

**TOWNSHIP OF MILLBURN  
ORDINANCE NO. 2585-21  
ORDINANCE AMENDING AND SUPPLEMENTING THE TOWNSHIP OF MILLBURN DEVELOPMENT  
REGULATIONS AND ZONING ORDINANCE**

**STATEMENT OF PURPOSE:** The purpose of this Ordinance is in furtherance of the conditions of a Settlement Agreement resolving certain litigation brought by the Township of Millburn in the Superior Court of New Jersey, Law Division, Essex County, captioned In the Matter of Township of Millburn, et al., Docket No. ESX-L-2778-18 (the “Litigation”). The Ordinance also adopts the zoning ordinance implementing the essential terms and conditions of the Settlement Agreement. The Settlement Agreement will not become implemented until approved by the Court at a Fairness Hearing that will be scheduled in the future by the Court and will be the subject of a published notice that will set forth the date, time and place of the Fairness Hearing and advise of an opportunity to be heard. The Fairness Hearing is in addition to, and not in-lieu-of, the statutory public hearing to be held on this ordinance as set forth in the requisite published notice.

**WHEREAS**, through Court-ordered mediation, the parties have been able to resolve the Litigation, subject to the approval of the Court at a Fairness Hearing as set forth above; and

**WHEREAS**, the Settlement Agreement set forth above includes a concept plan for Block 5302, Lot 5 (the “Property”) that depicts a four (4) story building, including one story of structured parking, and while it is recognized the concept plan has been and will continue to be amended to reflect engineering details, this concept plan serves as the basis for the zoning herein;

**WHEREAS**, the Township Committee of the Township of Millburn (the “Township”) desires to adopt a Zoning Ordinance implementing essential terms and conditions of the Settlement Agreement as it relates to the Property.

**NOW, THEREFORE, BE IT ORDAINED** by the Township Committee of the Township of Millburn, in the County of Essex and State of New Jersey as follows:

**Section 1.** Article 6 “Zoning Provisions”, Section 602 “Zoning Map”, is hereby amended such that a portion of Block 5302, Lot 5 consisting of not less than five (5) nor more than eight (8) acres on the Official Tax Map of the Map of the Township of Millburn to include an overlay zone permitting an inclusionary multifamily development as detailed in this Ordinance. The existing zoning shall remain in place.

**Section 2.** Article 6 “Zoning Provisions”, Section 606 “Zone Requirements” is hereby supplemented by adding the following new Section:

### 606.4.3 Residential Multi-Family Affordable Housing RMF – AH3

a. Purpose and Review.

To provide for multi-family inclusionary development a portion of Block 5302, Lot 5 consisting of not less than five (5) nor more than eight (8) acres (the “Property”) consistent with the concept plan included in the Township’s August 19, 2021 Settlement Agreement with Fair Share Housing Center with a required set aside for low- and moderate-income units together with customary amenities and maintenance spaces accessory to the residential use.

b. Permitted Principal Uses.

1. Residential apartments; with optional associated amenities and services, including but not limited to clubhouse, fitness center, screening room, dog play area, business center, balconies and terraces for individual units, and other uses customarily associated with multi-family dwellings, provided such accessory uses are subordinate to the principal use and serve only the principal use. Rooftop decks and amenities are prohibited as a principal use.

c. Permitted Accessory Uses.

1. Off-street structured parking within the building (i.e., at grade and below grade) and surface parking that serve the residential use.
2. Any other use which is subordinate and customarily incidental to the permitted principal use, including but not limited to leasing/sales/management offices associated with residential apartments, maintenance areas, and trash collection/recycling areas.
3. Sustainable building and site design features, such as but not limited to roof-mounted solar energy generating facilities, green roof, electric vehicle charging stations.
4. Rooftop decks and amenities are prohibited as accessory uses.

d. Maximum Development Yield.

