meeting of the Board, the Applicant had not filed an amended plan and requested an additional adjournment of the matter.

NOW, THEREFORE, BE IT RESOLVED, that at its Regular Meeting of July 23, 2020, the Planning Board of the Township of Bordentown reviewed the matter, declined to grant further adjournment extension; and

A motion was made by Vice Chairman Hirschfeld, to deem the Application to be Incomplete, and seconded by Mr. Grayson, and voted upon as follows;

Ayes (8):	Esser, Fairlie, Grayson, Holston, Holliday, Benowitz, Hirschfeld, Chidley
Nays (0):	None
Abstentions(0):	None
Not voting (1):	None
Absent (3):	Bowyer, Schiano, D'Angelo

This is a Resolution to memorialize the action taken by the Zoning Board of Adjustment of the Township of Bordentown at its regular meeting held on July 23, 2020.

_____

GEORGE CHIDLEY, *Chairman*

Attest:

_____

MICHAEL THEOKAS, *Board Secretary*

Date Adopted : July 23, 2020
Date Memorialized : August 13, 2020
Motion:
Second:
For Adoption:
Against:
Abstentions:
Absent:
Not Voting:

PLANNING BOARD OF THE
TOWNSHIP OF BORDENTOWN
Application No. PB-2020-04
Resolution No. P-2020-18

RESOLUTION MEMORIALIZING THE DENIAL OF THE BULK VARIANCE APPLICATION OF MARK AND ALICIA PALUMBO FOR THE PROPERTY DESIGNATED AS BLOCK 93.05, LOT 1 MORE COMMONLY KNOWN AS 30 WATERFORD DRIVE

WHEREAS, Mark and Alicia Palumbo (the "Applicants") have submitted an application to the Planning Board of the Township of Bordentown (the "Board") for Bulk Variance Relief for an installed pool, landscape retaining wall, setbacks and buffers on the property designated as Block 93.05, Lot 1 on the Tax Map of the Township of Bordentown, more commonly known as 30 Waterford Drive (the "Property" or "Subject Property"); and

WHEREAS, the Applicants are the current owners of the Property; and

WHEREAS, the Application submitted complies with the procedural requirements of the Township of Bordentown Land Development Application Checklist ("Checklist") necessary to review the application pursuant to the Township of Bordentown Land Development Ordinance ("LDO") Section 25.807; and

WHEREAS, the Applicant has requested the Board to deem the application "complete" and vest the Board with jurisdiction to hear the Application; and

WHEREAS, all jurisdictional and procedural requirements of the Bordentown Township LDO have been satisfied such that the Board shall deem the application complete and the Board has jurisdiction to hear the Application; and

WHEREAS, due to the health emergency and limitations imposed by Executive Orders 103 and 107, the meeting at which this matter was heard was conducted using the ZOOM video conferencing platform. Members of the public attended using the electronic forum, but those in

attendance made no comment on the Application when the meeting was opened to the public; and

NOW, THEREFORE, BE IT RESOLVED, that at its Regular Meeting on July 23, 2020, the Planning Board of the Township of Bordentown reviewed the application of Mark and Alicia Palumbo for the property designated as Block 93.05, Lot 1 and hereby deems the application complete subject to conditions and stipulations noted herein;

BE IT FURTHER RESOLVED, the Board finds there is sufficient notice and good cause to waive the requirement that the application be considered only for completeness at the first meeting after the filing of the Application.

A Motion was made by Mrs. Esser and seconded by Vice Chairman Hirschfeld, and voted on as follows:

Ayes (8)	Mayor Benowitz, Deputy Mayor Holliday, Vice Chairman Hirschfeld, Esser, Fairlie, Grayson, Holston, and Chairman Chidley
Nays (0)	None
Abstentions (0)	None
Absent (3)	Bowyer, Schiano, D'Angelo
Participated (0)	None

WHEREAS, the Board proceeded to consider the merits of the application; and

WHEREAS, the Applicant seeks relief from the provisions Section 25:403(D), 25.606(B)(5), 25.516(G) and 25:516(A) of the Bordentown Land Development Ordinance to permit an in-ground swimming pool, a retaining wall and various setbacks and buffers; and

WHEREAS, in compliance with the Municipal Land Use Law due notice was given by the Applicant in accordance with statute by publication and by certified mail to all property owners within 200 feet of the premises more than ten (10) days prior the date of the hearing,

Additionally, in compliance with the Open Public Meetings Act, as amended by A-3850, and in consideration of Executive Orders No. 103 and 107, issued by Governor Murphy on March 9 and 21, 2020 respectively, the Applicant provided due notice that the meeting would be conducted via video teleconferencing using the Zoom video conferencing platform to all property owners within 200 feet of the premises; and

WHEREAS, the Applicants represented themselves before the Board; and

WHEREAS, a formal objection was filed on behalf of Mark and Maureen Roselli, of 16 Bentwood Drive, the property to the rear of the subject property ("Lot 17"); and

WHEREAS, the Board considered the following documents, exhibit and testimony of the witnesses presented at the hearing:

a. *Documents:*

1. Variance Application packet with exhibits.
2. Zoning Board Resolution #Z-2014-08.
3. Zoning Permit #20190083 issued May 15, 2019.
4. Application for Zoning Permit dated April 15, 2019, including exhibits.
5. Report of Objectors' Planning Consultant, Veena Sawant, A.I.C.P., P.P. of VMS Planning LLC, dated July 23, 2020.

b. *Exhibits:*

A-1 Packet of documents submitted in connection with Application for the Zoning Permit, including: Zoning Permit #20190083, Application for Zoning Permit, Rear Lot Coverage Plan and Calculation of Lot Coverage.

A-2 "As-Built" Pool Area Grading Plan, dated June 12, 2020, prepared by Martin G. Miller, III, P.E., L.S.

A-3 Color Marked-up Rear Lot Coverage Plan to show the irregular shape of the Property.

O-1 Color Photograph from the driveway of the rear adjoining property of retaining wall and equipment.

O-2 Color Photograph of the Retaining Wall.

O-3 Color Photograph of the length of the Retaining Wall from Brentwood Drive.

O-4 Color Photograph of View of Retaining Wall from rear adjoining property.

O-5 Color Photograph of Filter and other pool mechanical equipment.

O-6 Color Photograph of Retaining Wall and added topsoil behind Wall.

O-7 Color Photograph of Concrete Decking around Pool.

O-8 Color Photograph of view over the Retaining Wall showing added soil up to the concrete decking; and

O-9 Report of Objector's Planning Consultant, Veena Sawant, A.I.C.P., P.P. of VMS Planning LLC, dated July 23, 2020.

c. *Witnesses:*

1. Mark Palumbo, Applicant.
2. Chris Chystanthou, representative of Pool Town, the Applicant's Pool Contractor on behalf of the Applicant.
3. Mark Roselli, Objector; and
4. Veena Sawant, A.I.C.P., P.P. of VMS Planning LLC, Objector's Planning Consultant,

WHEREAS, due to the health emergency and limitations imposed by Executive Orders 103 and 107, the meeting conducted using the ZOOM video conferencing platform which permitted members of the public to attend via video conference, telephone conference call and e-mail. Members of the public attended the meeting. Those in attendance offered no questions or comments on the Application when the meeting was opened to the public; and

WHEREAS, the Board finds as follows:

FINDINGS OF FACT

1. Applicants are the owners of the premises located at 30 Waterford Drive, which is in an R-30 Residential Zoning District ("R-30 Zone").

2. On April 15, 2019, the Applicant made application for a Zoning Permit to install a 19-foot x 35 foot in ground swimming pool on the Property. As required, application included a "Rear Lot Coverage Plan" prepared by Martin G. Miller, III, Professional Engineer and Land Surveyor, dated May 3, 2019 which showed the pool to be constructed in compliance will all of the requirements of the Land Development Ordinance.

3. The Applicant obtained a prior approval of the Bordentown Township Zoning Board of Adjustment to permit the installation of a four (4) foot high fence around the backyard of the property where a three (3) foot high fence is permitted under the LDO.

4. After reviewing the application, proposed plans and supporting documentation, the Township Zoning Officer issued a Zoning Permit to:

> "Construct a 19' x 35' in ground pool with 347 sq. feet of decking/patio. Pool setback to water's edge is 10' with 7' feet of open area to the rear yard property line, which is a use permitted by the ordinance. "

5. After the construction of the pool, the Township Zoning Officer received a complaint regarding a retaining wall that did not appear in the original plan submitted to the Township. After the complaint was investigated, the Applicant was requested to supply an "As-Built" Plan.

6. An "As-Built" topographical survey prepared by Martin G. Miller, III, P.E., L.S. dated June 12, 2020 was provided to the Zoning Officer. The "As-Built" plan reflected that the pool, decking and pool equipment were not constructed consistent with the plan submitted at the time the Applicant's Zoning Permit was approved.

7. On or about June 17, 2020 and again on June 29, 2020, the Township Zoning Officer advised the Applicant that the installed improvements no longer comply with the LDO. The Applicant applied for setback and bulk variance relief under N.J.S.A. 40:55-70(c).

8. The Zoning Officer identified the following deviations from the LDO:

a. LDO Section 516.A for a rear yard setback of the pool at 9.5 feet where 10 feet is required.

b. LDO Section 516.A for the absence of a four (4') foot wide landscape buffer between the pool concrete apron/decking and the rear property line.

c. LDO Section 516.G for the failure to provide a buffer for the pool equipment that will be placed in the side yard adjacent the street along Bentwood Drive.

d. LDO Section 403.D for an accessory structure (retaining wall) located at zero (0') feet rear yard setback where six (6') feet is required.

e. LDO Section 403.D landscape wall/retaining wall at zero (0') feet second front yard setback where twenty-five (25') feet is required.

f. LDO Section 606.B.5 for pool located at twenty-three (23') feet second front yard setback where twenty-five (25') feet is required; and

g. LDO Section 606.B.5 where decking located at thirteen (13') feet second front yard setback where twenty-five (25') feet is required.

9. Applicants seek variance relief for those deviations from the standards set out in the LDO under both N.J.S.A. 40:55D-70(c)(1) (a "C(1) variance") and N.J.S.A. 40:55D-70(c)(2) (a "C(2) variance").

10. Mark Palumbo, one of the Applicants, testified as follows:

a. The Applicants started this process six (6) years ago. They sought a variance for a six (6) foot high fence that was opposed by his neighbors. He compromised for a four (4') foot fence in response to the objections raised by both neighbors. The Zoning Board granted a variance with conditions to permit the Applicants to construct a four (4) foot high fence around the back yard.

b. When it came time to construct the pool. The Applicants wished to avoid the cost, time and aggravation of further variance hearings and hired Pool Town, a professional pool installation company to do the work. Pool Town filed an Application for Zoning Permit to construct the pool with a lot coverage plan showing the location and topography of the proposed pool. The Township Code Official approved the Permit.

c. Mr. Palumbo testified that "[u]nbeknownst to us there were a few mistakes made by the professionals. A few issues arose. Apparently, the pool was placed in the wrong place and based on that setbacks were violated, mostly because of that."

d. A landscape retaining wall was erected along the rear property line of Lot 17. Mr. Palumbo stated that "[i]t was built specifically to address water runoff and soil erosion due to the steep grade in the rear of the property. It was built specifically to protect the neighbors' property."

e. The landscape retaining wall is constructed with 6" x 6" pressure treated wood and runs 39 feet'10.5 inches in length with heights ranging from 16.5 inches to 33.5 inches over the length of the retaining wall. Mr. Palumbo stated that he installed the wall without realizing it was considered a structure which is required to be setback six (6) feet from the rear property line under the LDO. He viewed it as a landscape wall like all others he has seen around town. He did not inquire with the Township if there were any requirements to construct the retaining wall nor did he seek any approvals of an amended plan showing the wall.

f The retaining wall is 16.5 inches on one side and increases across the length of the wall to a height of 33.5 inches at the other. The four (4') foot fence above the retaining wall but would be recessed from the property line on the soil being retained by the wall to have the effect of a six (6') foot to seven (7') foot high fence in the rear of the property.

g. As part of the contract with Pool Town, the contractor agreed to install three (3') feet of concrete decking around the pool and an eight (8') foot by ten (10') foot pad. The Applicants made arrangements with the concrete subcontractor to supply an

additional two (2') feet of concrete decking for an additional charge.

h. Mr. Palumbo acknowledged that in adding the additional two (2') feet of concrete they ignored the approve plan. He trusted the contractor that the additional concrete could be installed without any issues. He did not know, nor did he ask if they would be required to go back to the Township with a revised plan.

i. The pool equipment is located the same distance from the rear property line as the water's edge is from the rear property line. However, as the pool was placed so that the water's edge was 2.5 feet closer at 9.5 feet from the rear property line, the filter and other pool equipment are located 9.5 feet from the rear property line. The pool equipment has not been buffered due to the cease work order.

j. As to the requirements in support of the request for C(2) variance:

(1) *The variance must relate to a specific piece of property.* Mr. Palumbo opined that this application relates to only the Applicant's property. There is no encroachment on any neighboring property.

(2) *A Purpose of the MLUL must be advanced.* Mr. Palumbo opined that the Retaining Wall is built for the sole purpose of protecting the neighbor's property, both from water runoff and erosion of dirt and soil. It was built without the knowledge that it was considered s structure.

(3) *Benefits of the deviation from the ordinance substantially outweigh any detriments.* Mr. Palumbo opined that the retaining wall protects the neighbors from runoff and erosion. There is no negative. The neighbors are more protected. "It helps the neighbors in every way".

(4) *The variance can be granted without substantial detriment to the public good.* Mr. Palumbo opined that there is no detriment to the public good. The variances do not create a nuisance. The retaining wall affects the rear property in a positive way by stopping the flow of water and soil erosion. The pool being in the wrong location by six (6") inches does not affect the bordering neighboring properties and does not cause public harm.

There is no public harm caused by the added concrete decking as it affects none of the neighboring properties. The pool was done professionally with modern equipment. The concrete was beautifully done with stamped concrete and it enhances the beauty of the property, as well as the neighborhood. The only detriment to the public is looking at the ugly orange construction fence and unimproved landscaping.

(5). *The grant of the variance will not substantially impair the intent and purpose of the municipal zone plan and ordinance.* The variances do not affect any other property. They do not affect the zoning plan or the zoning ordinances. The property is a corner lot that saddles an owner with specific restrictions. It is a wedge-shaped yard that is short of parallel on both sides of the property. This makes anything they want to do to the property difficult. The unique shape and nature of the property and the forty (40) foot deep lot make this the type of yard that begs for variance relief.

11. Chris Chrystanthou, a representative of Pool Town testified as follows:

a. When you install a pool, you inadvertently change the existing grade by putting the pool in the ground. You add another structure that is permanent that changes the grade of the yard in every single direction where you have surrounding land.

b. He acknowledged that the Pool was installed in the wrong location.

c. Corner lots present a challenge in locating a pool. There is always going to be a "Margin of Error". The error was not done intentionally and that it was not great enough to cause different grading than what was in the original plan.

d. When you put in the pool, you have an area in the ground and above the ground. You reconcile that with landscaping and drainage. This is always necessary due to grading problems of putting a pool.

12. Objector's Professional Planner, Veena Sewant, SICP, PP, testified on the Objector's behalf as follows:

a. The Objector called out an additional variance from the provisions of

LDO Section 25:403 that accessory structures should not be built in a front yard. This is a corner lot and the dimensional requirement is a setback from a side street of ten (10) feet. Section 25.403 requires that pool equipment and a filter be set back fifty (50) feet from Bentwood Drive. When two dimensional sections contradict, the more stringent restriction should control.

b. The subject property is not undersized. The minimum lot size required for the R-30 Zone is 10,000 square feet, whereas the existing lot measures approximately 12,650 square feet. The minimum lot width required for the zone is 100 feet, where the lot is 117 feet.

c. The requested variances are not a result of the hardship created by an undersized lot, or exceptional narrowness, shallowness, or shape of the property, or by reason of exceptional topographic conditions or features uniquely affecting the subject property, or by reason of an extraordinary and exceptional situation uniquely affecting the subject property.

d. A pool that fully complies with the setback requirements of the R-30 Zone can be easily constructed without any variances, as evidenced by the Zoning Permit issued to the applicants on May 15, 2019. The hardship created in this instance were in fact self-created as evidenced by the initial zoning permit issued where no variances were required or requested.

e. A C(2) variance requires balancing of the benefits and detriments from the grant of the variance. In this case, the benefits (positive criteria) are solely to the individual property owner. There are no benefits to the neighborhood or community. Given the absence of any positive criteria/benefits to the community, this project fails the balancing test. The C(2) analysis, therefore, does not apply.

f. The applicants are unable to demonstrate that any of the purposes of the MLUL, as set forth in N.J.S.A. 40:55D-2, would be advanced by the granting of the variances being requested. The proposed inground pool does not advance the purpose of the Municipal Land Use Law and works against one of the main purposes of Municipal Land Use Law which is to: *To promote a desirable visual environment*

through creative development techniques and good civic design and arrangement. The proposed pool in fact creates a negative visual impact.

g. A review of the Google map imagery, indicates that there are other properties within the neighborhood that have pools within the rear yards. When measured, the aerial photos demonstrate that these pools comply with the setback requirements of the zone and have rear yard setbacks that range from 12 to 15 feet. Clearly, the proposed 9.5-foot rear yard setback between the water's edge and the rear property line is inadequate and not consistent with the setback requirements of other pools in the neighborhood

h. Based on the survey that was submitted at the time the zoning permit was issued, there was to be a setback of 10 feet between the pool equipment and the rear property line along Lot 17. Based on the as-built survey the setback is approximately 9.6', which is significantly closer to my client's property. The equipment is easily visible from the neighbor's property. This creates a negative visual impact on the surrounding properties.

