

**ORDINANCE NO. 2172-2010**

**AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF FAIR LAWN 2000, SPECIFICALLY CHAPTER 49 ENTITLED "AFFORDABLE HOUSING" TO CREATE A NEW AFFORDABLE HOUSING DISTRICT AT §49-17 ENTITLED "MU MIXED-USE PLANNED DEVELOPMENT" FOR BLOCK 4801, LOT 1, LOCATED AT 16-31 ROUTE 208 KNOWN AS THE FORMER KODAK PROPERTY**

**WHEREAS**, the Mayor and Council recognize that the Borough has an obligation to provide for the reasonable development of affordable housing within appropriate areas of the Borough; and

**WHEREAS**, the Borough has determined that Block 4801, Lot 1, known as the former Kodak property, should be zoned to provide for such affordable housing opportunities as well as additional commercial opportunities; and

**WHEREAS**, the Borough has determined that Block 4801, Lot 1 was identified in the Borough's Housing Element and Fair Share Plan as a site appropriate for inclusionary residential development with a commercial component; and

**WHEREAS**, such a re-zoning is also substantially consistent with the recommendations of the Route 208 Study prepared by a consultant for the Borough Economic Development Corporation in 2007.

**WHEREAS**, this ordinance is being introduced and adopted under protest by the Mayor and Council of the Borough of Fair Lawn. This ordinance is being introduced and adopted pursuant to an interlocutory Order granting builders remedy and other relief entered on July 29, 2009, by Judge Jonathan N. Harris in the matter of Landmark at Radburn, et al vs. Borough of Fair Lawn, et al, Superior Court of New Jersey, Law Division, Bergen County, Docket Number: BER-L-8266-07 and the Borough of Fair Lawn reserves all of its rights to appeal, move for reconsideration, or seek any and all other such relief as it deems appropriate from the aforesaid interlocutory Order, when the Borough's right to appeal becomes fixed and determined;

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Council of the Borough of Fair Lawn that:

**SECTION I.**

A new Section 49-17 entitled: "MU Mixed-Use Planned Development" is hereby added to Chapter 49 and shall provide as follows:

**§ 49-17. MU Mixed-Use Planned Development.**

- A. Land. The land to which this district applies includes Block 4801, Lot 1 in the Borough of Fair Lawn.
- B. Zoning. There shall be an affordable housing set-aside for each residential development developed at a density of 8 units or more per gross acre. Each such development shall include a twenty-five percent set-aside of total units for affordable housing unless bonus options offered herein are exercised, which require higher set-asides.
- C. A 13 percent very-low-, a 37 percent low-, and a 50 percent moderate-income split shall be required.

- D. No affordable units shall be required if the project's growth share per COAH's rules is less than one whole unit.
- E. The residential set-aside shall be a whole number and shall be rounded up in all cases except when the obligation is less than one whole unit.
- F. Affordable units shall be constructed on site unless another compliance mechanism is approved by the Board.
- G. Inclusionary sites shall comply with Chapter 49 of the Borough Code, entitled Affordable Housing. The affordable units shall be designed, constructed and sold/leased in a manner that makes them eligible for crediting pursuant to COAH's rules governing including but not limited to low- and moderate-income split, bedroom distribution, phasing, deed restrictions and marketing. They shall be integrated into the overall project with the market rate units to the extent feasible.
- H. Incentives. Incentives to create the affordable housing include the following:
  - (1) Residential uses shall be permitted whereas they are not currently permitted.
  - (2) Retail uses shall be permitted whereas they are currently not permitted.
  - (3) Mixed-use development shall be permitted whereas it is currently not permitted.
  - (4) Opportunities for increased building height have been provided.
  - (5) Underground parking may be provided if structurally feasible, and parking beneath structures shall be permitted, also if structurally feasible.
  - (6) Shared parking between compatible uses may be permitted if found practicable by the Board.
  - (7) Residential uses may utilize the Residential Site Improvement Standards to determine the residential parking requirement with regard to number of parking spaces.
- I. Non-residential developer's fees shall be required on the permitted base floor-area-ratio (up to 0.18).
- J. Zoning Criteria:
  - (1) An inclusionary residential component shall be required.
  - (2) Permitted principal uses include a mix of uses comprised of the following:
    - (a) Townhouses, as defined in Section 125-8 (" Dwelling...Townhouse/Attached Single-family").
    - (b) Multi-family units, as defined in Section 125-8 (" Dwelling...Multi-family").
    - (c) Retail trade including: retail establishments; personal services; showroom sales intended for display of merchandise, excluding motorized vehicle sales and services.
    - (d) Services/recreation/entertainment uses including: health and fitness centers and spas; day-care facilities, including child-care and adult-care; bakeries; delicatessens; restaurants, excluding all restaurants with drive-thrus; catering facilities; theaters for the performing arts; professional studios for dance, music, art and photography; art galleries and libraries; commercial schools; animal hospitals.

- (e) Office and related business services including: executive, professional and administrative activities; financial institutions; computer and data processing and storage centers; business service and service establishments.
  - (f) Health services including: nursing homes; physical and mental health rehabilitation centers; and medical office.
  - (g) Public uses including: public parks and recreation facilities and government buildings and uses.
- (3) Permitted conditional uses.
- (a) Hotel/conference center. Hotel/conference center shall be permitted provided the facility has a minimum 100 rooms, minimum 3,000 SF of conference space, and a minimum height of 4 stories (maximum 8 stories), which may include residential or non-residential space related or unrelated to the hotel. Each story above 4 shall be allowed 10.5' in additional building height. Buildings more than 4 stories in height shall provide a 75' side yard setback, a 75' setback from Pollitt Drive and a 200' setback from Route 208.
  - (b) Reserved.
- (4) Accessory uses: Accessory uses which are customarily incidental to the principal use, including outdoor dining, shall be permitted.
- (5) Bulk standards: The zoning ordinance intends for the site to be developed as one cohesive project.
- (a) Minimum lot area: 9 acres
  - (b) Minimum lot width: 400'
  - (c) Minimum lot depth: 300'
  - (d) Maximum building height: 3 stories except as otherwise permitted herein.
  - (e) Maximum building coverage: 30 percent if surface parking is provided; 40 percent if structured parking is provided.
  - (f) Maximum total impervious coverage: 75 percent
  - (g) 4<sup>th</sup> building stories. 4<sup>th</sup> stories shall be considered bonus stories and shall be permitted for all permitted uses provided that the building adheres to required building setbacks and that open space or public gathering area is provided on-site at a rate of 0.5 SF for every 1 SF of bonus 4th story gross floor area created.
  - (h) Not more than 50 percent of the total amount of floor area proposed for the first and second floors of all buildings on the entire site shall be used for residential dwelling purposes. At least one residential unit shall be provided for every 1,000 square feet of non-residential space created up to the residential caps stipulated herein.
  - (i) No more than 45 percent of total non-residential floor area shall be "retail trade" in use, as defined in the Land Development Ordinance. Food store and/or hotel/conference center use shall not be counted towards the 45 percent limit.
  - (j) At least 50 percent of floor area within 100' of Route 208 shall be office in use.

(k) Building height and setbacks shall comply with the following schedule:

<b>Building Height &amp; Setback Schedule</b>			
<b>Building Height</b>	<b>Required Setbacks</b>		
	<b>Side Yard</b>	<b>From Pollitt Drive</b>	<b>From Route 208</b>
1 story / 25 feet	25 feet	35 feet	65 feet
2 stories / 35 feet	25 feet	35 feet	65 feet
3 stories / 40 feet*	40 feet	50 feet	65 feet
4 stories / 55 feet**	60 feet	75 feet	200 feet

\*Up to 35 percent of the linear frontage of Pollitt Drive or the linear length of a side property line may be occupied by a 3-story building that has a setback of 35 to 50 feet.

\*\*2) Up to 35 percent of the side yard or the linear frontage of Pollitt Drive may be occupied by a 4-story building that has a setback between 50 and 75 feet.

(6) Residential density, floor-area-ratios and affordable housing set-asides shall comply with one of the following options:

**Residential Density, Non-residential FAR and Affordable Housing Set-asides Schedule**

<b>Option #</b>	<b>Base Residential Density (in units per acre)</b>	<b>Maximum Non-residential Floor-Area-Ratio</b>	<b>Required Affordable Housing Set-Aside</b>	<b>Family Rental Requirement</b>
A	8 du/acre or 80 total units, whichever is less	0.18	25%	None
B	15 du/acre, or 150 total units, whichever is less	0.18	25%	75 percent of affordable units
C	15 du/acre, or 150 total units, whichever is less	0.22	27%	50 percent of affordable units
D	15 du/acre, or 150 total units, whichever is less	0.23*	27%	50 percent of affordable units

\*0.02 additional FAR shall be permitted for every additional 1-percent increase in affordable housing set-aside.

(7) In order to encourage variety in building façades, a 5-foot encroachment shall be permitted by roof overhangs, unenclosed porches, stoops, stairs and balconies into all required yard areas where the encroachment comprises less than 50 percent of the façade.

(8) Underground parking may be provided if structurally feasible, and parking beneath structures shall be permitted, also if structurally feasible. Below-grade parking shall be finished in appearance from all exterior viewsheds and shall not result in a building that appears from any street to be set on piers. Above-grade parking shall be permitted only if it is located wholly behind a building and/or is not visible from any public street. In no case shall any parking layout result in a residential finished floor elevation of more than 48" above grade.

(9) Signage shall comply with standards contained in the Chapter 125, Land Development, however except that only one freestanding sign shall be allowed on the site's Route 208 frontage. The sign on Route 208 shall be monument style and no more than 100 square feet in area.

K. If the subject tract is 10 acres in area, it shall be considered a Planned Development per the Municipal Land Use Law.

- L. Necessary off-tract improvements shall be made per Section 125-77.
- M. Any site plan shall provide mapping of areas that are undergoing soil remediation, areas that are to be capped and the location of any building to contain remediation equipment. The application and plan set shall be sent to the Borough Health Officer and Environmental Commission for review and comment on applicable items.
- N. Soil and groundwater contamination shall be remediated to allow for the proposed use in accordance with NJDEP requirements.
- O. Supplemental Design Standards. Deviations from these standards shall be granted via design waiver.
  - (1) The developer shall comply with applicable design standards contained in Chapter 125, Article V. Where this section conflicts with Chapter 125, Article V, this section shall supersede.
  - (2) Buildings shall be oriented toward the State highway. The primary entrance to the buildings does not have to face the State highway; however the facades shall be designed to appear as front facades.
  - (3) Residential uses may utilize the Residential Site Improvement Standards to determine the residential parking requirement with regard to number of parking spaces.
  - (4) No more than one point of ingress/egress shall be allowed on Route 208.
  - (5) Applicant should seek approval from NJDOT for the installation of acceleration and deceleration lanes on Route 208.
  - (6) A roadway or access driveway connection from Route 208 to Pollitt Drive should be made. Pollitt Drive Extension may need to be slightly modified/squared off to facilitate this connection.
  - (7) Croucher Lane should be maintained as a private road, and connections should be limited to providing access primarily to residents of Fair Lawn Commons.
  - (8) If acceptable to the owner of Fair Lawn Commons, the stop signs along Croucher Lane should be reoriented to face the parking lots to facilitate circulation in this area.
  - (9) A sidewalk connection between Pollitt Drive and Chandler Drive across Block 4702, Lot 2 should be provided to the extent feasible. There is already an easement in this area that could potentially be utilized, otherwise a new easement could be established by the Borough. This sidewalk easement will facilitate pedestrian traffic from the area to Radburn train station.
  - (10) An area for a bus pull-out, including a bus shelter, should be provided on Pollitt Drive. Fair Lawn currently provides mini-bus service to municipal residents.
  - (11) An open space / gathering area should be provided for the residential component. The open space area should be at least 3 percent of total site area and may include outdoor dining areas. Open space may include hard-surfaced plaza or gathering areas. This standard shall be exclusive of the open space requirements related to bonus floors.
  - (12) Rooftop spaces are permitted to meet the open space and public gathering area requirement for bonus floors if improved for public access with appropriate surfacing such as gravel, decking or similar material.

- (13) Existing mature trees greater than 5" diameter-at-breast-height that are in good condition shall be identified on the site plan and preserved to the extent feasible.
- P. The affordable units shall be designed, constructed and sold/leased in a manner that makes them eligible for crediting pursuant to COAH's rules governing including but not limited to low- and moderate-income split, bedroom distribution, phasing, deed restrictions and marketing. They shall be integrated into the overall project with the market rate units to the extent feasible.

**SECTION II:**

All other sections of Chapter 49 shall remain in full force and effect.

**SECTION III:**

Each section of this Ordinance and every subsection hereof shall be deemed independent, separate and distinct from all other sections, and the holding of any section or a part hereof to be unconstitutional, void, or ineffective for any cause shall not be deemed to affect the validity or constitutionality of any section or part hereof.

**SECTION IV:**

All ordinances, codes or parts thereof that are inconsistent with this Ordinance are repealed or otherwise modified.

**SECTION V:**

This Ordinance shall take effect upon passage and publication as required by law.

Attest:

Approved:

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Joanne M. Kwasniewski, RMC/CMC/MMC  
Municipal Clerk

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Joseph Tedeschi, Mayor

Introduced: January 26, 2010

Adopted: