

TOWNSHIP OF MILLBURN
ORDINANCE NO. 2593-21
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 705, Lot 1 (the property) that depicts a four (4) story building and while it is recognized the concept plan will 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 is 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 Block 705, Lot 2 (“Property”) on the Official Tax Map of the Map of the Township of Millburn to include an inclusionary multifamily zone district as detailed in this Ordinance.

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

606.4.4 Residential Multi-Family Affordable Housing RMF – AH4

a. Purpose and Review.

To provide for multi-family inclusionary development 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, interior courtyards, fitness center, screening room, business center, 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 rooftop amenities are prohibited.

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 rooftop amenities are prohibited as accessory uses.

d. Maximum Development Yield.

1. The total number of multi-family residential units permitted in the district shall be 150, of which 20% shall be set aside for low- and moderate-income households.
2. Not more than 54% of the market rate units shall be two-bedroom units; the remaining market rate units shall be one-bedroom units or studio 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 housing element and fair share plan and affordable housing regulations. 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. Site Plan Application.

1. Development of the site, as depicted in any site plan for preliminary or final site plan approval, shall be similar to the Concept Plan for Block 705, Lot 2 included in the Township's August 19, 2021 Settlement Agreement with Fair Share Housing Center, with the exception of necessary adjustments to account for site engineering and architecture consistent with this Ordinance.
2. Nothing herein shall prevent the request of reasonable waivers, deviations, and variances (excepting use 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 2 acres.
2. The required minimum building setback to Millburn Avenue shall be 10 feet. For the purposes of this ordinance, the Millburn Avenue right-of-way shall be defined as extending a distance of 250 feet from the eastern most Property line.
3. The required minimum building setback to Essex Street shall be 10 feet, provided, however that 170 feet of building shall have a minimum permitted setback of not less than 5 feet from the

contiguous Property line and 70 feet of building shall have a minimum permitted setback of not less than 2 feet from the contiguous Property line. For the purposes of this ordinance, the Essex Street right-of-way shall be defined as beginning at the curve onto Essex Street, a distance of 250 feet from the eastern most Property line.

4. The required minimum building setback to the eastern Property line shall be 10 feet, provided, however that 105 feet of building shall have a minimum permitted setback of not less than 3 feet to the eastern Property line.
 5. The required minimum building setback to railway line shall be 1 foot.
 6. The maximum building height shall be 4 stories and 48 feet. Building height shall be measured from 8" below finished floor to the deck level of the roof above. 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. At no point shall the distance between finished floor and adjacent grade exceed 5 ft.
 7. The maximum lot coverage shall be 90%.
 8. The maximum building coverage shall be 90%.
- h. Circulation and parking.
1. Nothing herein shall prohibit or preclude access through existing or modified drive aisles of neighboring properties, provided appropriate easements are entered into by and among the involved property owners.
 2. Vehicular entry points. Vehicle access shall only be provided from Essex Street.

3. Parking requirements. The required parking shall be not less than 1.3 spaces per unit.
 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 a building and a public street.
 6. Loading. All loading for resident move in/out and deliveries shall be provided on the site and shall be screened from view using plantings and/or a wall to the extent practicable. One loading space shall be provided, one of which shall have a dimension of not less than 10 feet by 35 feet.
 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 a public street or residentially zoned lands, the building shall include a stone or masonry base, brick facades with accents, flat roof, a division into bays, and architectural detailing at the roofline.
 2. Roof top amenity space is prohibited. The building roof may only be utilized for mechanical equipment and solar energy generating facilities.
 3. Vertical articulation.
 - (a) All facades of the building, excluding parking structures, visible from a public street or residentially zoned lands 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 parapet of the building, excluding parking structures, visible from a public street or residentially zoned lands 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, excluding parking structures, visible from a public street or residentially zoned lands shall be interrupted with gables, dormers, and/or other architectural techniques a minimum of every 100 feet.
- 4. Horizontal articulation: the building shall be divided into a base, middle, and roofline.
 - (a) Base **façade** detailing. The base of the building should be highlighted across the entire first level. While the primary material on facades should 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.
- 5. Materials.
 - (a) Primary permitted **façade** materials are brick, cultivated stone or other masonry facing, fiber cement siding, and metal. Stucco is discouraged. 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 should be consistent along all facades visible from a public street or residentially zoned lands. Materials should 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.

6. Parking Structure.

(b) Structured parking entries shall not exceed 35 feet in width as measured at the garage door opening.

(d) Any portion of structured parking visible from a public street or residentially zoned lands shall have the vehicles screened by structural elements that are compatible with the materials and design of the front and side building facades.

7. Service areas.

(a) Mechanical rooms. Where possible and as permitted by the utility providers, mechanical, storage, and other utilitarian rooms should 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 be fully contained within the building and parking structure.

i. Landscaping.

1. All portions of the building along the public street shall have a planted edge treatment consisting of a variety of grasses, flowers, low bushes, ornamental trees and/or shade trees, having a mix of deciduous and evergreen plantings for year-round visual interest. The planting bed shall be a minimum of 2 feet wide, measured horizontally and perpendicular to the building façade, and shall include drip irrigation.

2. Street trees shall be spaced at regular intervals of not more than 50 feet on center.

j. Building Signage.

1. Wall graphics. One (1) wall graphic per street frontage shall be permitted.
2. Façade sign placement, size, and design. Façade signs shall not obscure architectural features of the building. The area of the permitted façade sign shall not exceed 30 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. Signage lighting. All façade signs 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 signs.
 - (a) Directional signs shall not exceed six (6) square feet and shall be permitted at each driveway access point
 - (b) Wayfinding signs 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 graphics (monument or freestanding signs) are prohibited.

Section 3. 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 4. This Ordinance shall be so construed as not to conflict with any provision of New Jersey law.

Section 5. The provisions of this Ordinance shall be cumulative with, and not in substitution for, all other applicable zoning, planning and land use regulations except as specifically provided herein.

Section 6. This Ordinance may be renumbered for purposes of codification.

Section 7. 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 as set forth above, this entire Ordinance shall automatically become null and void and of no legal effect and the executed Settlement Agreement shall also become automatically null and void and of no legal effect without any further action by the Township, it being understood that neither the Settlement Agreement nor the adopted Ordinance will become effective or may be implemented until the Settlement Agreement is formally approved by the Superior Court of New Jersey after a Fairness Hearing.

Section 8. The developer of the site shall provide the draft site plan application, including a fully engineered site plan and architectural plans depicting the building façade and floor plans, to the Township for internal review 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 submission of a plan to the Township pursuant to this Section, whereupon the developer may submit the site plan application to the planning board.

Section 9. This Ordinance 2593-21 supersedes Ordinance No. 2587-21 introduced on October 5, 2021. Said Ordinance No. 2587-21 is hereby withdrawn.

ATTEST:

MILLBURN TOWNSHIP

By: _____

Christine A. Gatti, RMC
Township Clerk

Richard Wasserman, Deputy Mayor

1st Reading and Introduction: 10/19/2021
1st Publication: 10/28/2021
Referral to Planning Board: 10/19/2021
Notice to County Planning Board Prior to Adoption: 10/22/2021
Notice to Clerks of Adjoining Municipalities: 10/22/2021
Notice to Office of Planning Advocacy: 10/22/2021
Notice to Commander of Registered Military Facility: N/A
Notice to Affected Property Owners: 10/22/2021
2nd Reading and Adoption: 11/9/2021
2nd 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.

Christine A. Gatti, RMC
Township Clerk