i. Most municipalities do not permit construction of a retaining wall on a property line. The reason for doing so is that typically the footings of such structures encroach into the neighbor's property. Additionally, when maintaining such structures, you do not want to intrude into the neighbor's property. The retaining wall constructed by the Applicants was not depicted on the plan submitted for the initial zoning permit. It appears therefore that the applicant chose to ignore his own plans and to construct the retaining wall although it was never approved by the municipality. The retaining wall that was built on the property line is in violation of the Township's LDO. As it was built up to the rear property line to Lot 17, any maintenance and upkeep on the wall would require access across Lot 17. Therefore, the zero-foot setback for the existing/proposed retaining wall creates an undue hardship for the adjacent property owner. Finally, the other properties that have pools within the neighborhood do not appear to have retaining walls and the fences and pools are at ground level and not elevated as is being requested by the Applicant.

j. The Applicants have failed to meet the positive criteria for granting a C(2) variance. They failed to demonstrate that any of purposes of the MLUL would be advanced by the granting of such a variance. The granting of any of the variances being requested would also be materially detrimental to the public welfare of neighbors and the community since the pool triggers four setback variances and that the proposed/constructed pool adversely affects the neighboring properties. The project does not create any positive impacts on the surrounding properties/neighborhood. In fact, the proposed setback variances create a negative impact. The pool equipment within the second front yard is devoid of any landscape screening and is aesthetically not pleasing.

k. The requested variances cannot be granted without substantial detriment to the public good and the benefits of this deviation would not outweigh any detriment as there are no benefits associated with the project to anyone expect the property owner. Most importantly, the granting of these variances will substantially impair the intent and purpose of the zone plan and zoning ordinance.

CONCLUSIONS OF LAW

1. The Planning Board of the Township of Bordentown has jurisdiction over the within variance application pursuant to the provisions of N.J.S.A. 40:55D-70(c) and LDO Section 27:702.C, as amended by Township Ordinance 2020-01.

2. A fully compliant pool can be constructed on the subject property without the need for any variances. The Applicants originally proposed a plan and was issued a Zoning Permit to construct a pool without a variance.

3. Through mistake or negligence on the part of the Pool Contractor, and/or the Applicants inattention, the pool was installed in a location that deviated from the approved plan resulting in the pool, retaining wall and pool equipment to be in violation of several setback and buffer requirements under the LDO. Additionally, it resulted in the elevation of the property to

result in a steep incline in the rear of the property causing the ground water to flow toward Lot 17 in the rear, instead of toward Bentwood Drive as originally proposed.

4. The Applicants installed an additional two (2') feet of concrete decking around the pool in disregard of the approved plan which resulted in violations of several setbacks and buffers. Additionally, it contributed to the change in course of the ground water run-off toward Lot 17 in the rear, instead of toward Bentwood Drive.

5. To address the altered course of ground water run-off toward the rear of the property, the Applicants unilaterally constructed a thirty-nine (39') foot long retaining wall heights ranging from 16.5 inches to 33.5 inches along the property line with Lot 17 without submitting revised plans or seeking any necessary approvals from the Township.

6. The Board finds that the Applicants have failed to meet the Burden of Proof for a C(1) variance. The hardship claimed by the Applicants is that the deviations are the result of the acts or omissions of the Applicants or their contractors. The lot conforms with the zoning ordinance requirements for the R-30 zone as to size and footage. Its shape is not so exceptional to warrant the variances request. Applicants were issued a Zoning Permit for a plan where the pool could be constructed without the necessity of a variance. The hardships of which the Applicants complain are self-imposed or self-created, and not the result of the unique characteristics of the property.

7. The residents of Bordentown Township have a right to rely on the valid provisions of their zoning ordinances and have a right to demand its protection. No matter how minor a deviation may appear, the Board cannot overlook such deficiency merely because it arose through a mistake, negligence or inattention of a property owner and their contractors.

8. An Applicant may not, after the construction is practically completed, belatedly come to the Township to request approval of a new plan because of an alleged mistake by the owner or any of his professionals, contractors, or employees. To allow otherwise would allow applicants to use a claim of mistake as nothing more than a guise for evading the legal requirements of the LDO.

9. The Board finds that the Applicants have failed to meet the Burden of Proof for a C(2) variance. The proofs offered to meet the positive criteria are solely for benefits to the Applicants' property. While there was a suggestion that the construction of a retaining wall to remedy drainage and erosion issues caused by the Applicant's pool contractor failure to install in the appropriate location, as well as the installation of additional concrete decking in excess of what had been proposed is beneficial to the neighboring properties, those remedies would not have been necessary had the Applicants followed the approve plan. There are no benefits to the neighborhood or community.

10. The Applicants have failed to demonstrate that any of the purposes of the Municipal Land Use Law would be advanced by the granting of the variances requested.

11. The proposed variances are inconsistent with the overall characteristics of the neighborhood. The Applicants seek six or seven variances for a pool which had been proposed and approved for a Zoning Permit requiring no variances. To grant variances would be materially detrimental to the public welfare of the neighborhood and the community. The Applicants have failed to establish the negative criteria for granting any of the requested variances.

12. The Board finds that the Applicant has failed to sustain the burden of proof to support the granting of either a C(1) or C(2) variance for any of the requested variances and the Request for Relief must be denied.

NOW, THEREFORE, BE IT RESOLVED, that at its Regular Meeting on July 23, 2020, the Planning Board of the Township of Bordentown hereby denies the Application of Mark and Alicia Palumbo seeking Bulk Variance relief for an installed in-ground swimming pool, Landscape Retaining Wall, Setbacks and Buffers.

A Motion was made by Vice Chairman Hirschfeld and seconded by Mr. Fairlie, and voted on as follows:

Ayes (7)	Esser, Fairlie, Vice Chairman Hirschfeld, Deputy Mayor Holliday, Holston, Mayor Benowitz and Chairman Chidley
Nays (0)	None
Abstentions (0)	None
Absent (4)	Grayson, Bowyer, Schiano, D'Angelo
Participated (0)	None

This is a Resolution to memorialize the action taken by the Planning Board of the Township of Bordentown at a regular meeting held on August 13, 2020.

GEORGE CHIDLEY, *Chairman*

Attest:

_____
MICHAEL THEOKAS, Board Secretary

Date Adopted: July 23, 2020
Date Memorialized: August 13, 2020
Motion:
Second:
For Adoption:
Against:
Abstentions:
Absent:
Not Voting:

CERTIFICATION

I hereby certify that the foregoing is a true copy of a Resolution duly adopted by the Bordentown Township Planning Board at a public meeting on August 13, 2020.

_____
MICHAEL THEOKAS, *Board Secretary*

PLANNING BOARD OF TOWNSHIP OF BORDENTOWN
RESOLUTION #P-2020-20

RESOLUTION RECOMMENDING ADOPTION OF ORDINANCE #2020-15 AMENDING CHAPTER 25 OF THE LAND USE DEVELOPMENT ORDINANCE OF THE TOWNSHIP OF BORDENTOWN

WHEREAS, the Mayor and Township Committee of the Township of Bordentown authorized the Planning Board to undertake a review of proposed Bordentown Township Ordinance #2020-13, which Ordinance will amend Chapter 25 of the Township Code to provide assurances that very low-, low- and moderate-income housing units are created with controls on affordability in accordance with the Uniform Housing Affordability Controls and that very low-, low- and moderate income households shall occupy those units; and

WHEREAS, the Municipal Land Use Law, N.J.S.A. 40:55D-26 and 40:55D-64, requires that the Planning Board review the proposed ordinance, prepare and report its findings to the Governing Body; and

WHEREAS, said statutes do further require of the Planning Board shall include an identification of any provision or provisions set forth in the Proposed Amended Ordinance which is or are inconsistent with the Township Master Plan and contain recommendations concerning those inconsistencies and any other matters as the Board deems appropriate; and

WHEREAS, on December 19, 2019, the Superior Court of New Jersey entered a Conditional Order of Judgment of Compliance and Repose ("JOR") approving the Township of Bordentown Fair Share Plan in *In the Matter of the Application of the Township of Bordentown, County of Burlington*, Superior Court of New Jersey, Law Division-Burlington County, Docket #BUR-L-1579-15; and

WHEREAS, in compliance with the Court Approved Affordable Housing Plan, Board amended the Master Plan and adopted an Amended Housing Element and Fair Share Plan ("HEFSP"), dated July, 31, 2020; and

WHEREAS, the Board conducted a review of the Proposed Amended Ordinance at its regular meeting on August 13, 2020; and

WHEREAS, due to the health emergency and limitations imposed by Executive Orders 103 and 107, the Board's regular meeting was conducted using the ZOOM video conferencing platform which permitted members of the public to attend via video conference, telephone conference call and e-mail; and

WHEREAS, the Board considered the written testimony of the Township's Professional Planning consultant, Susan Gruel, P.P. of Heyer, Gruel & Associates and received comments from Board Members.

NOW, THEREFORE BE IT RESOLVED, by the Planning Board of the Township of Bordentown that the proposed amendment to the Land Development Ordinance is consistent with the Township of Bordentown Master Plan; and

BE IT FURTHER RESOLVED, that the Planning Board of the Township of Bordentown directs the Board Secretary to forthwith transmit it findings to the Township Clerk of the Township of Bordentown pursuant to the provisions of the Municipal Land Use Law for consideration by Mayor and Township Committee of the Township of Bordentown.

This is a Resolution to memorialize the action taken by the Planning Board of the Township of Bordentown at a regular meeting held on August 13, 2020.

_____

GEORGE CHIDLEY, *Chairman*

Attest:

_____

MICHAEL THEOKAS, *Board Secretary*

Date Adopted : August 13, 2020
Date Memorialized : August 13, 2020
Motion:
Second:
For Adoption:
Against:
Abstentions:
Absent:
Not Voting:

CERTIFICATION

I hereby certify that the foregoing is a true copy of a Resolution duly adopted by the Bordentown Township Planning Board at a public meeting on August 13, 2020.

_____

MICHAEL THEOKAS, *Board Secretary*

PLANNING BOARD OF TOWNSHIP OF BORDENTOWN
RESOLUTION #P-2020-21

RESOLUTION RECOMMENDING ADOPTION OF ORDINANCE #2020-16 AMENDING CHAPTER 25 OF THE LAND USE DEVELOPMENT ORDINANCE OF THE TOWNSHIP OF BORDENTOWN

WHEREAS, the Mayor and Township Committee of the Township of Bordentown authorized the Planning Board to undertake a review of proposed Bordentown Township Ordinance #2020-16, which Ordinance will amend Chapter 25 of the Township Code to create the new land use zone entitled "AH-D Affordable Housing Duplex Zone, Lots 12.02, 13 and 14 of Block 66 on the Township of Bordentown Tax Map will be zoned AH-D to allow for construction of five (5) duplexes by Habitat for Humanity; and

WHEREAS, the Municipal Land Use Law, N.J.S.A. 40:55D-26 and 40:55D-64, requires that the Planning Board review the proposed ordinance, prepare and report its findings to the Governing Body; and

WHEREAS, said statutes does further require of the Planning Board shall include an identification of any provision or provisions set forth in the Proposed Amended Ordinance which is or are inconsistent with the Township Master Plan and contain recommendations concerning those inconsistencies and any other matters as the Board deems appropriate; and

WHEREAS, on December 19, 2019, the Superior Court of New Jersey entered a Conditional Order of Judgment of Compliance and Repose ("JOR") approving the Township of Bordentown Fair Share Plan in *In the Matter of the Application of the Township of Bordentown, County of Burlington*, Superior Court of New Jersey, Law Division-Burlington County, Docket #BUR-L-1579-15; and

WHEREAS, in compliance with the Court Approved Affordable Housing Plan, the Board amended the Master Plan and adopted an Amended Housing Element and Fair Share Plan ("HEFSP"), dated July, 31, 2020; and

WHEREAS, the Board conducted a review of the Proposed Amended Ordinance at its regular meeting on August 13, 2020; and

WHEREAS, due to the health emergency and limitations imposed by Executive Orders 103 and 107, the Board's regular meeting was conducted using the ZOOM video conferencing platform which permitted members of the public to attend via video conference, telephone conference call and e-mail; and

WHEREAS, the Board considered the written testimony of the Township's Professional Planning consultant, Susan Gruel, P.P. of Heyer, Gruel & Associates and received comments from Board Members.

NOW, THEREFORE BE IT RESOLVED, by the Planning Board of the Township of Bordentown that the proposed amendment to the Land Development Ordinance is consistent with the Township of Bordentown Master Plan; and

BE IT FURTHER RESOLVED, that the Planning Board of the Township of Bordentown directs the Board Secretary to forthwith transmit it findings to the Township Clerk of the Township of Bordentown pursuant to the provisions of the Municipal Land Use Law for consideration by Mayor and Township Committee of the Township of Bordentown.

This is a Resolution to memorialize the action taken by the Planning Board of the Township of Bordentown at a regular meeting held on August 13, 2020.

GEORGE CHIDLEY, *Chairman*

Attest:

MICHAEL THEOKAS, *Board Secretary*

Date Adopted : August 13, 2020
Date Memorialized : August 13, 2020
Motion:
Second:
For Adoption:
Against:
Abstentions:
Absent:
Not Voting:

CERTIFICATION

I hereby certify that the foregoing is a true copy of a Resolution duly adopted by the Bordentown Township Planning Board at a public meeting on August 13, 2020.

MICHAEL THEOKAS, *Board Secretary*

PLANNING BOARD OF TOWNSHIP OF BORDENTOWN
RESOLUTION #P-2020-22

RESOLUTION RECOMMENDING ADOPTION OF ORDINANCE #2020-13 AMENDING CHAPTER 25 OF THE LAND USE DEVELOPMENT ORDINANCE OF THE TOWNSHIP OF BORDENTOWN

WHEREAS, the Mayor and Township Committee of the Township of Bordentown authorized the Planning Board to undertake a review of proposed Bordentown Township Ordinance #2020-13, which Ordinance will amend the Township Land Development Ordinance Section 24.409(C) to increase the maximum height for buildings in the GC-1 and GC-II zones from twenty-five (25) and 2.5 stories to fifty (50) feet and 3 stories; and

WHEREAS, the Municipal Land Use Law, N.J.S.A. 40:55D-26 and 40:55D-64, requires that the Planning Board review the proposed ordinance, prepare and report its findings to the Governing Body; and

WHEREAS, said statutes do further require of the Planning Board shall include an identification of any provision or provisions set forth in the Proposed Amended Ordinance which is or are inconsistent with the Township Master Plan and contain recommendations concerning those inconsistencies and any other matters as the Board deems appropriate; and

WHEREAS, the Board conducted a review of the Proposed Amended Ordinance at its regular meeting on August 13, 2020; and

WHEREAS, due to the health emergency and limitations imposed by Executive Orders 103 and 107, the Board's regular meeting was conducted using the ZOOM video conferencing platform which permitted members of the public to attend via video conference, telephone conference call and e-mail; and

WHEREAS, the Board received comments from Board Members.

NOW, THEREFORE BE IT RESOLVED, by the Planning Board of the Township of Bordentown that the proposed amendment to the Land Development Ordinance is consistent with the Township of Bordentown Master Plan; and

BE IT FURTHER RESOLVED, that the Planning Board of the Township of Bordentown directs the Board Secretary to forthwith transmit it findings to the Township Clerk of the Township of Bordentown pursuant to the provisions of the Municipal Land Use Law for consideration by Mayor and Township Committee of the Township of Bordentown.

This is a Resolution to memorialize the action taken by the Planning Board of the Township of Bordentown at a regular meeting held on August 13, 2020.

GEORGE CHIDLEY, *Chairman*

Attest:

MICHAEL THEOKAS, *Board Secretary*

Date Adopted : August 13, 2020
Date Memorialized : August 13, 2020
Motion:
Second:
For Adoption:
Against:
Abstentions:
Absent:
Not Voting:

CERTIFICATION

I hereby certify that the foregoing is a true copy of a Resolution duly adopted by the Bordentown Township Planning Board at a public meeting on August 13, 2020.

MICHAEL THEOKAS, *Board Secretary*

TOWNSHIP OF BORDENTOWN

ORDINANCE 2020-15

AN ORDINANCE OF THE TOWNSHIP OF BORDENTOWN AMENDING THE GENERAL CODE OF THE TOWNSHIP OF BORDENTOWN BY REPEALING AND REPLACING SECTION 1100 OF CHAPTER 25 TO ADDRESS THE REQUIREMENTS OF THE FAIR HOUSING ACT AND THE UNIFORM HOUSING AFFORDABILITY CONTROLS (UHAC) REGARDING COMPLIANCE WITH THE TOWNSHIP'S AFFORDABLE HOUSING OBLIGATIONS

WHEREAS, the Township Committee of the Township of Bordentown, Burlington County, New Jersey, based upon the recommendations of the Township's professionals, desires to repeal and replace Section 1100 of Chapter 25 Land Development Ordinance of the Code of the Township of Bordentown to include provisions addressing Bordentown Township's constitutional obligation to provide for its fair share of very low-, low- and moderate-income housing, as directed by the Superior Court and consistent with 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, N.J.S.A.52:27D-301 et. seq.; and

WHEREAS, this Ordinance is intended to provide assurances that very low-, low- and moderate-income units ("affordable units") are created with controls on affordability over time and that very low-, low- and moderate-income households shall occupy those units; and

WHEREAS, the Bordentown Township Planning Board has prepared a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq.; and

WHEREAS, on December 10, 2019, the Township received a Conditional Judgment of Compliance and Repose from the Court subject to conditions, one of which being an amendment to the Township's Affordable Housing Ordinance; and

WHEREAS, this Ordinance implements and incorporates the Housing Element and Fair Share Plan, satisfies a condition of the Conditional Judgment of Compliance and Repose, 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 Township Committee of the Township of Bordentown, County of Burlington as follows:

Section 1. Chapter 25 Section 1100, entitled "Fair Share Housing" shall be repealed and replaced as follows:

Chapter 25 Section 1100: Affordable Housing

§25.1101 **Monitoring and Reporting Requirements.**

The Township of Bordentown shall comply with the following monitoring and reporting requirements regarding the status of the implementation of its Housing Element and Fair Share Plan:

A. Beginning on July 1, 2020, and on every anniversary of that date through July 1, 2025, the Township shall provide annual reporting of its Affordable Housing Trust Fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center (FSHC) and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs (NJDCA), Council on Affordable Housing (COAH), or Local Government Services (NJLGS). The reporting shall include an accounting of all Affordable

Housing Trust Fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.

