

ORDINANCE 2263

AN ORDINANCE CREATING THE AH-5 AFFORDABLE HOUSING ZONE

WHEREAS, Durham Plaza is the owner of certain property identified as Block 541, Lot 10.02 (the "Property") as shown on the Tax Map of the Borough of South Plainfield, which consists of approximately 3.399 acres in total;

WHEREAS, on December 30, 2008, the Borough petitioned the Council on Affordable Housing (COAH) for substantive certification of a Housing Element and Fair Share Plan addressing its total 1987-2018 affordable housing obligation based on rules appearing at N.J.A.C.5:97 and on October 14, 2009 received substantive certification from COAH; and

WHEREAS, the rules that appear at N.J.A.C. 5:97 and on which the Borough's substantive certification was based were subsequently invalidated by the Superior Court, Appellate Division, in a decision that was affirmed by the New Jersey Supreme Court; and

WHEREAS, in a decision dated March 10, 2015, In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015)(Mount Laurel IV), the New Jersey Supreme Court found that COAH did not provide an adequate forum for demonstrating compliance with the Mount Laurel doctrine; and

WHEREAS, the New Jersey Supreme Court established a transitional process in which municipalities, instead of proceeding through the COAH process, could file declaratory judgment actions focused on whether the municipality's housing plan meets its Mount Laurel obligations; and

WHEREAS, the New Jersey Supreme Court provided that a trial court's evaluation of a municipality's plan that had received substantive certification, as supplemented or amended, may result in the municipality's receipt of the judicial equivalent of substantive certification and accompanying protection as provided under the Fair Housing Act of 1985; and

WHEREAS, on July 7, 2015, in accordance with the Supreme Court's decision, the Borough filed a declaratory action that is captioned In the Matter of the Borough of South Plainfield for a Judge of Compliance of Its Third Round Housing Element and Fair Share Plan, Docket No. MID-L-3994-15 ("Litigation"); and

WHEREAS, on February 15, 2017, the Borough entered into a settlement agreement with Fair Share Housing Center ("FSHC") with regard to the Litigation ("FSHC Agreement"); and

WHEREAS, the Settlement Agreement provided for, *inter alia*, the construction of 750 units with a 20% set aside, yielding 150 affordable units as part of the Colonial Oaks project ("Colonial Oaks"); and

WHEREAS, the Borough received a Final Unconditional Judgment of Repose on February 21, 2018 (the "Final Judgment"); and

WHEREAS, due to environmental constraints, the Colonial Oaks project yielded 36 fewer affordable units than had been anticipated; and

WHEREAS, due to the inaction of the Legislature, the Borough is required to address the shortfall of affordable units with the creation of new affordable units on this site; and

WHEREAS, Durham Plaza proposes to develop the Property with a residential development to provide affordable housing, which will assist in meeting the shortfall of affordable units from the Colonial Oaks project; and

WHEREAS, on or about March 2, 2022, Durham Plaza filed a motion to vacate the Borough’s Final Judgment, in the alternative conduct a midpoint review hearing, appoint a special master, and permit intervention (“the Litigation”); and

WHEREAS, the Borough and Durham Plaza entered into a Settlement Agreement dated December 19, 2022 in order to resolve the Litigation, which required the adoption of the AH-5 Affordable Housing Zone herein.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Council of the Borough of South Plainfield, that the Municipal Code is amended to include Section 540-51.2, titled AH-5 Affordable Housing Zone as provided for herein.

Section 1. Amending the Municipal Code to add Section 540-51.2, titled AH-5 Affordable Housing Zone.

§ 540-51.2 — AH-5 Affordable Housing Zone.

A. Purpose.

- (1) The purpose of the AH-5 Zone District is to provide multifamily residential development that contributes to the Borough of South Plainfield’s municipal affordable housing obligation.
- (2) This section is designed to implement and effectuate the terms of the Consent Order in connection with an action captioned In the Matter of the Borough of South Plainfield for a Judgment of Compliance of its Third Round Housing Element and Fair Share Plan (MID-L-3994-15).

B. Permitted uses. A building may be erected, altered, or used and a lot or premises may be occupied and used for any of the following purposes:

- (1) Principal uses:
 - (a) Inclusionary multifamily residential apartments, subject to all requirements of this section.
- (2) Accessory buildings and uses:
 - (a) Resident amenities (e.g., mailroom, laundry facility, concierge’s office, patio, terrace, dog run, multipurpose rooms, etc.).
 - (b) Swimming pools, but not public swim clubs.
 - (c) Signs.
 - (d) Fences, hedges, and a security gate(s) or guardhouse(s), subject to the provisions of this section.
 - (e) Playgrounds, gazebos, pergolas, firepits, grills.
 - (f) Trash enclosures.
 - (g) Parking (incl., surface and covered).
 - (h) Utility structures such as water meter hot boxes, electrical transformers and generators, sewer pump houses.

- (i) Other customary accessory uses and structures which are incidental to the principal structure and use.

C. Development standards. Development in the AH-5 Affordable Housing Zone shall comply with the standards and requirements set forth below, all of which are based on the total tract area. No variance shall be required for bulk, design, and buffer requirements on a lot developed with uses permitted under this section, where the need for such variance is caused solely by a subdivision of such lot into two or more for financing or phasing of such uses. In the event of an inconsistency between this Ordinance and any other portion of the Township's Code, this Ordinance shall govern.

- (1) All development in the AH-5 Affordable Housing Zone shall be substantially consistent with the Concept Plan annexed to this Ordinance as Exhibit A.
- (2) The affordable units shall be distributed throughout the development and indistinguishable from market-rate units.
- (3) Minimum tract area: 3.0 acres.
- (4) Number of residential units: 95 (maximum). Twenty percent (20%) of all units proposed for development shall be reserved for low- and moderate-income households, including very-low-income households, subject to the standards in Chapter 504 of the South Plainfield Borough Code (Affordable Housing), the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et seq. ("UHAC"), and the Settlement Agreement between the Borough of South Plainfield and Durham Plaza, LLC dated December 16, 2022.
- (5) Maximum building coverage: 35%
- (6) Maximum impervious surface coverage: 75%.
- (7) Principal building requirements.
 - (a) Minimum setback measured from a public right-of-way line to building foundation (eaves and gutters are excluded from measurement): 35 feet.
 - (b) Minimum perimeter setback (measured from all lot lines not fronting on a public right-of-way; eaves and gutters are excluded from measurement): 45 feet.
 - (c) Minimum setback from interior private road: 15 feet, unless a particular roadway segment is providing direct access to a covered parking area.
 - (d) Minimum setback from parking lots: 8 feet.
 - (e) Maximum building height.
 - [1] Except where otherwise permitted, the buildings shall not exceed three stories over a parking level, which level may include other uses ancillary to the residential use above (e.g., interior amenities, lobby space, mechanical rooms, etc.) or 55 feet in height. Loft spaces constructed substantially within a pitched roof or mansard roof will not be considered an additional story. Loft spaces shall not be used as additional bedrooms.
- (8) Accessory building requirements.
 - (a) Accessory buildings shall be limited to a height of 15 feet.
 - (b) Minimum setback measured from public right of way:

[1] Main Street: 15 feet

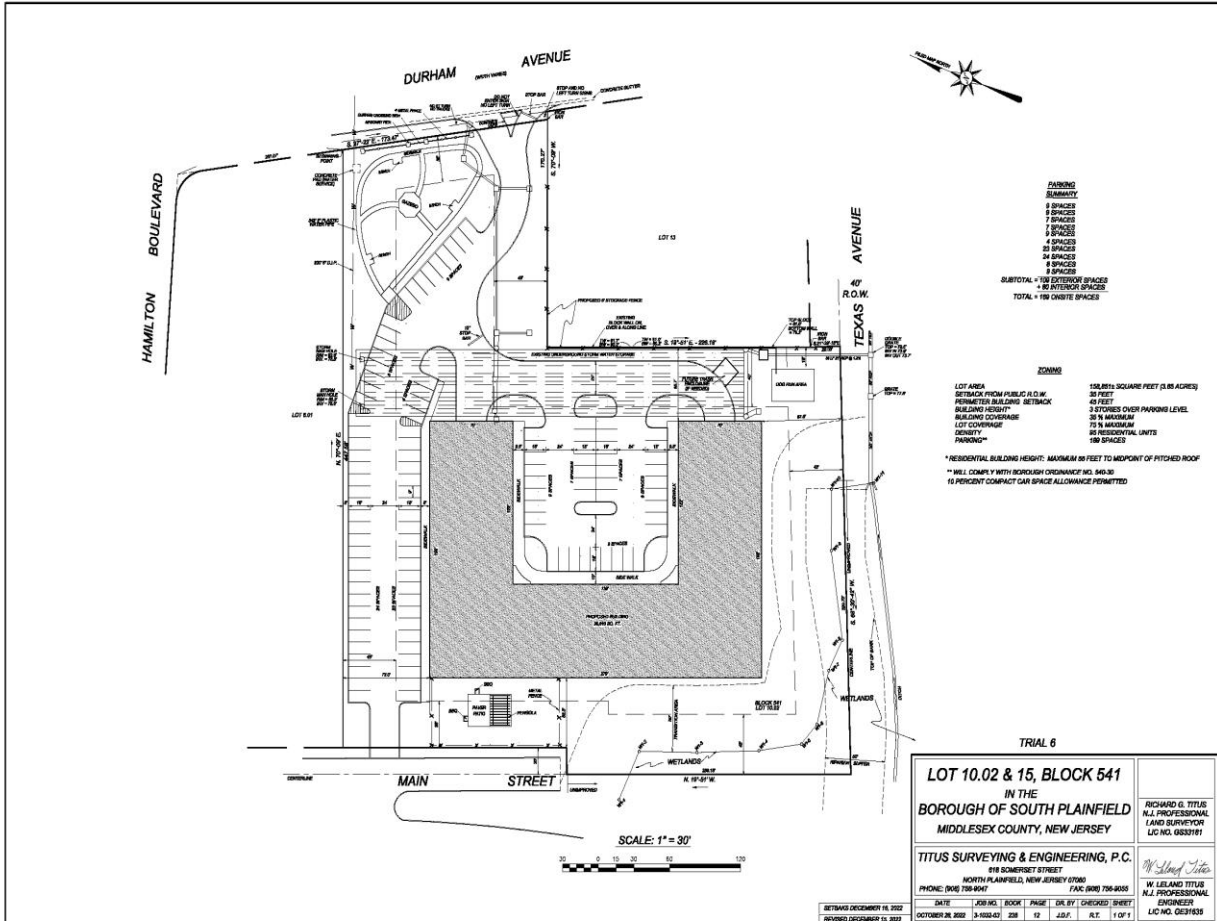
[2] Durham Avenue: 30 feet

- (c) The perimeter setbacks shall be a minimum of 10 feet.
 - (d) Accessory buildings attached to a principal building shall comply with the setbacks of the principal building.
 - (e) A security gate and/or guardhouse shall be setback a minimum of 5 feet from the Main Street right of way.
- (9) Façade and exterior wall treatments.
- (a) Facades may be clad in any combination of brick, stone, vinyl or composite siding, vinyl, or stucco.
 - (b) Each principal building with a façade of more than 200 feet shall not exceed 80 feet without a change in façade architecture, including an articulation over a length of at least 6 linear feet, which may include changes in setback, façade color, texture, or design, in order to bring about a varied composition. Parking levels are excluded from this requirement.
- (10) Roof treatments.
- (a) Roofs may be pitched, gabled, mansard, or flat;
 - (b) All pitched roofs shall be finished with asphalt “dimensional”-type, wood, slate, or slate composite shingles.
- (11) All buildings containing a principal use shall incorporate architectural features, including, but not limited to, pitched roofs, varied rooflines, or, in the case of a flat roof design, parapets at the uppermost story to help reduce the visual impact of the building height.
- (12) Purely decorative roof appurtenance, such as decorative lanterns, chimneys, cupolas, among others, shall not be restricted by the required building height.
- (13) Building location and configuration shall be designed in a manner to provide light, air, and open space and reduce the feeling of a continuous “wall” right along the public right-of-way.
- D. Parking requirements.
- (1) Parking shall comply with the requirements of the Zoning Ordinance of the Borough of South Plainfield.
 - (2) A 10% compact car allowance is permitted.
- E. Signage requirements.
- (1) Signage shall conform with the Borough’s except that, in the Applicant’s discretion, project identification signs may be provided at the following locations:
 - (a) One project identification sign located at the entrance to the premises at the entrance located on Durham Avenue.
 - (b) One project identification sign located at the entrance to the premises at the entrance located on Main Street.

F. Conflict

- (1) To the extent this AH-5 ordinance specifically conflicts with another section of the Borough's land use ordinance, the terms of this ordinance shall control.

**EXHIBIT A
(CONCEPT PLAN)**



Section 2. Passage and Effect

This Ordinance shall take effect upon final passage and publication in accordance with New Jersey law.