

**BOROUGH OF FAIR HAVEN
ORDINANCE NO. 2021-06**

**AN ORDINANCE OF THE COUNCIL OF THE BOROUGH OF FAIR HAVEN IN THE COUNTY OF MONMOUTH
AMENDING CHAPTER 30, LAND USE AND DEVELOPMENT REGULATIONS, BY AMENDING THE
AFFORDABLE HOUSING ZONE**

WHEREAS, in March 2019, the Borough Council of the Borough of Fair Haven, Monmouth County, New Jersey (the "Borough") voluntarily petitioned the Court via Declaratory Judgment Action ("DJ Action") for approval of its Housing Element and Fair Share Plan ("HEFSP"), which was also adopted in March of 2019; and

WHEREAS, as a result, the Borough obtained immunity from builder's remedy and Mount Laurel litigation, while its plan was processed; and

WHEREAS, the 2019 HEFSP included a mixed-use overlay zone in the B-1 district, which the Borough found to be consistent with its long-term planning goals; and

WHEREAS, the Borough Council of the Borough of Fair Haven, Monmouth County, New Jersey, entered into a Settlement Agreement with Fair Share Housing Center (FSHC) on February 12, 2020 that resolves the Borough's DJ Action globally; and

WHEREAS, the Borough subsequently entered into a Settlement Agreement with M&M Realty Partners ("M&M"), the owner of property located at Block 31, Lot 1, which is within the mixed use overlay district as it was defined by the 2019 HEFSP; and

WHEREAS, M&M Entered into a settlement on February 12, 2020 that proposes the property be included in the Borough's Housing Element and Fair Share Plan as a mixed-use inclusionary development at the density prescribed in the Township's 2019 HEFSP; and

WHEREAS, a Court Order was signed by the Honorable Judge Linda Grasso-Jones on June 5, 2020, that found that the Borough's proposed affordable housing strategy as set forth within the FSHC Settlement Agreement is facially constitutionally compliant and provides a fair and reasonable opportunity for the Borough to meet its obligations under Mount Laurel IV; and

WHEREAS, pursuant to the executed Settlement Agreements and Court Order, the Borough has determined that Block 31 Lot 1 is appropriate within the parameters of the regulations defined herein, for mixed-use inclusionary development through the creation of a new zone, entitled the "Affordable Housing (AH)" District; and

WHEREAS, a dispute over the original ordinance subsequently arose between the parties; and

WHEREAS, the parties were able to amicably resolve those disputes; and

WHEREAS, a first Amendment dated April 12, 2021 to the Settlement Agreement between the Borough and M & M was executed; and

WHEREAS, this amended Ordinance implements and incorporates the Borough's First Amended Settlement Agreement with M&M Realty Partners, the Borough's executed Settlement Agreement with FSHC, the Court Order, and the New Jersey Fair Housing Act of 1985.

NOW THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Fair Haven, County of Monmouth as follows:

A new zoning district, entitled "Affordable Housing (AH)" district is hereby created as follows:

Section 1. Section 30-5.1 The Official Zoning Map of the Borough of Fair Haven is hereby amended to include the newly created Affordable Housing Zone on Block 31 Lot 1.

Section 2. Section 30-5.1a2 Schedules. The Schedule of Permitted Uses is hereby amended as follows:

Schedules. The Schedule of Permitted Uses (Table A, Table B and Table AH) and the Schedule of Area Yard and Building Requirements (Table C) for zone districts within the Borough are established and are made part of this section, together with all notations, references, and designations shown thereon. Requirements related to off-street parking, off-street loading, are set forth in subsection 30-9.2a and b. of this chapter. Requirements related to signs are set forth in subsection 30-7.24 of this Chapter,"

Section 3. Permitted and Prohibited Uses- Schedule of Permitted Uses- Table AH is hereby amended as follows:

**Table AH (subsection 30-5.1)
Schedule of Permitted Uses-Affordable Housing Districts
P=Permitted Use
C= Conditional Use**

A= Accessory Use
NP= Not Permitted
AH Zone

Type of Use	AH Zone
Mixed-use residential with required commercial on the ground floor	P
Restaurant, category one	P
Restaurant, category two	P
Retail sale or rental of goods, merchandise, or equipment, art galleries, artist studios, except for the following:	P
(i) Uses requiring storage or display of goods outside a fully enclosed building, except that this shall not be construed to prohibit temporary sidewalk sales or other temporary special promotional events utilizing a sidewalk area provided the Zoning Office is notified in writing at least ten (10) days in advance of such sale or event; that there is adequate provision for the safe and convenient circulation of pedestrians; and further provided that there are no sales of goods from trucks.	NP
(ii) Motor vehicle sales	NP
(iii) Lumberyards	NP
(iv) Auction markets	NP
Personal service establishments, having as their primary function the rendering of service to a client within a building. Such services may include, but are not limited to, barber and beauty shops; dry cleaning drop-off/pick-up shops; self-service	P
Business service establishments, having as their primary function the rendering of a service to a business client. Such services may include, but not be limited to, document reproduction, duplication, and administrative services.	P
Product service establishments, having as their primary function the servicing or repair of a product, including, but not limited to, the repair or servicing of shoes, audio and visual equipment, appliances, jewelry, and watches. Motor vehicle body shops shall not be permitted.	P
Business offices whose operations are designed to attract and service customers or clients on the premises, including, but not limited to, insurance agents; travel agencies; realtor; finance companies; and tax preparation services.	P
Banks, with no drive-thru services	P
Professional Offices	P
Indoor athletic, exercise, or recreation facilities	P
Childcare center	P
Drive thru uses	NP
Other Uses Incidental and Accessory to the Principal Permitted Use	
Seasonal Outdoor Café and/or Outdoor Dining subject to Section 4-2 of the Borough Code	A
Private garages	NP
Home Occupations	NP
Drive-thru services	NP
Signs (pursuant to Section 30-7.24 of the Borough Code)	A
Fences and walls	A
Off-street parking	A
Loading and unloading areas	A
Essential services	A

Section 4. 30-5.1a.2.c Table C: Schedule of Area, Yard, and Building Requirements regarding the AH Affordable Housing Zone is hereby amended with the following standards:

t Requirements	Minimum Yard Requirements		Maximum Allotment			
	Principal Buildings & Structures	Accessory Buildings & Structures	% Maximum Lot	Maximum Habitable Floor Area Ratio (4)	Maximum Habitable Floor	Maximum Building Coverage % (6)
Corner Lots						

Area (sq. ft.)	Frontage & Width (feet)	Depth (Feet)	Front (feet) (3)	Rear (feet)	One Side (feet)	Total side Yards (9)(10)	Rear (feet)	Side (feet)	Coverage (7)		Area Sq. ft. (5)(8)	
40,000	150	150	50	30	25	50	10	25	30%	0.15	6,900	20
33,500	140	200	50	30	20	40	10	10	30%	0.15	5,180	20
25,000	125	150	50	30	14	35	10	10	35%	0.18	4,140	25
18,000	120	120	35	30	12	30	10	10	35%	0.2	3,450	30
11,500	115	100	30	30	10	25	10	10	40%	0.28	3,220	35
11,500	115	100	25	30	10	25	10	10	45%	0.28	3,220	35
11,500	95	100	30	30	10	24	10	8	45%	0.28	3,220	35
10,000	80	100	30	30	7	16	10	8	45%	0.35	3,020	35
7,000	70	100	25	30	7	16	10	5	50%	0.4	2,200	35
7,000	70	100	35	10	5(1)	10(1)	3	3	80%	0.4	2,200	50
10,000	80	100	35	30	15(2)	30(2)	10	10	70%	0.4	3,020	30
28,000	175 feet along River Road; 125 feet along Cedar Avenue	175	15 feet from River Road; 13 feet from Cedar Avenue (13)	18	50	N/A	3	3	85%	0.95 (15)	N/A	45%

for residence purposes shall comply with the requirements of the R-5 zone. For any other Building, a side yard of not less than five feet wide is required along a boundary, the side street line of the building shall be at least 30 feet from the center of the side street.

for residence purposes shall comply with the requirements of the R-7.5 zone.

front yard for the respective zone for both intersecting streets.

a Ratio."

a."

Setbacks. The permitted habitable floor area for any single family dwelling shall be the lesser of the maximum habitable floor area or the maximum habitable floor area ratio. For other uses, the permitted habitable floor area is determined by the maximum habitable floor area ratio.

Increment for each full 5 feet that the lot width exceeds the minimum lot width for the zone.

For R-10A, R-10B and R-10, the distance between the principal structures on adjacent lots must be equal to the minimum required combined side yard for the zone in question. If a principal structure on an adjacent lot, the larger side yard will be placed abutting the least conforming adjacent structure.

If a lot is wider than the minimum lot width for the zone, a dwelling may be constructed on said lot under the zone standard if the front yard setback conforms to the zone standard in which the lot is located. Further provided that a lot in the R-10, R-10A and R-10B zones which would otherwise be fully conforming under the R-15 standards provided that the front yard setback conforms to the zone standard in which the lot is located.

A mixed-use building shall be setback a minimum of 8 feet from the first story building face along River Road and Cedar Avenue.

The setback shall be 13 feet, increasing to 16 feet at the corner of the building at River Road and Cedar Avenue, as shown on the concept plan.

Setbacks shall be measured from the existing curb to the highest point of the building from the average height of each corner of the lot.

Setbacks located beneath the building.

Setbacks shall be required along Cedar Avenue. For the purposes of lot dimensions, minimum yard requirements, maximum allotments, and calculations, the ROW dedication

Section 5. 30-5.5 is hereby amended as follows:

30-5.5 AH Affordable Housing Zone

Purpose: The purpose of the AH Affordable Housing Zone, which applies to Lot 1 in Block 31, is to provide affordable housing in the form of a mixed-use inclusionary development consisting of a total 14 family rental units, of which 2 will be deed restricted as affordable units in accordance with U.H.A.C rules and regulations. The building shall be a total of 3 stories. The ground floor is required to contain commercial uses. The 2nd and 3rd stories shall consist of the residential units. The 2nd and 3rd story is required to be set back a minimum of 8 feet from the 1st story building facades along the road frontages of River Road and Cedar Avenue. The site plan shall be substantially consistent with the concept plan attached as an exhibit within the executed First Amended Settlement Agreement between the Borough of Fair Haven and M&M Realty Partners and attached to this ordinance. The intent of this zone is to be developed as a single entity. The standards within the Land Development Ordinance remain in effect. Where there is a conflict between this section and another section of the Land Development Ordinance, this section shall supersede those standards.

- a. Principal Permitted Uses
 1. See Table AH in subsection 30-5.1
- b. Permitted Accessory Uses
 1. See Table AH in subsection 30-5.1
- c. Total Number of Residential Units Permitted
 1. 14 total dwelling units
- d. Affordable Housing
 1. Development of the site shall provide for 2 rental family affordable units on site.
 2. One of the affordable units shall be a 2-bedroom low-income unit and the other affordable unit shall be a 2-bedroom moderate-income unit, as specified in the First Amended executed Settlement Agreement. The third and final unit shall be a 2 or 3-bedroom very low-income unit as defined herein or a Payment in Lieu ("PIL") of the construction of the third unit in an amount of no less than \$175,000.00.
 3. Except as otherwise specified in this ordinance relating to Payments in Lieu and income and bedroom distribution, all affordable units shall comply with N.J.A.C.5:93-1 et seq. and the Uniform Housing Affordability Controls (UHAC) at N.J.A.C.5:80-26.1 et seq., the Fair Housing Act and the Borough's HEFSP.
 4. Each affordable restricted unit shall remain restricted for a minimum of 30 years and that restriction may be unilaterally extended by the Borough at its sole discretion, thereafter.
- e. Parking Standards

Section 30-9.2b Off-Street Parking shall apply. Where a conflict occurs between this section and Section 30-9.2b, this section shall supersede those standards.

 1. Each residential unit shall provide 2 parking spaces per unit and no additional guest parking is required
 - (a) Tandem parking is permitted to satisfy residential parking requirements, in accordance with the following:
 - (1) No more than two vehicles shall be placed one behind the other.
 - (2) Both spaces shall be assigned to a single unit.
 2. Commercial parking shall be provided utilizing 1 space/250 sq. ft. of gross floor area, regardless of commercial use. Outdoor dining associated with a restaurant shall not generate additional parking requirements.
 3. Parking areas and drive aisles shall be setback a minimum of four (4) feet from all lot lines; however, a minimum 6-foot setback shall be required along the side lot line.
 4. All surface parking lots that abut the public sidewalk or street shall be separated from the sidewalk or street by a landscaped buffer with a minimum width of four(4) feet. Buffers shall include shrubbery, plantings, a row of trees and/or a minimum 30-inch-high/maximum 42-inch-high brick screen wall.
- f. Circulation Standards

Sections 30-8 Design Guidelines and Standards for Subdivisions and Site Plans and 30-9 Improvement Standards, Specific Criteria and Construction Specifications shall apply. Where a conflict occurs between this section and Sections 30-8 and 30-9, this section shall supersede those standards.

1. As shown and agreed to in the concept plan attached hereto, one (1) one-way entrance driveway shall be permitted from River Road.
2. One (1) two-way entrance/exit driveway shall be permitted from Cedar Avenue.
3. Parking may be permitted within the front yard along Cedar Avenue, provided it is set back a minimum of 4.9feet from the front lot line along Cedar Avenue. In no event shall parking be located between the building and River Road.
4. The applicant shall provide intersection improvements on the applicant's portion of frontage on Block 31 Lot 1 at the intersection of River Road and Cedar Avenue as recommended in the Borough's Active Transportation Plan, which was adopted by the Borough Planning Board in 2017.
5. Bicycle parking for public use and residents shall be provided.
6. All loading shall only be permitted on-site.

g. Signs

Section 30-7.24 Signs shall apply. Where a conflict occurs between this section and Section 30-7.24, this section shall supersede those standards.

1. Permitted signs in the AH Affordable Housing Zone

(a) Wall signs

- (1) Each commercial store front shall be permitted 1 wall sign above the entrance to the storefront in the 'sign band'.
- (2) In no event shall a single wall sign exceed 5% of the 1st floor commercial façade.
- (3) Wall signs may be externally lit. In no event shall a wall sign be internally lit.
- (4) The maximum lettering height shall be 10 inches.

(b) Freestanding Signs

- (1) One freestanding sign is permitted to be located to the west of the River Road entrance driveway as shown on the attached Concept Plan
- (2) In no event shall the freestanding sign exceed 30 square feet.
- (3) The freestanding sign shall not be greater than eight (8) feet in height.
- (4) The freestanding sign may be externally lit. In no event shall the sign be internally lit.
- (5) The sign shall be set back a minimum of three (3) feet from the front property line.
- (6) The maximum lettering height shall be 10 inches.

(c) Developer shall be permitted to utilize window signs pursuant to Section 30-7.24 of the Borough's code.

2. Awnings

- (a) Awnings shall have a metal structure covered with canvas, metal or like product.
- (b) Awnings may have a front skirt; the bottom of the skirt shall not be scalloped.
- (c) Awnings/canopies shall extend a maximum of three (3) feet from the exterior wall into the front yard setback at a height of at least eight (8) feet above sidewalk grade.
- (d) In no event shall a sign be permitted on an awning.
- (e) The first-floor corner commercial space may have an awning.
- (f) The commercial store fronts fronting along River Road may have awnings only if all the store fronts along River Road have awnings.

h. Lighting

Section 30-7.22c14 Lighting and Illumination shall apply.

i. Design Standards

1. Architectural

The attached River Road and Cedar Avenue M&M illustrative concept plan, elevations, and cross-section shall be used as guidelines.

- (a) Both the River Road and Cedar Avenue building facades shall be designed and treated as front facades
- (b) The building shall be composed of durable materials such as brick, stone or cement board. In no event shall EFIS be permitted.

- (c) There shall be no continuous front facade along River Road. The facade shall be vertically broken up into a minimum of 3 "bays". Each bay shall complement one another and be aesthetically pleasing.
- (d) Pedestrian entry ways and/or lobbies shall be prominent, well-lit and separate from service entrances.
- (e) A minimum of 60% of the ground floor front facades shall be glazed.
- (f) A minimum of 20% of the upper-story front facades shall be glazed.
- (g) Glazing shall be a minimum of 70% transparent.
- (h) The maximum sill height above sidewalk grade shall be 30 inches.
- (i) A horizontal architectural feature shall define the ground floor from the upper floors.
- (j) Each individual commercial use on the ground floor is required to have its own primary entrance.
- (k) The exterior walls of the building shall not have large blank or featureless expanses.
- (l) Retail openings for windows and windowpanes shall have a vertical dimension greater than or equal to the horizontal dimension and shall not be as a walk up or otherwise utilized for transactions.
- (m) Balconies, terraces, Juliet balconies, and sliding glass doors are permitted as shown on the concept plan.
- (n) Enclosure of rooftop areas, terraces, or balconies is not permitted.

2. Balconies

- (a) The Developer shall make every effort to preclude balconies/outdoor areas for such uses including but not limited to storage, trash/recycling, laundry, grill, etc. so as not to create a fire hazard or other nuisance. Landlord shall prohibit the use of balconies from such uses in its residential leases and/or in the Master Deed to the extent the residential units are condominiums.
- (b) Balconies shall be kept free of clutter as a means to maintain the overall aesthetics of the building façade.
- (c) Any violation of this provision shall be enforced against the tenant and not the landlord. However, landlord shall cooperate with the Borough in enforcement.

3. Utilities

Sections 30-8 Design Guidelines and Standards for Subdivisions and Site Plans and 30-9 Improvement Standards, Specific Criteria and Construction Specifications shall apply. Where a conflict occurs between this section and Sections 30-8 and 30-9, this section shall supersede those standards.

- (a) Public utilities, transformers and primary and backup generator shall be located interior to the building, on the roof or vaulted underground within the pavement area of an adjacent street or sidewalk.
- (b) Individual window air conditioning units shall not be permitted.
- (c) Rooftop mechanical equipment shall be screened from public view. In addition, mechanical equipment shall be setback a minimum of 6 feet from the edge of the building.
- (d) Meters and access panels shall be integrated with street and building design.
- (e) Manholes, meters and access panels shall be constructed of materials and styles consistent with established design theme.
- (f) The developer shall coordinate all utility improvements with the responsible utility.
- (g) Backup generators for common areas are encouraged.

4. Landscaping and Buffering

Sections 30-8 and 30-9 apply. Where a conflict occurs between this section of this ordinance and Sections 30-8 or 30-9, this section shall supersede those specific requirements.

- (a) A minimum buffer area of at least four (4) feet shall be provided around the side and rear lot lines. The buffer area shall consist of a combination of deciduous and evergreen shrubs and trees. Plantings are encouraged to consist of native species.

(b) If the topography of the site requires retaining walls, retaining walls shall be landscaped and be aesthetically pleasing. In no event shall a retaining wall be more than 3 feet tall.

5. Lighting

Sections 30-9.2a12 Lighting and 30-9.3c4 Lighting shall apply. Where a conflict occurs between this section of this ordinance and Sections 30-9.2a12, and 30-9.3c4, this section shall supersede those standards.

- (a) The maximum height of light poles shall be 15 feet.
- (b) Full cutoff of fully shielded light fixtures are encouraged.
- (c) Floodlights shall not be directed toward the street or adjacent properties.
- (d) Only dimmable LED lighting elements shall be permitted.
- (e) Neon lighting is prohibited on commercial storefronts.
- (f) Flashing lights are prohibited.
- (g) Lighting shall be aesthetically unified and complimentary to the design of the building and site.
- (h) On site lighting shall not exceed 3000 Kelvin

6. Signs

- (a) Signs and awnings shall have a coordinated graphic design theme through the site plan. The design theme shall include the style and size of lettering, construction, materials, colors, size, lighting, color of letters, and background. These design theme elements shall be carefully considered in relation to the color and materials of the building, building design, and where the signs are proposed to be located.
- (b) Buildings shall be designed to include a 'signage zone' above the commercial use frontage and integrated into the overall architectural design of the building.

7. Stormwater Management

- (a) Sections 30-8 Design Guidelines and Standards for Subdivisions and Site Plans and 30-9 Improvement Standards, Specific Criteria and Construction Specifications shall apply. Where a conflict occurs between this section and Sections 30-8 and 30-9, this section shall supersede those standards.
- (b) The proposed improvement shall include design elements to reduce post development runoff.
- (c) The project shall utilize roof runoff recharge, rain gardens, and/or bioswales in accordance with the Concept Plan and NJDEP Stormwater Regulations when applicable.
- (d)

8. Additional Design Standards

- (a) To the extent feasible, the developer shall consider potential future interconnections to adjacent sites.
- (b) Pedestrian pathways/sidewalks that are included within a parking lot shall be made of a different surface material than the parking areas and are encouraged to include landscaping around the edges of the walkway.

Section 7. Section 30-7.17a Home Occupations shall be amended as follows:

"Home occupations, as defined in these regulations, are permitted as an accessory use in the zones specified provided that within any residential district, no building or lot with a home occupation will be constructed or altered so as to be inharmonious to the residential character of adjacent structures or to be inconsistent with the residential character of the dwelling unit. **Home Occupations are not permitted in AH Affordable Housing Zone.**"

Section 8. Section 30-7.18 Storage of Boats and Recreational Vehicles shall be amended as follows:

"e. Recreational vehicles or parts, sections, pieces, or appurtenances and boats or boat trailers or parts, sections, pieces, or appurtenances shall not be stored in the AH Zone."

Section 9. Section 30-7.19 Commercial Vehicles shall be amended as follows:

"c. No commercial vehicles will be permitted to park in the outdoor (non-residential) parking area between the hours of 9:00 PM and 7:00 AM."

Section 10. Section 30-7.25 Fences and walls shall be amended as follows:

"f. Chain link, open wire, or wire mesh fence shall not be located in a front yard. ***In the AH Affordable Housing Zone, chain link, open wire, or mesh fences shall be prohibited.***"

"q. In the AH Affordable Housing Zone, a solid decorative fence shall be installed along the side and rear property lines that has a maximum height of 6 feet."

Section 11. Section 30-7.26a Garages shall be amended as follows:

"a. A private garage accessory to a principal building is permitted in any zone district, except for the AH Affordable Housing zone. ***Garages are prohibited within the AH Affordable Housing Zone.***"

Section 12. This ordinance shall take effect immediately upon final passage and publication thereof according to law.