B. Beginning on July 1, 2020, and on every anniversary of that date through July 1, 2025, the Township shall provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to Fair Share Housing Center, using forms previously developed for this purpose by COAH or any other forms endorsed by the Special Master and FSHC.

C. By July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Township will post on its municipal website, with a copy provided to FSHC, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether any mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to FSHC, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the Court regarding these issues.

D. By July 1, 2020, and every third year thereafter, as required by N.J.S.A. 52:27D-329.1, the Township will post on its municipal website, with a copy provided to FSHC, a status report as to its satisfaction of its very low-income requirements, including its family very low income requirements. Such posting shall invite any interested party to submit comments to the municipality and FSHC on the issue of whether the municipality has complied with its very low income and family very low-income housing obligations.

§25.1102 **Definitions.**

The following terms when used in this Ordinance shall have the meanings given in this Section:

"Act" means the Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.)

"Adaptable" means constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

"Administrative agent" means the entity designated by the Township to administer affordable units in accordance with this Ordinance, N.J.A.C. 5:93, and UHAC (N.J.A.C. 5:80-26).

"Affirmative marketing" means a regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

"Affordability average" means the average percentage of median income at which new restricted units in an affordable housing development are affordable to very low-, low- and moderate-income households.

"Affordable" means, a sales price or rent level that is within the means of a low- or moderate-income household as defined within N.J.A.C. 5:93-7.4, and, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

"Affordable housing development" means a development included in or approved pursuant to the Housing Element and Fair Share Plan or otherwise intended to address the Township's fair share obligation, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable housing development.

"Affordable housing program(s)" means any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

"Affordable unit" means a housing unit proposed or created pursuant to the Act and approved for crediting by the Court and/or funded through an affordable housing trust fund.

"Agency" means the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1, et seq.).

"Age-restricted unit" means a housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development wherein the unit is situated are 62 years of age or older; or 2) at least 80 percent of the units are occupied by one person who is 55 years of age or older; or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as "housing for older persons" as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

"Alternative living arrangement" means a structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangements include, but are not limited to: transitional facilities for the homeless; Class A, B, C, D and E boarding homes as regulated by the State of New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

"Assisted living residence" means a facility that is licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

"Certified household" means a household that has been certified by an Administrative Agent as a very low-income, low-income household or moderate-income household.

"COAH" means the Council on Affordable Housing, as established by the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301, et seq.).

"DCA" means the State of New Jersey Department of Community Affairs.

"Deficient housing unit" means a housing unit with health and safety code violations that requires the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

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

"Development" means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to N.J.S.A. 40:55D-1, et seq.

"Inclusionary development" means a development containing both affordable units and market rate units. This term includes, but is not limited to: new construction, the conversion of a non-residential structure to residential use and the creation of new affordable units through the gut rehabilitation or reconstruction of a vacant residential structure.

"Low-income household" means a household with a total gross annual household income equal to 50 percent or less of the regional median household income by household size.

"Low-income unit" means a restricted unit that is affordable to a low-income household.

"Major system" means the primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and load bearing structural systems.

"Market-rate units" means housing not restricted to very low-, low- and moderate-income households that may sell or rent at any price.

"Median income" means the median income by household size for the applicable housing region, as adopted annually by COAH or a successor entity approved by the Court.

"Moderate-income household" means a household with a total gross annual household income in excess of 50 percent but less than 80 percent of the regional median household income by household size.

"Moderate-income unit" means a restricted unit that is affordable to a moderate-income household.

"Non-exempt sale" means any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a class A beneficiary and the transfer of ownership by court order.

"Random selection process" means a process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery).

"Regional asset limit" means the maximum housing value in each housing region affordable to a four-person household with an income at 80 percent of the regional median as defined by duly adopted Regional Income Limits published annually by COAH or a successor entity.

"Rehabilitation" means the repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

"Rent" means the gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

"Restricted unit" means a dwelling unit, whether a rental unit or an ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1 et. seq, as amended and supplemented, but does not include a market-rate unit financed under UHORP or MONI.

"UHAC" means the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26-1, et seq.

"Very low-income household" means a household with a total gross annual household income equal to or less than 30 percent of the regional median household income by household size pursuant to the New Jersey Fair Housing Act of 1985, N.J.S.A.52:27D-301 et. seq.

"Very low-income unit" means a restricted unit that is affordable to a very low-income household pursuant to the New Jersey Fair Housing Act of 1985, N.J.S.A.52:27D-301 et. seq.

"Weatherization" means building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for purposes of a rehabilitation program.

§25.1103 **Applicability.**

A. The provisions of this Ordinance shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created within the Township of Bordentown pursuant to the Township's most recently adopted Housing Element and Fair Share Plan.

B. This Ordinance shall apply to all developments that contain very low-, low- and moderate-income housing units, including any currently unanticipated future developments that will provide very low-, low- and moderate-income housing units, and also including projects funded with Low Income Housing Tax Credits.

C. Projects receiving federal Low Income Housing Tax Credit financing shall comply with the income and bedroom distribution requirements of UHAC at N.J.A.C. 5:80-26.3 (with the exception that the UHAC requirement for 10% of the affordable units in rental projects being required to be at 35% of median income be modified as required by the statutory requirement at N.J.S.A. 52:27D-329.1 to 13% of affordable units in such projects shall be required to be at 30% of median income) and the length of the affordability controls applicable to such projects shall be not less than a 30-year compliance period plus a 15-year extended-use period.

§25.1104 **Alternative Living Arrangements.**

A. The administration of an alternative living arrangement shall be in compliance with N.J.A.C. 5:93-5.8 and UHAC, with the following exceptions:

   1. Affirmative marketing (N.J.A.C. 5:80-26.15), provided, however, that the units or bedrooms may be affirmatively marketed by the provider in accordance with an alternative plan approved by the Court;

   2. Affordability average and bedroom distribution (N.J.A.C. 5:80-26.3).

B. With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least 30-year controls on affordability in accordance with UHAC, unless an alternative commitment is approved by the Court.

C. The service provider for the alternative living arrangement shall act as the Administrative Agent for the purposes of administering the affirmative marketing and affordability requirements for the alternative living arrangement.

§25.1105 **Phasing Schedule for Inclusionary Zoning.**

In inclusionary developments, the following schedule for the issuance of certificates of occupancy for the required affordable housing units relative to the issuance of certificates of occupancy for the permitted market units shall be followed:

Maximum Percentage of Market-Rate Units Completed (COs Issued)	Minimum Percentage of Low- and Moderate-Income Units Completed (COs Issued)
25	0
25+1	10

50	50
75	75
90	100

§25.1106 **New Construction.**

A. Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:

1. The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit. At least 13 percent of all restricted rental units shall be very low-income units (affordable to a household earning 30 percent or less of regional median income by household size). The very low-income units shall be counted as part of the required number of low-income units within the development.

2. In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be very low or low-income units.

3. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:

   a. The combined number of efficiency and one-bedroom units shall be no greater than 20 percent of the total low- and moderate-income units;

   b. At least 30 percent of all low- and moderate-income units shall be two-bedroom units;

   c. At least 20 percent of all low- and moderate-income units shall be three-bedroom units; and

   d. The remaining units may be allocated among two- and three-bedroom units at the discretion of the developer.

4. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted very low-, low- and moderate-income units within the inclusionary development. This standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

B. Accessibility Requirements:

1. The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free SubCode, N.J.A.C. 5:23-7 and the following:

2. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:

   a. An adaptable toilet and bathing facility on the first floor; and

   b. An adaptable kitchen on the first floor; and

   c. An interior accessible route of travel on the first floor; and

   d. An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and

e. If not all of the foregoing requirements in b.1) through b.4) can be satisfied, then an interior accessible route of travel must be provided between stories within an individual unit, but if all of the terms of paragraphs b.1) through b.4) above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and

f. An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a, et seq.) and the Barrier Free SubCode, N.J.A.C. 5:23-7, or evidence that Bordentown Township has collected funds from the developer sufficient to make 10 percent of the adaptable entrances in the development accessible:

1) Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.

2) To this end, the builder of restricted units shall deposit funds within the Township of Bordentown's Affordable Housing Trust Fund sufficient to install accessible entrances in 10 percent of the affordable units that have been constructed with adaptable entrances.

3) The funds deposited under paragraph 6)b) above shall be used by the Township of Bordentown for the sole purpose of making the adaptable entrance of an affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.

4) The developer of the restricted units shall submit a design plan and cost estimate to the Construction Official of the Township of Bordentown for the conversion of adaptable to accessible entrances.

5) Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free SubCode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Township's Affordable Housing Trust Fund in care of the Township Treasurer who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately earmarked.

g. Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is "site impracticable" to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free SubCode, N.J.A.C. 5:23-7.

C. Design:

1. In inclusionary developments, to the extent possible, very low-, low- and moderate-income units shall be integrated with the market units.

2. In inclusionary developments, very low-, low- and moderate-income units shall have access to all of the same common elements and facilities as the market units.

D. Maximum Rents and Sales Prices:

1. In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC, utilizing the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD and using the calculation set forth below. Income limits for all affordable units that are created in the Township for which income limits are not already established through a federal program exempted from the UHAC pursuant to N.J.A.C 5:80-26.1 shall be updated by the Township annually within 30 days of the

publication of determinations of median income by the Department of Housing and Urban Development ("HUD") as follows:

a. Regional income limits shall be established for the region within which the Township is located based on the median income by household size, which shall be established by a regional weighted average of uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of hour is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within a housing region is summed. The sum is divided by the estimated total households form the most recent decennial Census in the Township's housing region. This quotient represents the original weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low-income unit for a household of four shall be 30 percent of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.

b. The income limits are the result of applying the percentages set forth in paragraph (i) above to HUD's determination of median income for the fiscal year 2019 and shall be utilized until the Township updates the income limits after HUD has published revised determinations of median income for the next fiscal year.

c. The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)(3) shall be calculated by the Township annually by taking the percentage increase of the income limits calculated pursuant to paragraph (i) above over the previous year's income limits and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.

d. The resale prices of owner-occupied very low-, low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region determined pursuant to the above methodology. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.

e. The rent levels of very-low-, low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the Northeast Urban Area, upon its publication for the prior calendar year. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low income housing tax credit regulations shall be indexed pursuant to the regulations governing low income housing tax credits.

2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of median income, and the average rent for restricted rental units shall be affordable to households earning no more than 52 percent of median income.

3. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units, provided that at least 13

percent of all low- and moderate-income rental units shall be affordable to very low-income households, which very low-income units shall be part of the low-income requirement.

4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent of median income, and each affordable development must achieve an affordability average of 55 percent for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different sales prices for each bedroom type, and low-income ownership units must be available for at least two different sales prices for each bedroom type.

5. In determining the initial sales prices and rent levels for compliance with the affordability average requirements for restricted units other than assisted living facilities and age-restricted developments, the following standards shall be used:

   a. A studio shall be affordable to a one-person household;

   b. A one-bedroom unit shall be affordable to a one- and one-half-person household;

   c. A two-bedroom unit shall be affordable to a three-person household;

   d. A three-bedroom unit shall be affordable to a four and one-half person household; and

   e. A four-bedroom unit shall be affordable to a six-person household.

6. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted developments, the following standards shall be used:

   a. A studio shall be affordable to a one-person household;

   b. A one-bedroom unit shall be affordable to a one- and one-half-person household; and

   c. A two-bedroom unit shall be affordable to a two-person household or to two one-person households.

   d. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28 percent of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.

7. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate size household, including an allowance for tenant paid utilities, as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.

8. The price of owner-occupied very low-, low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the Administrative Agent be lower than the last recorded purchase price.

9. The rents of very low-, low- and moderate-income units may be increased annually based on the permitted percentage increase in the Housing Consumer Price Index for the Northeast Urban Area. This increase shall not exceed nine percent in any one year. Rent increases for units constructed pursuant to low- income housing tax credit regulations shall be indexed pursuant to the regulations governing low- income housing tax credits.

§25.1107 **Utilities.**

A. Affordable units shall utilize the same type of heating source as market units within an inclusionary development.

B. Tenant-paid utilities included in the utility allowance shall be set forth in the lease and shall be consistent with the utility allowance approved by HUD for the Section 8 program.

§25.1108 **Occupancy Standards.**

In referring certified households to specific restricted units, the Administrative Agent shall, to the extent feasible and without causing an undue delay in the occupancy of a unit, strive to:

1. Provide an occupant for each bedroom;
2. Provide children of different sexes with separate bedrooms;
3. Provide separate bedrooms for parents and children; and
4. Prevent more than two persons from occupying a single bedroom.

§25.1109 **Control Periods for Restricted Ownership Units and Enforcement Mechanisms.**

A. Control periods for newly constructed restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, except as modified by the terms of the settlement agreement between the Township of Bordentown and Fair Share Housing Center (FSHC), as said settlement agreement may be further amended and supplemented, and each newly constructed restricted ownership unit shall remain subject to the requirements of this Ordinance for a period of at least thirty (30) years, until Bordentown Township takes action to release the unit from such requirements; prior to such action, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, except as modified by the terms of the settlement agreement between the Township of Bordentown and Fair Share Housing Center (FSHC), as said settlement agreement may be further amended and supplemented.

B. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.

C. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.

D. At the time of the initial sale of the unit, the initial purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the restrictions set forth in this Ordinance, an amount equal to the difference between the unit's non-

restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit

E. The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.

F. A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all Code standards upon the first transfer of title following the removal of the restrictions provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

§25.1110 **Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices.**

Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:

1. The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.

2. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.

3. The master deeds of inclusionary developments shall provide no distinction between the condominium or homeowner association fees and special assessments paid by very low-, low- and moderate-income purchasers and those paid by market purchasers.

4. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of approved capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom. See Section 13.

§25.1111 **Buyer Income Eligibility.**

A. Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50 percent of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80 percent of median income.

B. Notwithstanding the foregoing, the Administrative Agent may, upon approval by the Township Committee, and subject to the Court's approval, permit a moderate-income purchaser to buy a low-income unit if and only if the Administrative Agent can demonstrate that there is an insufficient number of eligible low-income purchasers in the housing region to permit prompt occupancy of the unit and all other reasonable efforts to attract a low income purchaser, including pricing and financing incentives, have failed. Any such low-income unit that is sold to a moderate-income household shall retain the required pricing and pricing restrictions for a low-income unit.

C. A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year.

D. The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit.

and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33 percent of the household's eligible monthly income.

§25.1112 **Limitations on Indebtedness Secured by Ownership Unit; Subordination.**

A. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the Administrative Agent for a determination in writing that the proposed indebtedness complies with the provisions of this Section, and the Administrative Agent shall issue such determination prior to the owner incurring such indebtedness.

B. With the exception of First Purchase Money Mortgages, neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95 percent of the maximum allowable resale price of the unit, as such price is determined by the Administrative Agent in accordance with N.J.A.C.5:80-26.6(b).

§25.1113 **Capital Improvements To Ownership Units.**

A. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements made since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household or that add an additional bathroom. In no event shall the maximum sales price of an improved housing unit exceed the limits of affordability for the larger household.

B. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Administrative Agent at the time of the signing of the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price, which shall be subject to 10-year, straight-line depreciation, has been approved by the Administrative Agent. Unless otherwise approved by the Administrative Agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at the time of or as a condition of resale.

§25.1114 **Control Periods for Restricted Rental Units.**

A. Control periods for newly constructed restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, except as modified by the terms of the settlement agreement between the Township of Bordentown and Fair Share Housing Center (FSHC), as such settlement agreement may be further amended and supplemented, and each newly constructed restricted rental unit shall remain subject to the requirements of this Ordinance for a period of at least thirty (30) years, until Bordentown Township takes action to release the unit from such requirements. Prior to such action, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, except as modified by the terms of the settlement agreement between the Township of Bordentown and Fair Share Housing Center (FSHC), as such settlement agreement may be further amended and supplemented.

B. Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Burlington. A copy

of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.

C. A restricted rental unit shall remain subject to the affordability controls of this Ordinance despite the occurrence of any of the following events:

1. Sublease or assignment of the lease of the unit;

2. Sale or other voluntary transfer of the ownership of the unit; or

3. The entry and enforcement of any judgment of foreclosure on the property containing the unit.

§25.1115 **Rent Restrictions for Rental Units; Leases.**

A. A written lease shall be required for all restricted rental units and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.

B. No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.

C. Application fees (including the charge for any credit check) shall not exceed five percent of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.

D. No rent control ordinance or other pricing restriction shall be applicable to either the market units or the affordable units in any development in which at least 15% of the total number of dwelling units are restricted rental units in compliance with this Ordinance.

§25.1116 **100% Affordable Projects.**

A. All 100% affordable projects, including projects funded through Low Income Housing Tax Credits, shall comply with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et. seq., except as modified by the terms of the settlement agreement executed between the Township of Bordentown and Fair Share Housing Center (FSHC), as such settlement agreement may be further amended and supplemented. All such projects shall be required to have an initial thirty (30) year affordability control period.

§25.1117 **Tenant Income Eligibility.**

A. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:

1. Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30 percent of the regional median household income by household size.

2. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of the regional median household income by household size.

3. Moderate-income rental units shall be reserved for households with a gross household income less than 80 percent of the regional median household income by household size.

B. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income household, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C.

5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:

1. The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;

2. The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;

3. The household is currently in substandard or overcrowded living conditions;

4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or

5. The household documents reliable anticipated third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.

C. The applicant shall file documentation sufficient to establish the existence of the circumstances in 1.a. through 2.e. above with the Administrative Agent, who shall counsel the household on budgeting.

§25.1118 **Municipal Housing Liaison.**

A. There is hereby created the position of Municipal Housing Liaison. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for Bordentown Township, including the following responsibilities which may <u>not</u> be contracted out to the Administrative Agent:

1. Serving as Bordentown Township's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;

2. Monitoring the status of all restricted units in Bordentown Township's Fair Share Plan;

3. Compiling, verifying, submitting and posting all monitoring reports as required by the Court and by this Ordinance;

4. Coordinating meetings with affordable housing providers and Administrative Agents, as needed; and

5. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing at least annually and more often as needed.

B. The Township of Bordentown shall appoint a specific municipal employee to serve as a Municipal Housing Liaison responsible for overseeing the Township's affordable housing program, including overseeing the administration of affordability controls on the affordable units and the affirmative marketing of available affordable units in accordance with the Township's Affirmative Marketing Plan; fulfilling monitoring and reporting requirements; and supervising Administrative Agent(s). Bordentown Township shall adopt a Resolution appointing the person to fulfill the position of Municipal Housing Liaison. The Municipal Housing Liaison shall be appointed by the governing body and may be a full or part time municipal employee.

C. Subject to the approval of the Court, the Township of Bordentown shall designate one or more Administrative Agent(s) to administer and to affirmatively market the affordable units constructed in the Township in accordance with this Ordinance. The Municipal Housing Liaison shall supervise the work of the Administrative Agent(s).

§25.1119 **Administrative Agent.**

An Administrative Agent may either be an independent entity serving under contract to and reporting to the municipality, or the municipality itself, through a designated municipal employee, department, board, agency or committee, pursuant to N.J.A.C. 5:80-26.14(c). ***The fees of the Administrative Agent shall be paid by the owners of the affordable units for which the services of the Administrative Agent are required.*** The Administrative Agent shall be qualified through a training program sponsored by the Affordable Housing Professionals of New Jersey before assuming the duties. The Administrative Agent shall perform the duties and responsibilities of an Administrative Agent as set forth in UHAC, including those set forth in Sections 5:80-26.14, 16 and 18 thereof, which includes:

A. Affirmative Marketing:

1. Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the Township of Bordentown and the provisions of N.J.A.C. 5:80-26.15; and

2. Providing counseling or contracting to provide counseling services to very low-, low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

B. Household Certification:

1. Soliciting, scheduling, conducting and following up on interviews with interested households;

2. Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;

3. Providing written notification to each applicant as to the determination of eligibility or non-eligibility;

4. Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendices J and K of N.J.A.C. 5:80-26.1 et seq.;

5. Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located;

6. Employing a random selection process as provided in the Affirmative Marketing Plan of the Township of Bordentown when referring households for certification to affordable units; and

7. Notifying the following entities of the availability of affordable housing units in the Township of Bordentown: Fair Share Housing Center, the Latino Action Network, Willingboro NAACP, Southern Burlington County NAACP, Supportive Housing Association, and the New Jersey Housing Resource Center.

C. Affordability Controls:

1. Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;

2. Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;

3. Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the Burlington County Register of Deeds or Burlington County Clerk's office after the termination of the affordability controls for each restricted unit;

4. Communicating with lenders regarding foreclosures; and

5. Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.

D. Resales and Re-rentals:

1. Instituting and maintaining an effective means of communicating information between owners and the Administrative Agent regarding the availability of restricted units for resale or re-rental; and

2. Instituting and maintaining an effective means of communicating information to low- (or very low-) and moderate-income households regarding the availability of restricted units for resale or re-rental.

E. Processing Requests from Unit Owners:

1. Reviewing and approving requests for determination from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this Ordinance;

2. Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air conditioning systems;

3. Notifying the municipality of an owner's intent to sell a restricted unit; and

4. Making determinations on requests by owners of restricted units for hardship waivers.

F. Enforcement:

1. Securing annually from the municipality a list of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;

2. Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent;

3. Posting annually, in all rental properties (including two-family homes), a notice as to the maximum permitted rent together with the telephone number of the Administrative Agent where complaints of excess rent or other charges can be made;

4. Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;

5. Establishing a program for diverting unlawful rent payments to the municipality's Affordable Housing Trust Fund; and

6. Creating and publishing a written operating manual for each affordable housing program administered by the Administrative Agent, to be approved by the Township Committee and the

Court, setting forth procedures for administering the affordability controls. The Operating Manual(s) shall be available for public inspection in the office of the Township Clerk, in the office of the Municipal Housing Liaison, and in the office(s) of the Administrative Agent(s).

G. Additional Responsibilities:

1. The Administrative Agent shall have the authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.

2. The Administrative Agent shall prepare monitoring reports for submission to the Municipal Housing Liaison in time to meet the Court-approved monitoring and reporting requirements in accordance with the deadlines set forth in this Ordinance.

3. The Administrative Agent shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing at least annually and more often as needed.

§25.1120 **Affirmative Marketing Requirements.**

A. The Township of Bordentown shall adopt by resolution an Affirmative Marketing Plan, subject to approval of the Court, that is compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.

B. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan is intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs marketing activities toward Housing Region 5 and is required to be followed throughout the period of restriction.

C. The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in Housing Region 5, comprised of Camden, Gloucester, and Burlington Counties.

D. The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Program, including initial sales and rentals and resales and re-rentals. The Administrative Agent designated by the Township of Bordentown shall implement the Affirmative Marketing Plan to assure the affirmative marketing of all affordable units.

E. In implementing the Affirmative Marketing Plan, the Administrative Agent shall provide a list of counseling services to very low-, low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

F. The Affirmative Marketing Plan shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Plan, the Administrative Agent shall consider the use of language translations where appropriate.

G. The affirmative marketing process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy.

H. Applications for affordable housing shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; the municipal administration building and the municipal library in the municipality in which

the units are located; and the developer's rental office. Applications shall be mailed to prospective applicants upon request.

I. In addition to other affirmative marketing strategies, the Administrative Agent shall provide specific notice of the availability of affordable housing units in Bordentown Township, and copies of the application forms, to the following entities: Fair Share Housing Center, the Latino Action Network, Willingboro NAACP, Southern Burlington County NAACP, Supportive Housing Association, and the New Jersey Housing Resource Center.

J. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.

§25.1121 **Enforcement of Affordable Housing Regulations.**

A. Upon the occurrence of a breach of any of the regulations governing an affordable unit by an Owner, Developer or Tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, a requirement for household recertification, acceleration of all sums due under a mortgage, recuperation of any funds from a sale in violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.

B. After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action(s) against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:

1. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation or violations of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is adjudged by the Court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the Court:

   a. A fine of not more than $500.00 per day or imprisonment for a period not to exceed 90 days, or both, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense;

   b. In the case of an Owner who has rented a very low-, low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Township of Bordentown Affordable Housing Trust Fund of the gross amount of rent illegally collected;

   c. In the case of an Owner who has rented a very low-, low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the Court.

2. The municipality may file a court action in the Superior Court seeking a judgment that would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any such judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- or moderate-income unit.

   a. The judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the very low-, low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs

of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have his right to possession terminated as well as his title conveyed pursuant to the Sheriff's sale.

b. The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the very low-, low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.

c. Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the very low-, low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.

d. If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the very low-, low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the very low-, low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.

e. Failure of the very low-, low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the municipality, with such offer to purchase being equal to the maximum resale price of the very low-, low- and moderate-income unit as permitted by the regulations governing affordable housing units.

f. The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.

§25.1122 **Appeals.**

Appeals from all decisions of an Administrative Agent appointed pursuant to this Ordinance shall be filed in writing with the Court.

Section 2. At least three copies of said full Ordinance are on file in the Office of the Municipal Clerk for public examination and acquisition. Copies are available for inspection or acquisition during regular weekday working hours and arrangements have been made for the publication of said proposed Ordinance in pamphlet or other similar form which will be available for purchase from the Township Clerk.

Section 3. This ordinance shall take effect upon final passage and publication according to law.

Section 4. The Township Clerk is hereby directed to give notice at least ten days prior to the hearing on the adoption of this Ordinance to the County Planning Board, and to all others entitled thereto pursuant to the provisions of N.J.S.A. 40:55-15. Upon adoption of this Ordinance, after public hearing thereon, the Township Clerk is further directed to publish notice of passage thereof and file a copy of this Ordinance as finally adopted with the County Planning Board as required by N.J.S.A. 40:55-16 and with the Township Tax Assessor.

Section 5. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

Section 6. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by a 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.

INTRODUCED: July 27, 2020
PUBLIC HEARING: August 14, 2020
ADOPTED:

TOWNSHIP OF BORDENTOWN

ORDINANCE No. 2020-16

AN ORDINANCE TO AMEND CHAPTER 25, LAND DEVELOPMENT ORDINANCE, OF THE BORDENTOWN TOWNSHIP CODE, TO ESTABLISH A NEW ZONING DISTRICT ENTITLED "AH-D AFFORDABLE HOUSING DUPLEX"

WHEREAS, the Township Committee of the Township of Bordentown, Burlington County, New Jersey, based upon the recommendations of the Township's professionals, desires to amend Chapter 25 Land Development Ordinance of the Code of the Township of Bordentown to create a new zone, entitled "AH-D Affordable Housing Duplex Zone" which assists in addressing Bordentown Township's constitutional obligation to provide for its fair share of very low-, low- and moderate-income housing, as directed by the Superior Court and consistent with 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, N.J.S.A.52:27D-301 et. seq.; and

WHEREAS, Bordentown Township and Fair Share Housing Center (FSHC) entered into a Settlement Agreement on June 26, 2017, which was subsequently amended on June 11, 2019, that determines the Township's affordable housing obligation and the mechanisms for how the obligation will be addressed; and

WHEREAS, on June 24, 2019, the Township passed Ordinance 2019-10 approving the purchase of Block 66 Lots 13 and 14 (179 and 181 Crosswicks Road) for affordable housing for $250,000, provided from the Township's Affordable Housing Trust Fund; and

WHEREAS, the Township purchased the property pursuant to said ordinance and proposes to utilize an additional $50,000 from the Trust Fund to demolish the existing structures; and

WHEREAS, On March 23, 2020, the Township adopted Ordinance 2020-08 authorizing the purchase of the adjacent Block 66 Lot 12.02 (183 Crosswicks Road), for $265,000 for the development of affordable housing in conjunction with Lots 13 and 14; and

WHEREAS, the Conditional Order of Judgement of Compliance and Repose, dated December 10, 2019, includes the Habitat for Humanity Site as one of the mechanisms to satisfy the Township's Round 3 obligation; and

WHEREAS, the Township and Habitat for Humanity entered into a Memorandum of Understanding (MOU) on May 15, 2020. Pursuant to the MOU, the Township will subdivide Block 66 Lots 12.02, 13 and 14 and donate the land to Habitat for Humanity. Habitat for Humanity will construct up to 5 duplexes (for a total of up to10 units) on the adjoining lots to create affordable family housing which will be afforded to moderate and low-income households; and

WHEREAS, the Township has determined that Block 66 Lots 12.02, 13, and 14 is appropriate for a 100% affordable development through the creation of a new zone, entitled the "Affordable Housing Duplex (AH-D)" district; and

WHEREAS, the Township is amending its Housing Element and Fair Share Plan in August 2020 to include Block 66 Lots 12.02, 13 and 14 as an affordable housing site; and

WHEREAS, this Ordinance implements the Amended 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 Township Committee of the Township of Bordentown, County of Burlington as follows:

Section 1: Section 25.303 entitled "Zoning Map" is hereby amended to create a new zone entitled "AH-D Affordable Housing Duplex District" on Block 66 Lots 12.02, 13, and 14.

Section 2: A new zoning district, entitled "Affordable Housing Duplex (AH-D)" district is hereby created as follows:

25.413. **AH-D Affordable Housing Duplex District**

A. Purpose
   The purpose of the AH-D Affordable Housing Duplex District, which applies to Lots 12.02, 13 and 14, in Block 66, is to provide for a 100% affordable housing development that will include up to 10 affordable units developed as for-sale duplexes. The site will be subdivided into fee-simple lots to accommodate up to 10 affordable family units.
B. Principal Permitted Uses
   1. Duplexes
   2. Parks, recreational facilities, and playgrounds
C. Permitted Accessory Uses
   1. Private parks and playgrounds
   2. Private recreation facilities
   3. Uses customary and incidental to the principal use
D. Bulk standards
   1. Lot Requirements
      a. Minimum Lot Area: 2,000 square feet
      b. Minimum Lot Width: 20 feet
      c. Minimum Lot Depth: 120 feet
   2. Principal Building Requirements
      a. Minimum Front Yard Setback: 45 feet
      b. Minimum Side Yard Setback (one): 0 feet
      c. Minimum Side Yard Setback (both): 6 feet
      d. Minimum Rear Yard Setback: 25 feet
      e. Maximum Building Height: 2.5 stories or 35 feet
   3. Maximum Building Coverage: 35%
   4. Maximum Impervious Coverage: 60%
   5. Accessory Buildings
      a. Minimum Side Yard Setback: 3 feet
      b. Minimum Rear Yard Setback: 3 feet
      c. Distance to other building: 10 feet
      d. Maximum Height: 15 feet
E. Off-Street Parking
   1. Each duplex shall provide a minimum of 4 parking spaces or 2 parking spaces per unit.
F. Open Space Requirements

1. If open space is provided, it shall be located along the Crosswicks Road/County Route 528 frontage.

G. Number of Units
   1. Up to 10 total dwelling units (up to 5 duplexes)
   2. Development of the site shall provide for 100% family affordable for-sale units

H. Affordable Housing
   1. Very low, low and moderate-income housing shall be constructed in accordance with the Council on Affordable Housing rules at N.J.A.C. 5:93-1 et seq. and the Uniform Housing Affordability Controls (UHAC) at N.J.A.C. 5:80-26.1 et seq. including standards for the split between very low, low and moderate income housing, provided a minimum of 13% of the affordable units are very low income units at 30% of the median income and 37% of the affordable units are low income units with the (up to) 50% balance of units allowed at moderate income; bedroom distribution; range of affordability; pricing of units; affirmative marketing and 30-year minimum affordability controls. Very low-income shall be defined as households earning 30% or less of the region's median income as defined by the Fair Housing Act.

I. Additional Standards
   1. To the extent feasible, existing trees and vegetation shall be maintained and protected.
   2. Access to the lots shall be from Thorntown Lane. In no event shall a driveway be permitted along Crosswicks Road/County Route 528.
   3. No dwelling unit and/or room intended for human habitation shall be located in a basement, cellar or attic.
   4. Driveways shall be a minimum of 20 feet in width.
   5. In no event shall a driveway be located closer than 5 feet to a side lot line.

Section 3: This Ordinance shall take effect immediately upon adoption by the Township Committee.

Section 4. Repealer. Any and all other ordinances inconsistent with any of the terms and provisions of this ordinance are hereby repealed to the extent of such inconsistencies.

Section 5. Severability. In the event that any section paragraph, clause phrase, term, provision or part of this ordinance shall be adjudicated by a court of competent jurisdiction to be involved or unenforceable for any reason, such judgment shall not effect, impair or invalidate the remainder thereof, but shall be confined in its operation to the section, paragraph, clause, term, provision or part thereof directly involved in the controversy in such judgment shall be rendered.

INTRODUCED: July 27, 2020
PUBLIC HEARING: August 14, 2020
ADOPTED:

TOWNSHIP OF BORDENTOWN

ORDINANCE No. 2020-13

ORDINANCE AMENDING SECTION 25.409
OF THE BORDENTOWN TOWNSHIP MUNICIPAL CODE ENTITLED
"GC-I—GENERAL COMMERCIAL AND GC-II—GENERAL COMMERCIAL"

WHEREAS, the Township Committee of the Township of Bordentown desires to alter the maximum building height for buildings in the GC-I and GC-II zones.

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Bordentown that:

Section 1.

Section 25.409(C) be changed from:

> C. Maximum building height. No building shall exceed 25 feet in height and 2.5 stories except as allowed in Section 25:602.
>
> To
>
> C. Maximum building height. No building shall exceed 50 feet in height and 3 stories except as allowed in Section 25:602.

Section 2. Repealer. Any and all ordinances inconsistent with the terms of this Ordinance are hereby repealed to the extent of any such inconsistencies.

Section 3. Severability. In the event that any clause, section, paragraph or sentence of this Ordinance is deemed to be invalid or unenforceable to any reason, then the Township Committee hereby declares its intent that the balance of the Ordinance not affected by said invalidity shall remain in full force and effect to the extent that is allows the Township to meet the goals of the Ordinance.

Section 4. Effective Date. This Ordinance shall take effect upon proper passage in accordance with the law.

INTRODUCED: July 27, 2020
PUBLIC HEARING:
ADOPTED: