

ORDINANCE NO. 2179-2010

AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF FAIR LAWN 2000, SPECIFICALLY CHAPTER 49 ENTITLED "AFFORDABLE HOUSING" AND CHAPTER 125 ENTITLED "LAND DEVELOPMENT" TO CREATE A NEW AFFORDABLE HOUSING DISTRICT AT §49-14 ENTITLED "R-6 INCLUSIONARY MULTI-FAMILY RESIDENTIAL" FOR BLOCK 3610, LOTS 1 AND 2 AND BLOCK 3609, LOT 1, KNOWN AS THE LANDMARK SITE, DALY FIELD AND ARCHERY PLAZA

WHEREAS, an Interlocutory Order of the Superior Court of New Jersey, granting a Builder's Remedy and Other Forms of Relief, was entered by the Honorable Jonathan N. Harris, J.S.C. on July 29, 2009, requiring the Borough to permit the development of the Landmark Site (Block 3610, Lot 1; Block 3610, Lot 2 and Block 3609, Lot 1) substantially in compliance with Exhibit P15 ("The Landmark Plan," dated March 15, 2006) and Exhibit P4, including rendered building elevations, which were submitted to the Court as part of the document entitled "Planning Report: Builders [sic] Remedy Assessment and R-1-1 Zoning Analysis in the Matter of: Landmark at Radburn, LLC, et al v. Borough of Fair Lawn, et al. Docket Number BER-L-8226-07, dated October 30, 2008;" and

WHEREAS, the Builder's Remedy was ordered to allow a maximum of 200 total dwelling units, including a set-aside of affordable units equal to 20 percent of the total number of dwelling units constructed on the Landmark Site; and

WHEREAS, the Borough has complied with the Interlocutory Order in the timeline set forth by the Court and has prepared an ordinance that permits a development in substantial compliance with the aforementioned Exhibits and which permits a maximum 200 total dwelling units and requires a 20 percent affordable unit set-aside; and

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.

Section 49-14 of the Borough Code entitled "R-1-1 Residential with Increased Density and Affordable Housing Component Overlay District" shall be replaced in its entirety by the following new section:

§ 49-14. R-6 Inclusionary Multi-Family Residential.

- A. The land to which this district applies includes Block 3610, Lots 1 and 2; Block 3609, Lot 1 in the Borough of Fair Lawn. Projects in this zoning district shall be considered prior round (1986-1999) inclusionary residential projects.
- B. The purpose of the R-6 Inclusionary Multi-Family Residential Zone is to implement the provisions of the Interlocutory Order of the Superior Court of New Jersey, granting a Builder's Remedy and Other Forms of Relief, entered by the Honorable Jonathan N. Harris, J.S.C. on July 29, 2009, by

permitting the development of the Landmark Site (Block 3610, Lot 1; Block 3610, Lot 2 and Block 3609, Lot 1) substantially in compliance with Exhibit P15 (“The Landmark Plan,” dated March 15, 2006) and Exhibit P4, including rendered building elevations, which were submitted to the Court as part of the document entitled “Planning Report: Builders [sic] Remedy Assessment and R-1-1 Zoning Analysis in the Matter of: Landmark at Radburn, LLC, et al v. Borough of Fair Lawn, et al. Docket Number BER-L-8226-07, dated October 30, 2008.” The Builder’s Remedy was ordered to allow a maximum of 200 total dwelling units, including a set-aside of affordable units equal to 20 percent of the total number of dwelling units constructed on the Landmark Site.

- C. The residential set-aside shall be a whole number and shall be rounded up in all cases.
- D. Units shall be created on-site. The location and bedroom distribution of the affordable units shall be indicated on the architectural floor plans.
- E. 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. The income distribution pursuant to COAH’s rules and the New Jersey Fair Housing Act shall be at least 13 percent very-low-income units, 37 percent low-income units and no more than 50 percent moderate-income units.

F. Supplemental Definitions:

- 1. **MEZZANINE** shall mean an intermediate level of a building story that is located between the uppermost story’s floor and the roof or uppermost ceiling, which has an aggregate floor area of not more than one-third of the area of the story in which it is located.
- 2. **HABITABLE ATTIC** shall mean a finished or unfinished area not considered a story which occupies at least 70 square feet in area which area shall have an average ceiling height of at least 7 feet and is enclosed by knee walls on the sides (if applicable), the roof assembly above and the floor-ceiling assembly below.

G. Zoning Criteria:

- 1. Permitted principal 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”), including units that are separated vertically and/or,horizontally.
 - c. Garden Apartment units, as defined in Section 125-8 (“Dwelling...Garden Apartment”).
 - d. Any building may combine multiple residential unit types.
- 2. Permitted accessory uses and structures: Uses which are customarily incidental to the principal use, excluding detached garages and sheds.
- 3. Zoning standards: The zoning ordinance intends for the site to be developed as one cohesive project.
 - a. Minimum tract area: 10 acres
 - b. Maximum number of residential units: 200
 - c. Maximum number of building stories and height:

- i. 4 residential stories plus mezzanine/57 feet. Buildings that contain ceiling heights of less than 9 feet and have a roof pitch of less than 8:12 shall be a maximum of 52.5 feet.
 - ii. When a building is within 200 feet of an existing adjacent single-family dwelling: 3 residential stories plus habitable attic or mezzanine/40 feet shall be the maximum building height.
 - iii. The height of a building containing more than one horizontal segment or leg and more than 3 residential stories shall be measured individually for each segment. An average shall be taken of the vertical distance from a point in the center of the street opposite of the building wall fronting said street to the mean height of a gable or hip roof at each end of the segment. Where a rear or side building façade also faces a street, the segment ends shall be comprised of the two points that are closest to the street, and at least 100 feet apart. Each segment, as measured above, shall comply with the building height requirement.
- d. Minimum building setback from Plaza Road and Cooper's Way:
- i. Buildings taller than 40 feet shall be set back at least 35 feet from the Cooper's Way property line and a minimum of 40 feet and an average of 45 feet from the cartway of Plaza Road;
 - ii. Buildings 40 feet or less in height may be set back no less than 30 feet from the cartway of Plaza Road and 35 feet from the Cooper's Way property line.
- e. Minimum building setback from internal roadways: Buildings taller than 40 feet shall be set back at least 20 feet from the face of curb; buildings 40 feet or less in height may be set back no less than 10 feet. Porte-cocheres on internal roadways may be located at the edge of pavement.
- f. In order to encourage variety in building façades, an 8-foot encroachment shall be permitted by first floor unenclosed rear and front porches, stoops, stairs and balconies into all required yard areas, and bay windows and cornices shall be permitted to encroach 5 feet, where the encroachment comprises less than 50 percent of the façade.
- g. Minimum building setback from adjacent single-family residential lot lines: 30 feet
- h. Minimum building setback from all other property lines: 20 feet
- i. Maximum building coverage: 35 percent (calculated on Block 3610, Lots 1 and 2) (including a maximum total deck coverage of 5 percent)
- j. Maximum impervious coverage: 70 percent (calculated on Block 3610, Lots 1 and 2).
- k. Block 3609, Lot 1 may contain a maximum 15 percent total impervious coverage including 5 percent accessory building coverage.
- l. Minimum separation between buildings: 30 feet
- m. Maximum number of residential units per building: 124 units may be located in one building; all other buildings shall contain 30 or fewer units.
- n. Maximum accessory building or structure height: 16 feet / 1 story, except that one open air pavilion may be provided with a maximum height of 35 feet to the ridge.
- o. Accessory building setbacks: Accessory buildings shall comply with the tract perimeter setback requirements for principal buildings.

- p. Block 3609, Lot 1 (Archery Plaza) may contain an accessory structure without containing a principal structure.
- q. Front-loaded garages shall not extend more than 7 feet from the building face. Minimum front yard setback for units with front-loaded garages shall be 20 feet from the street.
- r. Substantial evergreen trees including Colorado Spruce, Norway Spruce, Douglas Fir, Leyland Cypress or comparable species shall be planted along all property lines that directly abut single-family residential uses to screen proposed buildings and parking, and shall also be utilized to screen any solid building walls greater than 40 feet in height from residences across the railroad tracks and from Route 208. A maximum 20 percent of the evergreen tree stock may be Eastern White Pine. 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.
- s. Off-street parking areas and driveways shall be set back at least 10 feet from all property lines that abut a side property line of a single-family residential use, and shall be set back at least 20 feet from all property lines that abut a rear property line of a single-family residence. Head-in parking shall not face adjacent single-family residential uses.
- t. Signs.
 - i. One project identification sign shall be permitted as well as one sign identifying the Radburn community, the combined total of which shall not exceed 45 square feet.
 - ii. The Radburn community sign shall be located at the intersection of Plaza Road and Cooper's Way. The Radburn community sign shall be mounted on a brick or stone wall not exceeding 6 feet in height and may be externally illuminated. The base of the sign should be suitably landscaped.
 - iii. The project identification sign may be located at one of the site's entrance points. The sign may be externally illuminated and should be mounted on a brick or stone wall or monument, which shall not exceed 7 feet in height. The sign shall be set back at least 20 feet from the Plaza Road cartway, shall not be located in a required sight triangle. The base of the sign should be suitably landscaped.
 - iv. Sign area.
 - (a) Area to be included. The supporting structure or bracing of a sign shall be omitted in measuring the area of the sign unless such structure or bracing is made part of the message or sign face. Where a sign has two faces back-to-back and parallel to each other, the area of only one face shall be included in determining the area of the sign.
 - (b) The area of all signs with backing shall be measured by computing the surface area of the sign backing.
 - (c) The area of all signs without backing shall be measured by computing the area of the smallest geometric figure or figures which can encompass all words, letters, figures, emblems and other elements of the sign message.

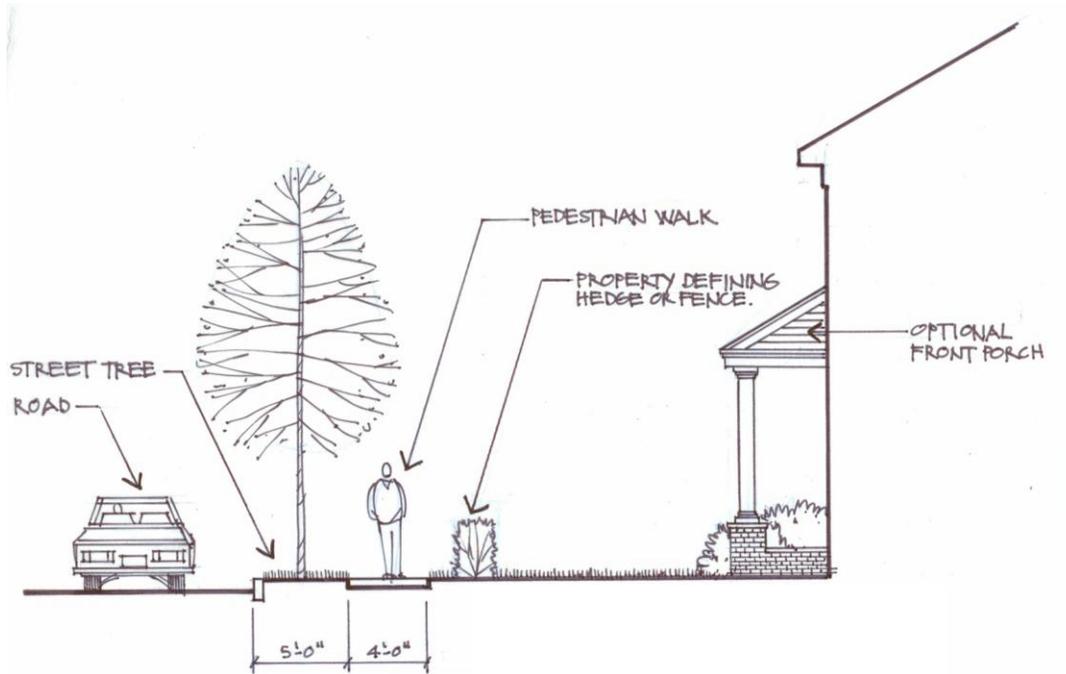
- H. The New Jersey Residential Site Improvement Standards shall govern and shall supersede applicable sections of Chapter 125. Deviations from the Residential Site Improvement Standards are to be done in accordance with N.J.A.C. 5:21-3.
- I. The loading space requirements set forth in Section 125-48B shall not be applicable.
- J. The location of and/or the need for relocation of any existing utility or other easements shall not be a valid impediment to approval by the Board, provided that the legitimate public interests pertaining thereto are provided for in any such relocation. Further, the Board shall cooperate with the Governing Body or other empowered entity to facilitate the relocation, at the Applicant's expense, of any such easements and/or the improvements located in such easements.
- K. 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 and other applicable sections pertaining to development application procedures.
- L. No studies related to fiscal or economic effects of the project shall be required.
- M. 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 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.
- N. Supplemental Design Standards. Where provisions herein conflict with other provisions of Chapter 125, Land Development, this Section shall supersede. Deviations from these standards may be granted via design waiver.
 - 1. Off-street parking may be located at-grade, below grade and underneath buildings. Parking beneath buildings shall be enclosed and finished in appearance and shall contain fenestration where appropriate to avoid large expanses of blank façade. Below grade parking and parking under buildings shall not result in a building that appears from any street to be set on piers. Off-street surface parking shall not be permitted between the building and Plaza Road, shall not be visible from Plaza Road and shall be screened with a year-round vegetative screen along Cooper's Way as well as along abutting single-family residential property lines.
 - 2. In no case shall any finished floor elevation exceed 72 inches from the street centerline grade. Where finished floor elevation exceeds 48 inches from the street centerline grade, the building façade shall be treated with fenestration or other decorative treatment and landscaping where appropriate for the purpose of minimizing large expanses of blank wall. Exposed walls on building segments with finished floor elevations of less than 48 inches shall be effectively screened with foundation plantings.
 - 3. A 10-foot-wide green space shall be provided between buildings and parking lots to provide for vehicle overhang and landscaping. Additional width shall be provided in areas where pedestrian access is provided.
 - 4. The site plans shall demonstrate the provision of adequate areas for the storage and collection of trash and recyclables. If trash and recyclables are to be stored inside units, adequate space shall be indicated on the floor plans. If common trash areas are to be provided, a detail of the area shall be provided on the plans. Trash enclosures shall be properly sized for the number of units served and shall be surrounded on three sides by a masonry enclosure at least 6 feet high, finished to match the principal buildings.
 - 5. No more than two curb cuts consisting of an ingress/egress shall be allowed on Plaza Road. Individual driveways shall not be permitted onto Plaza Road.
 - 6. Internal roadways shall be maintained as private roads unless accepted by the Borough in accordance with N.J.S.A. 40:67-23.7.

7. Off-tract improvements for the project's impacts shall be governed by applicable law.

Areas on site that do not contain buildings, parking areas, roadways or driveways should be designed as open space areas for the enjoyment of the private community and should be contiguous where possible to increase usability. Open space including but not limited to active play areas, walking paths and similar amenities shall be provided totaling no less than 15,000 square feet in area. Such amenities may be located on Block 3610, Lots 1 and 2 and Block 3609, Lot 1.

8. 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 square feet or 10 square feet per residential unit, whichever is more. 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. Additional parking spaces shall not be required for the children's play area. Such amenities as are provided pursuant to this provision shall not be counted as impervious coverage.
9. At least fifty (50) percent of all parking areas shall be shaded at tree maturity. Shade tree species shall be utilized. The perimeter of the parking area shall be fully landscaped and screened from residences.
10. All areas not covered by buildings, streets, parking areas or sidewalks shall be landscaped with material that is suitable for the location and function of land.
11. Existing mature street trees shall be identified on the site plans.
12. The existing mature street trees along Plaza Road should be preserved, in which case the current sidewalk location may be maintained. If it is not feasible to preserve the trees, then a 5-foot-wide planting strip shall be located between the curb and a 4-foot-wide sidewalk, wherein street trees shall be planted 40-feet on-center.
13. Sidewalk no less than 4 feet wide shall be provided along Cooper's Way, the interior tract roadways and throughout the tract. Along the Cooper's Way frontage, a 2-foot-wide grass strip shall be provided between the curb and the sidewalk. The existing mature street trees shall be preserved.
14. Any proposed rear decks or patios shall be indicated on the site or subdivision plans as well the architectural floor plans.
15. In order to increase the effectiveness and usability of proposed open space and recreation areas, such areas shall be contiguous where feasible.
16. A clear pedestrian connection shall be provided from the residential units to the Radburn train station across Block 3609, Lot 1.
17. Architectural floor plans and building elevations, prepared by a licensed architect under seal, shall be submitted with the site plans. The floor plans shall indicate the number of bedrooms per dwelling unit.
18. Although a common design theme is not to be discouraged, buildings should be differentiated to avoid monotony and to minimize the appearance of building mass.
19. The facades of buildings facing Plaza Road and Cooper's Way shall be designed to appear as front facades, and building entrances shall be provided on Plaza Road. The rear of buildings and garages shall not face Plaza Road.
20. Buildings shall be designed to have an attractive, finished appearance from all public spaces, streets and adjacent residential uses. The architectural treatment of a facade or roof shall be completely continued around all visibly exposed sides of a building. Building

- facades abutting or facing the railroad right-of-way may be solid walls without fenestration; the color and finish material of the wall shall complement the colors and materials used on the building facades that do not abut the railroad right-of-way, but shall not be required to be the same as the facades that do not abut the railroad right-of-way.
21. The colors of all buildings, pavements, awnings, signage, site amenities and other structures should be warm, muted tones. Building and trim accent areas may feature brighter colors.
 22. Building facades, porch and entry posts, windows and window panes should respect traditional architectural proportions such as the Golden Rectangle.
 23. Porches shall provide porch beams above piers or posts.
 24. Building facades should be articulated vertically as well as horizontally where appropriate to reduce the scale and uniformity of large-scale buildings. Street side building facades should be designed to reflect the Radburn community's identity, character and scale. The buildings should feature pitched roofs with dormers, as well as changes in roof plane. Façade and roof designs shall be similar in concept but not required to be the same as Exhibits P15 ("The Landmark Plan," dated March 15, 2006) and Figures 20, 22 and 24 in Exhibit P4 which were submitted to the Court as part of the document entitled "Planning Report: Builders [*sic*] Remedy Assessment and R-1-1 Zoning Analysis in the Matter of: Landmark at Radburn, LLC, *et al* v. Borough of Fair Lawn, *et al*. Docket Number BER-L-8226-07, dated October 30, 2008."
 25. Materials on facades fronting on Plaza Road and to a depth of at least 100 feet off of Plaza Road and Cooper's Way shall be high-quality and may include but not be limited to brick, natural stone, stucco, EIFS, fiber cement or wood composite. Trim materials may include but not be limited to wood, wood composite, natural stone, brick, cellular PVC or fiberglass.
 26. Building fronts shall be arranged so that front facades generally face front facades.
 27. Roofs.
 - a. Box-like shapes should be avoided.
 - b. Architectural embellishments that add visual interest to roofs, including but not limited to dormers, belvederes, masonry chimneys, cupolas and such similar elements should be utilized, provided that such are architecturally compatible with the style, materials, colors and details of the building and they comply with the building height standards.
 - c. The minimum permitted roof pitch shall be 6:12; a 4:12 roof pitch may be permitted for shed dormers.
 28. Where building entrances are planned along Plaza Road, they shall be separated from the sidewalk by a low hedge and/or tubular aluminum picket-style or similar fence to create separation and privacy (see Detail #1 "Plaza Road Streetscape").



Detail #1 "Plaza Road Streetscape"

29. Mechanisms to control outdoor clutter and to handle storage of bicycles, grills and other outdoor equipment shall be provided.
30. Ganged mail boxes shall be located where safe pedestrian and vehicular access can be provided.
31. All exterior yard areas shall be maintained by a Homeowner's Association, not individual property owners.
32. In addition to the other landscaping standards herein and elsewhere in the Borough Code, on-site landscaping should be provided as follows:
 - a. Non-invasive, drought-tolerant species should be utilized.
 - b. Single-stemmed tree species are recommended.
33. A stormwater basin may be located in the southwestern corner of the site, and shall not be permitted between the building and Plaza Road.
34. Site lighting shall facilitate access to buildings from the street, sidewalk or parking areas without creating nuisance glare, sky light or consuming too much electricity. Full cut-off fixtures and house-side shields should be utilized. Light poles and fixtures should enhance site aesthetics, and light pole footings shall be installed flush with grade.
35. Retaining walls should not exceed 6 feet in height. Where total wall height is required to be greater than 6 feet, terracing shall be used between walls at a width equal to the height of the tallest wall. The terraced area shall be landscaped with low-maintenance plant material that will grow to at least the height of the wall. The wall shall be faced with durable material that coordinates with the principal building façade materials.

- O. 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.
- P. The application and plan set shall be sent to the Borough Health Officer and Borough Environmental Commission for review and comment on applicable items.
- Q. Soil and groundwater contamination shall be remediated to allow for the proposed use in accordance with NJDEP requirements.
- R. Board approval will be subject to all outside agency approvals, including New Jersey State Historic Preservation Office review and recommendation pertaining to the appropriateness and size of buffer areas that will protect the integrity of the historic site per N.J.A.C. 5:97-3.13(b)5. The review and written recommendation by the New Jersey Historic Preservation Office shall be considered by the Board in its review of the plan.
- S. Informal plan review recommended.
 - 1. It is strongly recommended that Applicant appear before the Board for informal review of a refined concept plan for the project prior to the submission of any site plan application.
 - 2. The refined concept plan should indicate the location of required roadways, parking areas, pedestrian paths, open space and recreation areas, buildings, driveways and other site improvements. The number of proposed units, unit types and orientation of buildings should also be provided, as well as architectural sketches of proposed buildings.
- T. 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. Section 125-9, entitled “Zones Established,” shall be amended to include the R-6 Inclusionary Multi-Family Residential Zone.

SECTION III. Section 125-23, currently “reserved,” shall be amended to reference the new R-6 Zone and to refer to the standards as set forth in new Section 49-14.

SECTION IV. All other sections of Chapters 49 and 125 shall remain in full force and effect.

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

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

Attest:

Approved:

 Joanne M. Kwasniewski, RMC/CMC/AAE
 Acting Manager / Municipal Clerk
 Introduced: February 9, 2010
 Adopted:

 Joseph Tedeschi, Mayor