1. The total number of multi-family residential units permitted in the overlay zone shall be not more than 195 total units, of which 20% shall be set aside for low- and moderate-income households.

2. Of the 156 market units, no more than 48 units may be two-bedroom with a den, no more than 48 units may be two-bedrooms without a den, at least 28 units shall be one-bedrooms with a den, and at least 32 units shall be one-bedroom units. For purposes of this section, a “den” shall be defined as a room with a door, but no closet, no direct access to a bathroom, and is not to be used as a bedroom. A den may or may not include a window. Any reduction in total units shall have a proportionate adjustment of the bedroom distribution of the market units.
- e. Affordable Housing Requirements.
1. A total of twenty percent (20%) of the units shall be maintained as affordable units in compliance with applicable New Jersey Council on Affordable Housing (COAH) rules and regulations and Uniform Housing and Affordability Controls (UHAC), as well as the Township’s third round housing element and fair share plan and affordable housing regulations. Assuming that 195 apartment units are constructed, such affordable units shall include: 8 three-bedroom units; 24 two-bedroom units; and 7 one-bedroom units as set forth in the applicable UHAC provisions. Any reduction in total units shall have a proportionate adjustment of the number of affordable units and the bedroom distribution of the affordable units. Half of the affordable units shall be set aside for low-income households, and the other half shall be set aside for moderate income households, as defined by COAH and/or UHAC. In addition, 13 percent of the affordable units, including 13% of the units in each bedroom configuration, shall be made available to very low-income households, as defined by COAH and/or UHAC. The affordable units shall be integrated with market rate units throughout the development.
- f. Development application.
1. Application shall be made for preliminary site plan and subdivision approval for the entire portion of Block 5302, Lot 5 subject to RMF-AH3 zoning (the “Tract”). Application for final site plan and/or subdivision approval may be made separately for a portion of the Tract or simultaneously with the application for preliminary site plan approval, in the sole discretion of the developer.

2. Nothing contained herein shall preclude the phased construction of the required development components, provided that the construction of the affordable housing units shall follow the schedule set forth in N.J.A.C. 5:93-5.6(d) .
  3. Nothing herein shall prevent the request of reasonable waivers, deviations, and “c variances” from the Township Code during preliminary or final site plan approval.
- g. Area, Bulk and Setback Requirements
1. The minimum Tract area shall be 5 acres.
  2. Required minimum building setbacks shall be as follows:
    - (a) Along JFK Parkway, the minimum setback shall be 30 feet.
    - (b) Along the rear northerly property line adjacent to the New Jersey American Water property, the minimum setback shall be 20 feet.
    - (c) Along the shared property line with Lot 3 in Block 5302, [103 Eisenhower] the minimum setback shall be 15 feet.
    - (d) Along the easterly most property line adjacent to New Jersey American Water property, the minimum setback shall be 50 feet.
  3. The maximum lot coverage shall be 90%.
  4. The maximum building coverage shall be 90%.
  5. Building height.
    - (a) Building height shall be measured with respect to the adjoining finished grade at the building perimeter and shall not exceed 60 feet. Height shall be measured to the deck level of the roof. For purposes of measuring height, stairways, architectural features (including parapet walls), elevators bulkheads and similar rooftop mechanical appurtenances located above the deck level of the roof shall be excluded from the building height calculation, provided, however, that

no such rooftop appurtenance shall exceed the deck level of the roof by more than 12 feet.

- h. Circulation and parking. Sections 607.3 and 607.5 of the Millburn Township Code shall not apply in the RMF-AH3 Zone. The following standards shall apply:
  - 1. Nothing herein shall prohibit or preclude access through existing or modified drive aisles of neighboring properties, provided appropriate cross easements are entered into by and among the involved property owners.
  - 2. Vehicular entry points. One vehicular entry for residents and visitors is permitted from JFK Parkway. Up to two entries for the purpose of deliveries and resident move in/out are permitted from JFK Parkway, provided each entry is not less than 100 feet from the resident and visitor vehicular entry. This shall not include any permitted easement access from neighboring property owners subject to County approval.
  - 3. Parking requirements. The required parking shall be not less than 1.7 parking spaces per unit. Banked parking is encouraged where feasible as determined by the Planning Board.
  - 4. Structured parking stall dimensions shall be a minimum of eight and one-half (8.5) feet wide and eighteen (18) feet deep.
  - 5. Surface parking spaces shall not be located between the building and JFK Parkway, with the exception of vehicle parking (not loading) located in and around an entrance courtyard. All parking areas shall be adequately screened with plantings from JFK
  - 6. Loading. Loading for resident move in/out shall be provided on the site and not be located between the building and JFK Parkway. One (1) loading space per 100 units shall be provided. Adequate screening of the loading areas with plantings shall be provided.
  - 7. Electric vehicle supply/service equipment and make-ready parking spaces shall be provided consistent with P.L. 2021, c.171.
- i. Building Design.

1. As viewed from JFK Parkway, the building shall include a stone or masonry base, brick facades with white accents, flat roof, a division into bays, and architectural detailing at the roofline.
2. A significant break in the façade of the building(s) along JFK Parkway, of not less than 50 feet deep, shall occur such that there is a distance of not less than 60 feet between portions of the building and no more than 125 units shall be on either side of the break.
3. Residential amenity space may be located on any floor of the building(s) but shall not be permitted on the roof (indoor and outdoor).
4. Vertical articulation: Bays
  - (a) All facades of the building visible from JFK Parkway shall be divided into series of alternating bays. A bay is distinguished by having a change in plane of not less than one (1) foot deep.
  - (b) Where a flat roof is provided, the roofline of the building visible from JFK Parkway shall not continue on the same horizontal plane for a length that exceeds 100 feet.
  - (c) Where a flat roof is not provided, the roof of the building visible from JFK Parkway shall be interrupted with gables, dormers, and/or other architectural techniques a minimum of every 100 feet.
5. Horizontal articulation: the building shall be divided into a base, middle, and roofline.
  - (a) Base façade detailing. The base of the building shall be highlighted across the entire first level. While the primary material on facades shall be brick, a significant portion of the ground floor façade of the building (and principally on major bays) shall be stone, simulated stone, or masonry in order to visually ground the building.
  - (b) Middle detailing. The middle of the building shall include variations in plane by means of bays, as well as further architectural components such as, but not limited to, bay

windows and Juliet balconies, to help create variety and visual interest.

- (c) Roofline detailing. The roofline of the building shall be highlighted with architectural details and/or a different building material.

6. Materials.

- (a) Primary permitted **façade** materials are brick, cultivated stone or other masonry facing, fiber cement siding, and metal. Stucco is prohibited. EIFS is prohibited. Fiber-cement clapboard or paneling may be used as an accent material.
- (b) No more than four different materials should be employed as primary materials on each bay's building **façade**. Within the chosen primary materials, variation in color, texture, and/or pattern may be employed to create further distinctions. The level of materials, detailing and articulation shall be consistent along all facades visible from JFK Parkway. Materials shall be extended around corners and extensions to a logical break in plane, in order to avoid a "pasted on" appearance.
- (c) Rubber roofs are permitted only for flat roofs.

7. Parking Structure.

- (a) Structured parking entries shall not be accessed from a building wall which is parallel, or approximately parallel, to JFK Parkway.
- (b) Structured parking entries shall not exceed 35 feet in width as measured at the garage door opening.
- (c) Structured parking shall not exceed one (1) level and shall be located beneath up to 3 floors of residential units and associated amenity space.
- (d) Not more than one story of structured parking shall be visible from JFK Parkway.

- (e) Any portion of a structured parking visible from JFK Parkway shall be screened by structural elements that are compatible with the materials and design of the front and side building facades.
8. Service areas.
- (a) Mechanical rooms. Where possible and as permitted by the utility providers, mechanical, storage, and other utilitarian rooms shall be located at the interior or rear of the building, rather than facing streets, sidewalks, the courtyard, or other pedestrian areas. Where they must be located along an exterior, street-facing or courtyard-facing wall of the building, they shall maintain the overall pattern, proportion, and design of windows in adjacent and upper facades, including divided lites; no large expanses of blank walls are permitted.
  - (b) Trash and refuse. Building trash and recycling collection areas shall either be fully contained within the building, including the parking structure, or adequately screened from public view through a combination of solid fencing and plantings.
- j. Landscaping.
- 1. The site's frontage along JFK Parkway shall be landscaped with a variety of grasses, flowers, low bushes, ornamental trees, and shade trees, having a mix of deciduous and evergreen plantings for year-round visual interest. The planting bed shall be a minimum of 10 feet wide, measured horizontally and perpendicular to the building façade, and shall include drip irrigation.
  - 2. Street trees shall be spaced at regular intervals along JFK Parkway of not more than 50 feet on center.
- k. Building Signage.
- 1. Wall Graphics. One (1) wall graphic shall be permitted on each residential apartment building
  - 2. Wall graphic placement, size, and design. Façade signs shall not obscure architectural features of the building. The area of the permitted façade sign shall not exceed 60 square feet or 10% of the



façade area, whichever is less. Recommended facade signage types include letters painted on or affixed to a signage board; channel-cut, pin-mounted individual letters; and box signs with light-colored lettering against a dark, opaque background. Dimensional signs (such as carved relief or individually-pin-mounted lettering) are encouraged.

3. Lighting. All wall graphics shall be either externally lit by wall-mounted, focused, directional lights such as goose neck lights or sconces with the lighting source shielded and the bulb exposure limited to that sufficient to illuminate the sign content or internally illuminated channel letters.
4. Directional and wayfinding graphics.
  - (a) Directional graphics shall not exceed six (6) square feet and shall be permitted at each driveway access point
  - (b) Wayfinding graphics shall not exceed three (3) square feet and shall be permitted as deemed appropriate by the Planning Board to direct residents to the various building components.
5. Ground Graphic. One externally illuminated monument sign along JFK Parkway shall be permitted. Such monument sign shall not exceed forty (40) square feet and shall not be taller than six (6) feet from its base. The base area shall be well landscaped.

**Section 3.** All other ordinances, or parts of ordinances, that are inconsistent or in conflict with This Ordinance are hereby superseded to the extent of any such inconsistency or conflict and the provisions of this Ordinance shall apply. All Development and Zoning Provisions in the Millburn Township Code shall apply to all development in the RMF-AH3 Zone, with the following limits and exceptions which eliminate unnecessary cost-generative requirements therein pursuant to N.J.A.C. 5:93-10.1(b):

1. Section 507 (Drainage) of the Millburn Township Code shall not apply in the RMF-AH3 Zone.
2. Except for Section 608.5.a, DRZ-608 (Protection of Steep Slope Areas) of the Millburn Township Code shall apply in the RMF-AH3 Zone. Any steep slope disturbance shall be subject to the design standards set forth in Section 608.7 a through l.

3. DRZ-509 (Environmental Impact Statement) of the Millburn Township Code shall apply in the RMF-AH3 Zone, except that the contents thereof as set forth in Sections 509.1 through 509.6 shall exclude the portion of the contents that have been submitted to, and specifically approved by, the Watershed Property Review Board and the New Jersey Board of Public Utilities.
4. DRZ-525 (Stormwater Runoff) of the Millburn Township Code and the Stormwater Management Regulations of the New Jersey Department of Environmental Protection (N.J.A.C. 7:8) shall apply in the RMF-AH3 Zone, unless the Watershed Property Review Board and the New Jersey Board of Public Utilities have specifically approved a component or components of the Stormwater Management System which approvals are in conflict with DRZ-525 or the Stormwater Management Regulations of the New Jersey Department of Environmental Protection (N.J.A.C. 7:8). In such instance, the specific approval of the Watershed Property Review Board and the New Jersey Board of Public Utilities shall govern.
5. Chapter 11 (Tree Preservation) of the Millburn Township Code shall not apply in the RMF-AH3 Zone, PROVIDED, HOWEVER, that a Landscaping Plan shall be submitted to the Planning Board as a component of the Site Plan application and include the planting of deciduous trees to the maximum extent possible and based upon a review by the Township Forester to compensate for the substantial loss of trees due to site development.

**Section 4.** If any portion or clause of this Ordinance is declared invalid for any reason whatsoever, the same shall not affect the validity or constitutionality of any other part or portion of this Ordinance.

**Section 5.** This Ordinance shall be so construed as not to conflict with any provision of New Jersey law.

**Section 6.** The provisions of this Ordinance shall be cumulative with, and not in substitution for, all other applicable zoning, planning and land use and development regulations except as specifically provided herein.

**Section 7.** This Ordinance may be renumbered for purposes of codification.

**Section 8.** This ordinance shall be effective upon final passage and publication as required by law, and the granting of an exemption from the Watershed Protection and Moratorium Act from the Watershed Property Review Board and the New Jersey Board of Public Utilities, and shall be **SUBJECT TO** approval by the Superior Court of New Jersey of the Settlement Agreement at a subsequently scheduled Fairness Hearing as previously set forth in this Ordinance.

**Section 9.** Subsequent to an exemption granted by the Watershed Property Review Board and the Board of Public Utilities, the developer of the site shall provide the draft site plan application , including the fully engineered site plan that was submitted to the Watershed Property Review Board and the Board of Public Utilities and architectural plans depicting the building façade and floor plans, to the Township prior to submission for site plan approval. These documents shall be provided for information only; however, the developer shall agree to meet with Township staff, officials, and professionals (as selected by the Township) to discuss comments and concerns about the site plan prior to submission for site plan approval. All such Township comments and concerns shall be provided to the developer within 30 days of the developer’s provision of a plan to the Township pursuant to this Section. No such comments shall contradict the elements of the fully engineered site plan submitted to the Watershed Property Review Board and the Board of Public Utilities and specifically approved by the Watershed Property Review Board and the Board of Public Utilities .

**Section 10.** Anything to the contrary notwithstanding, if the Settlement Agreement is not approved by the Superior Court of New Jersey in the subsequently scheduled Fairness Hearing, the executed Settlement Agreement shall become automatically null and void and of no legal effect without any further action by the Township.

ATTEST:

MILLBURN TOWNSHIP

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By: \_\_\_\_\_

Christine A. Gatti, RMC  
Township Clerk

Tara Prupis, Mayor

1<sup>st</sup> Reading and Introduction: 10/5/2021  
1<sup>st</sup> Publication: 10/14/2021  
Referral to Planning Board: 10/7/2021  
Notice to County Planning Board Prior to Adoption: 10/7/2021  
Notice to Clerks of Adjoining Municipalities: 10/7/2021  
Notice to Office of Planning Advocacy: 10/7/2021  
Notice to Commander of Registered Military Facility: N/A  
Notice to Affected Property Owners: 10/7/2021  
2<sup>nd</sup> Reading and Adoption: 11/9/2021  
2<sup>nd</sup> Publication: 11/18/2021  
Filing with County Planning Board: 11/16/2021

CERTIFICATION

I, Christine A. Gatti, Clerk of the Township of Millburn, in the County of Essex, State of New Jersey, do hereby certify that the foregoing is a true and correct copy of an Ordinance duly adopted by the Township Committee at a regular meeting held on the November 9, 2021.

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Christine A. Gatti, RMC  
Township Clerk