

ORDINANCE NO. 2173-2010

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 §49-16 ENTITLED "R-5-4 INCLUSIONARY MULTI-FAMILY RESIDENTIAL PLANNED DEVELOPMENT" FOR BLOCK 5729, LOT 2, LOCATED AT 14-00 THIRD STREET, KNOWN AS THE CLARIANT 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 Block 5729, Lot 2, known as the Clariant property, should be zoned to provide for affordable housing opportunities consistent with the Amendment to the Borough's Housing Element and Fair Share Compliance Plan.

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 49-16 entitled: "R-5-4 Inclusionary Multi-Family Residential Planned Development" is hereby added to Chapter 49 and shall provide as follows:

§ 49-16. R-5-4 Inclusionary Multi-Family Residential Planned Development.

- A. Land. The land to which this district applies includes Block 5729, Lot 2, also known as the Clariant property 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.
- C. A 20 percent very-low-, a 30 percent low-, and a 50 percent moderate-income split shall be required. A cash subsidy may be available from the Borough's Affordable Housing Trust Fund to assist in the creation of two very-low-income units.
- 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. Units shall be created on-site.

- 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. The market rate units may be age-restricted. The affordable units may be age-restricted, however the number of units age-restricted shall not exceed the Borough's senior cap per COAH's rules. Units planned or created as part of a municipally-sponsored senior housing project shall take precedence when calculating units toward the senior cap.
- I. Incentives. Incentives to create the affordable housing include the following:
- (1) Residential units shall be permitted at a maximum density of 10 units per acre whereas residential uses are not currently permitted.
 - (2) 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.
- J. Zoning Criteria:
- (1) Permitted uses:
 - (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").
 - (2) Accessory uses: Accessory uses which are customarily incidental to the principal use.
 - (3) Prohibited uses: Those uses enumerated in Section 125-17.B shall be prohibited.
 - (4) Bulk standards: The zoning ordinance intends for the site to be developed as one cohesive project.
 - (a) Minimum lot area: 12 acres
 - (b) Maximum building height: 3 stories
 - (c) Minimum setback from property lines: 50'.
 - (d) Minimum setback from interior roadways: 25'
 - (e) Maximum building coverage: 25 percent
 - (f) Maximum total lot coverage: 60 percent
 - (g) Minimum total open space set-aside: 20 percent
 - (h) Maximum deck coverage: 5 percent
 - (i) 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.

- (j) Minimum separation between buildings: 30 feet
 - (k) Maximum number of residential units per building: 75
 - (l) Maximum accessory building or structure height: 16 feet / 1 story.
 - (m) Accessory building setbacks: Accessory buildings shall comply with the setback requirements for principal buildings.
 - (n) Front-loaded garages shall not extend more than 7 feet from the building face.
 - (o) Substantial evergreen trees including Colorado spruce, Norway spruce, Douglas fir and Leyland cypress shall be planted along all property lines that abut single-family residential zones. Trees shall be installed 8 to 10 feet in height, 10-feet on-center. Where space provides, deciduous trees with canopies shall be provided between the evergreen tree buffer and buildings or parking areas, 50-feet on-center, to create additional screening from upper stories. A fence along this property line may also be required by the Board, and both sides of the fence may require landscaping.
 - (p) Off-street parking lots shall be located behind buildings and shall be set back at least 25 feet from all property lines. Head-in parking shall not face adjacent single-family residential uses.
 - (q) One project identification sign shall be permitted on the Fair Lawn Avenue frontage. The sign shall be located on a brick or stone wall, may be externally illuminated and shall not exceed 45 square feet in area.
- K. A public riverfront walkway and linear conservation area containing the walkway shall be provided along the Passaic River the full length of the property. The walkway shall comply with the applicable rules of the New Jersey Department of Environmental Protection. The walkway may be conveyed to the Borough of Fair Lawn or other conservation entity for the purposes of ownership and/or maintenance. The dedication of the conservation area shall not diminish the overall size of the tract in terms of residential unit yield. The walkway and any required parking for the public access to the waterfront shall not be counted in the tract's overall impervious coverage limitation.
- L. The New Jersey Residential Site Improvement Standards shall govern. Deviations from those standards are to be done in accordance with N.J.A.C. 5:21-3. Parking spaces shall not be required for on-site recreational facilities, and a portion of required parking may be provided on internal site roadways in areas where adequate dimensions have been provided.
- M. Necessary off-tract improvements shall be made per Section 125-77.
- N. In its review of requested variances or waivers, the Board shall consider the requirements of the New Jersey Council on Affordable Housing's rules at N.J.A.C. 5:97-10.3 pertaining to development application procedures.
- O. No studies related to fiscal or economic affects of the project shall be required.
- P. Any subdivision of land in order to create smaller parcels for conveyance, including, but not limited to, fee simple townhouses, residential or other lots, shall provide access to such lots from

- Q. either a public way or a private way subject to a Homeowner's Association, and shall have a minimum lot width of 16 feet and a minimum depth of 50 feet.
- R. Supplemental Design Standards. These standards shall be in addition to the standards contained in Chapter 125, Article V, Site Plan and Subdivision Standards, where applicable. Where provisions herein conflict with other applicable provisions of Chapter 125, Land Development, this Section shall supersede. Deviations from these standards may be granted via design waiver.
- (1) No more than one curb cut consisting of an ingress/egress shall be allowed on Fair Lawn Avenue and one shall be allowed on Third Street. Individual driveways shall not be permitted onto those streets.
 - (2) Due to the significant number of dwelling units permitted, a children's play area for the private community shall be provided at the rate of 2,000 SF or 10 SF per residential unit, whichever is more, if the project is not age-restricted. The play area shall contain no fewer than 4 pieces of equipment; an alternate layout may be approved by the Board. The play area shall comply with the New Jersey Barrier Free Subcode and the New Jersey Public Playground Safety Subcode.
 - (3) Existing mature street trees and trees along the Passaic River shall be identified on the site plans and preserved to the extent feasible.
 - (4) Off-street parking areas shall not be visible from Fair Lawn Avenue or Third Street.
 - (5) The facades of buildings facing Fair Lawn Avenue and Third Street shall be designed to appear as front facades. The rear of buildings and garages shall not face Fair Lawn Avenue.
 - (6) Façade materials on facades facing Fair Lawn Avenue and Third Street to a depth of at least 100 feet shall be high-quality and may consist of brick, natural stone, stucco, EFIS or wood composite. Trim materials may consist of wood, wood composite, natural stone, brick or fiberglass-wrapped columns.
 - (7) All pedestrian entryways shall be prominent, well-lit and shall be elevated a minimum of 18 inches and a maximum of 48 inches above adjacent sidewalks. Entryways shall be covered.
 - (8) Where building entrances are planned along Fair Lawn Avenue or Third Street, they shall be separated from the sidewalk by a low hedge or tubular aluminum picket-style or similar fence to create separation and privacy.
- S. 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. Soil and groundwater contamination shall be remediated to allow for the proposed use in accordance with NJDEP requirements.
- T. The application and plan set shall be sent to the Borough Health Officer and Borough Environmental Commission for review and comment on applicable items.
- U. Nothing in this section shall restrict or limit the powers of the Planning Board of Fair Lawn and discharge of its statutory responsibilities, including its review of and granting or denial of a development application for the site, under the Municipal Land Use Law, the ordinances and codes of the Borough of Fair Lawn, other state or federal regulatory requirements, or any other applicable law.

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:

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

Joseph Tedeschi, Mayor

Introduced: January 26, 2010

Adopted: