

SENATE, No. 2337

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED OCTOBER 27, 2008

Sponsored by:
Senator BOB SMITH
District 17 (Middlesex and Somerset)

SYNOPSIS

The "Second Unit Housing Authorization Act."

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning permitted uses within residential zones and
2 supplementing P.L.1975, c.291 (C.40:55D-1 et seq.).

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the "Second
8 Unit Housing Authorization Act."

9

10 2. The Legislature finds and declares that second units, also
11 known as accessory apartments, are a valuable form of housing in
12 New Jersey. Second units provide housing for family members,
13 students, the elderly, in-home health care providers, the disabled,
14 and others, at below market prices within existing neighborhoods.
15 Homeowners who create second units benefit from added income,
16 and an increased sense of security.

17 It is the intent of the Legislature that any second unit ordinances
18 adopted by municipalities shall have the effect of providing for the
19 creation of second units and that provisions in these ordinances
20 relating to matters including unit size, parking, fees and other
21 requirements, shall not be so arbitrary, excessive, or burdensome so
22 as to unreasonably restrict the ability of homeowners to create
23 second units in zones in which they are authorized by local
24 ordinance.

25

26 3. As used in this act:

27 "Accessory apartment" means a self-contained residential
28 dwelling unit with a kitchen, sanitary facilities, sleeping quarters
29 and a private entrance, which is created within an existing home, or
30 through the conversion of an existing accessory structure on the
31 same site, or by an addition to an existing home or accessory
32 building.

33 "Efficiency unit" means a self-contained residential dwelling unit
34 with a kitchen, sanitary facilities and sleeping quarters designed for
35 occupancy by a single person, often on a limited or temporary basis,
36 which may or may not have a private entrance.

37 "Living area," means the interior habitable area of a dwelling
38 unit including basements and attics, but does not include a garage or
39 any accessory structure.

40 "Neighborhood" means the general area surrounding the housing
41 to be built or created.

42 "Second unit" means an accessory apartment and also includes
43 an efficiency unit or a manufactured home.

44

45 4. A municipality may, by ordinance, provide for the creation
46 of second units in single-family and multifamily residential zones.
47 The ordinance may do any of the following:

1 a. Designate areas within the municipality where second units
2 may be permitted. The designation of areas may be based on
3 criteria, that may include, but are not limited to, the adequacy of
4 water and sewer services and the impact of second units on traffic
5 flow.

6 b. Impose standards on second units that include, but are not
7 limited to, parking, height, setback, lot coverage, architectural
8 review, maximum size of a unit, and standards that prevent adverse
9 impacts on any real property that is listed in the New Jersey
10 Register of Historic Places.

11 c. Provide that second units do not exceed the allowable
12 density for the lot upon which the second unit is located, and that
13 second units are a residential use that is consistent with the existing
14 general plan and zoning designation for the lot.

15 d. Provide that any permit issued be to an owner-occupant.

16 Nothing in this section shall limit the authority of a municipality
17 to adopt less restrictive requirements for second unit housing.

18

19 5. On or after the effective date of P.L. , c. (C.)
20 (pending before the Legislature as this bill), a municipality which
21 has not adopted an ordinance governing second units in accordance
22 with section 4 of P.L. , c. (C.) (pending before the
23 Legislature as this bill), shall accept each application for the
24 development of a second unit and approve or disapprove the
25 application ministerially, without discretionary review, and without
26 regard to the issuance of variances or special use permits, unless it
27 adopts an ordinance in accordance with section 4 of
28 P.L. , c. (C.) (pending before the Legislature as this bill)
29 within 120 days after receiving the application. Nothing in this
30 section shall be construed to require a local government to adopt or
31 amend an ordinance for the creation of second units.

32

33 6. a. Notwithstanding any law to the contrary, a municipality
34 shall grant a variance or special use permit for the creation of a
35 second unit if the second unit complies with all of the following:

36 (1) The unit is not intended for sale and may be rented.

37 (2) The lot is zoned for single-family or multifamily use.

38 (3) The lot contains an existing single-family dwelling.

39 (4) The second unit is either attached to the existing dwelling
40 and located within the living area of the existing dwelling or
41 detached from the existing dwelling and located on the same lot as
42 the existing dwelling.

43 (5) The increased floor area of an attached second unit shall not
44 exceed 30 percent of the existing living area.

45 (6) The total area of floor space for a detached second unit shall
46 not exceed 1,200 square feet.

47 (7) The unit complies with requirements relating to height,
48 setback, lot coverage, architectural review, site plan review, fees,

1 charges, and other zoning requirements generally applicable to
2 residential construction in the zone in which the property is located.

3 (8) The unit complies with State Uniform Construction Code
4 requirements applicable to detached dwellings, as appropriate.

5 (9) The unit has received approval for a private sewage disposal
6 system, if required.

7 No other local ordinance, policy, or regulation shall be the basis
8 for the denial of a building permit or a use permit under this
9 section.

10 b. This section establishes the maximum standards that
11 municipalities shall use to evaluate proposed second units on lots
12 zoned for residential use which contain an existing single-family
13 dwelling.

14 No additional standards, other than those provided in this
15 section, shall be utilized or imposed, except that a municipality may
16 require an applicant for a permit issued pursuant to this subsection
17 to be an owner-occupant.

18 No changes in zoning ordinances or other ordinances or any
19 changes in the general plan shall be required to implement this
20 section. Any municipality may amend its zoning ordinance or
21 general plan to incorporate the policies, procedures, or other
22 provisions applicable to the creation of second units if these
23 provisions are consistent with the limitations of this section.

24 c. A second unit which conforms to the requirements of this
25 section shall not be considered to exceed the allowable density for
26 the lot upon which it is located, and shall be deemed to be a
27 residential use which is consistent with the existing general plan
28 and zoning designations for the lot. The second units shall not be
29 considered in the application of any local ordinance, policy, or
30 program to limit residential growth, including the "Highlands Water
31 Protection and Planning Act," P.L.2004, c.120 (C.13:20-1 et seq.).

32 d. No municipality shall adopt an ordinance which totally
33 precludes second units within single-family or multifamily zoned
34 areas unless the ordinance contains findings acknowledging that the
35 ordinance may limit housing opportunities of the region and further
36 contains findings that specific adverse impacts on the public health,
37 safety, and welfare that would result from allowing second units
38 within single-family and multifamily zoned areas justify adopting
39 the ordinance.

40 e. A municipality may establish minimum and maximum unit
41 size requirements for both attached and detached second units. No
42 minimum or maximum size for a second unit, or size based upon a
43 percentage of the existing dwelling, shall be established by
44 ordinance for either attached or detached dwellings which does not
45 permit at least an efficiency unit to be constructed in compliance
46 with local development standards.

47 f. Parking requirements for second units shall not exceed one
48 parking space per unit or per bedroom. Additional parking may be

1 required provided that a finding is made that the additional parking
2 requirements are directly related to the use of the second unit and
3 are consistent with existing neighborhood standards applicable to
4 existing dwellings. Off-street parking shall be permitted in setback
5 areas in locations determined by the municipality or through tandem
6 parking, unless specific findings are made that parking in setback
7 areas or tandem parking is not feasible based upon specific site or
8 regional topographical or fire and life safety conditions, or that it is
9 not permitted anywhere else in the jurisdiction.

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11 7. This act shall take effect on the first day of the fourth month
12 next following enactment.

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15 STATEMENT

16
17 This bill, entitled the "Second Unit Housing Authorization Act,"
18 would establish maximum standards that municipalities may impose
19 prior to issuing a building or other permit for second units of
20 housing. Also known as accessory apartments, second units are a
21 valuable form of housing, providing housing for family members,
22 students, the elderly, in-home health care providers, the disabled,
23 and others, at below market prices within existing neighborhoods.
24 Often such housing enables grandparents to assist young families
25 with child care, and helps extended families come together. For
26 other families, it can provide companionship, security and a source
27 of income.

28 New Jersey has the distinction of being one of the most densely
29 populated states in the country. Available land for building new
30 housing is becoming scarce, as new laws are consistently enacted to
31 protect environmentally sensitive and rural lands from development.
32 Allowing families to increase their housing by the addition of a
33 second unit is a sound way to provide additional, much needed
34 housing without a drastic impact on the municipal infrastructure.

35 Under the bill, municipalities would be authorized, but not
36 required, to enact ordinances setting standards for second unit
37 housing. The ordinance may:

- 38
- 39 • Designate areas within the municipality where second units
40 may be permitted. The designation of areas may be based on
41 criteria, that may include, but are not limited to, the
42 adequacy of water and sewer services and the impact of
43 second units on traffic flow.
 - 44 • Impose standards on second units that include, but are not
45 limited to, parking, height, setback, lot coverage,
46 architectural review, maximum size of a unit, and standards
47 that prevent adverse impacts on any real property that is
listed in the New Jersey Register of Historic Places.

- 1 • Provide that second units do not exceed the allowable
2 density for the lot upon which the second unit is located, and
3 that second units are a residential use that is consistent with
4 the existing general plan and zoning designation for the lot.

5 The bill would not limit the authority of a municipality to adopt
6 less restrictive requirements for second unit housing. If a
7 municipality chooses not to adopt a second unit ordinance, then
8 such housing would be permitted if the proposal met all of the
9 following:

- 10 (1) The unit is not intended for sale and may be rented.
11 (2) The lot is zoned for single-family or multifamily use.
12 (3) The lot contains an existing single-family dwelling.
13 (4) The second unit is either attached to the existing dwelling
14 and located within the living area of the existing dwelling or
15 detached from the existing dwelling and located on the same lot as
16 the existing dwelling.
17 (5) The increased floor area of an attached second unit shall not
18 exceed 30 percent of the existing living area.
19 (6) The total area of floor space for a detached second unit shall
20 not exceed 1,200 square feet.
21 (7) The unit complies with requirements relating to height,
22 setback, lot coverage, architectural review, site plan review, fees,
23 charges, and other zoning requirements generally applicable to
24 residential construction in the zone in which the property is located.
25 (8) The unit complies with State Uniform Construction Code
26 requirements applicable to detached dwellings, as appropriate.
27 (9) The unit has received approval for a private sewage disposal
28 system, if required.

29 A municipality may require an applicant for a permit be an
30 owner-occupant.

31 The bill designates that a second unit which conforms to the
32 requirements of the bill shall not be considered to exceed the
33 allowable density for the lot upon which it is located, and shall be
34 deemed to be a residential use which is consistent with the existing
35 general plan and zoning designations for the lot. The second units
36 shall not be considered in the application of any local ordinance,
37 policy, or program to limit residential growth, including the
38 "Highlands Water Protection and Planning Act," P.L.2004, c.120
39 (C.13:20-1 et seq.).

40 Under the bill, a municipality may not adopt an ordinance which
41 totally precludes second units within single-family or multifamily
42 zoned areas unless the ordinance contains findings acknowledging
43 that the ordinance may limit housing opportunities of the region and
44 further contains findings that specific adverse impacts on the public
45 health, safety, and welfare that would result from allowing second
46 units within single-family and multifamily zoned areas justify
47 adopting the ordinance.