

ORDINANCE NO. 17-21

**BOROUGH OF NORTH PLAINFIELD
COUNTY OF SOMERSET
STATE OF NEW JERSEY**

**AN ORDINANCE TO AMEND, REVISE AND SUPPLEMENT
THE BOROUGH CODE OF THE BOROUGH OF NORTH PLAINFIELD,
CHAPTER VIII ENTITLED, “ZONING BOARD OF ADJUSTMENT,”
ADDING SECTION 22-113B ENTITLED “AHO AFFORDABLE HOUSING OVERLAY
ZONE” AND AMENDING ARTICLE XIA ENTITLED “GROWTH SHARE
AFFORDABLE HOUSING OBLIGATION.”**

WHEREAS, on March 10, 2015, the New Jersey Supreme Court transferred responsibility to review and approve housing elements and fair share plans from the Council on Affordable Housing (“COAH”) to designated Mt. Laurel trial judges within the New Jersey Superior Court; and,

WHEREAS, on July 8, 2015, the Borough submitted a Declaratory Judgment Action to the New Jersey Superior Court; and,

WHEREAS, on June 14, 2017, the Borough reached a settlement agreement with the Fair Share Housing Center, which was approved thereafter by the North Plainfield Borough Council; and,

WHEREAS, on August 8, 2017, a Fairness Hearing was held before the Honorable Thomas C. Miller, P.J.ch., at which time Judge Miller approved the settlement agreement a copy of said settlement agreement being maintained in the Office of the Borough Clerk, and the contents of which are incorporated herein; and,

WHEREAS, the terms of said settlement agreement arise out of the proposed “Borough of North Plainfield Master Plan and 2017 Housing Element and Fair Share Plan” (hereinafter referred to as the “Plan”) prepared by Phillips Preiss Grygiel LLC, which contemplates the Borough of North Plainfield meeting its Fair Share obligation to provide affordable housing, a

copy of said Plan being maintained in the Office of the Borough Clerk, and the contents of which are incorporated herein; and,

WHEREAS, the Borough Council of the Borough of North Plainfield, County of Somerset, State of New Jersey, believes that it is in the best interest of the Borough to revise, amend and supplement the Borough Code of the Borough of North Plainfield to eliminate certain sections of the Borough Code and to create a new overlay zone; and,

WHEREAS, the Borough of North Plainfield, County of Somerset, State of New Jersey is authorized by State law to revise its zoning laws regarding the Borough of North Plainfield's need to meet its obligation to provide affordable housing.

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of North Plainfield, County of Somerset, State of New Jersey that the Borough Code of the Borough of North Plainfield is hereby amended, revised, and supplemented by adding the following Chapter creating the new Affordable Housing Overlay Zone as follows:

22-113B AHO AFFORDABLE HOUSING OVERLAY ZONE

22-113B.1 Uses.

In the AHO Affordable Housing Overlay Zone, in addition to any use permitted in the underlying zone district, multifamily residential development is permitted with development incentives for the provision of affordable housing.

22-113B.2 Required Conditions.

- a. Height. No building shall exceed a height of five (5) stories or sixty (60) feet.
- b. Minimum Lot Area. There shall be a minimum lot area of forty thousand (40,000) square feet.
- c. Front Yard. There shall be a front yard of not less than ten (10) feet along any street.
- d. Rear Yard. There shall be a rear yard of not less than twenty-five (25) feet.
- e. Side Yards. The minimum side yard width shall be fifteen (15) feet.

- f. Maximum Building Coverage. The total ground floor area of all buildings shall not exceed forty (40%) percent of the total lot area.
- g. Maximum Impervious Coverage. The total area of all impervious surfaces shall not exceed eighty-five (85%) percent of the total lot area.
- h. Maximum Gross Residential Density. The maximum gross residential density shall be twenty-two (22) dwelling units/acre, which may be increased per 22-113B.3.
- i. Off-Street Parking and Loading Requirements. Off-street parking and loading shall be provided in accordance with Section 22-117 of the Borough Code, except that the minimum off-street parking requirements shall be as follows:

| <u>Bedrooms</u> | <u>Spaces (Parking)</u> |
|-----------------|-------------------------|
| 0 | 1.00 |
| 1 | 1.50 |
| 2 | 1.75 |
| 3 or more | 2.00 |

- j. Landscaping. All portions of the property surrounding the principal building not used for off-street parking or loading shall be landscaped with ornamental trees, shrubs and grass lawn area, subject to approval by the Approving Authority.
- k. Lighting. All on-site lighting in connection with off-street parking, pedestrian walkways and/or building lighting shall be so arranged and shielded as to reflect the light downward and away from adjoining streets or properties.
- l. Signs. Signs shall comply with the requirements of Section 22-119 of the Borough Code.

22-113B.3 Affordable Housing Requirements.

The maximum gross residential density shall be increased to twenty-eight (28) dwelling units per acre when low- and moderate-income dwelling units are provided in accordance with this subsection. The minimum affordable housing set-aside shall be twenty (20%) percent of the dwelling units in the development, except that the minimum set-aside shall be fifteen (15%) percent where affordable rental units are provided. Of these, at least half must be reserved for, and affordable to, low income households. A minimum of thirteen (13%) percent of the affordable units shall be affordable to households earning thirty (30%) percent or less of the area median income for the Council on Affordable Housing region. Low and moderate income housing units shall be governed by the standards set forth in the Uniform Housing Affordability Controls, N.J.A.C. 5:89-26.1 et seq., and shall comply with the applicable rules of the Council on Affordable Housing and any other relevant state regulations.

NOW, THEREFORE, BE IT FURTHER ORDAINED by the Borough Council of the Borough of North Plainfield, County of Somerset, State of New Jersey that the Borough Code of

the Borough of North Plainfield that Article IXA Growth Share Affordable Housing Obligation is hereby amended, revised, and supplemented as follows:

ARTICLE IXA ~~GROWTH-SHARE AFFORDABLE HOUSING OBLIGATION~~

22-133 REQUIRED GROWTH SHARE AFFORDABLE INCLUSIONARY HOUSING REQUIREMENTS FOR REZONINGS AND VARIANCES OBLIGATION.

Any residential development consisting of ten (10) or more dwelling units, at a density above six (6) units per acre, that is permitted pursuant to a variance or rezoning shall produce low- and moderate-income housing on-site or elsewhere in the Borough or pay a fee in lieu of providing affordable units. The number of affordable units to be provided or in lieu payment shall be equal to twenty (20%) percent of the residential units in the development, or fifteen (15%) percent for affordable rental units. The amount of the payment in lieu of providing housing shall be as determined by the appropriate rules of the New Jersey Council on Affordable Housing and any other relevant state regulations.

~~22-133.1 Authority and Purpose.~~

~~Pursuant to the provisions of the Third Round Substantive Rules promulgated and adopted by the New Jersey Council on Affordable Housing, N.J.A.C. 5:94 et seq. and N.J.A.C. 5:95 et seq., it is hereby declared that the purpose of this Article is to help the Borough fulfill its affirmative obligation to facilitate the provision of affordable housing. This Article sets forth mechanisms by which that is associated with development taking place within the Borough of North Plainfield. (Ord. #07-01, S II)~~

~~22-133.2 Definitions.~~

~~As used in this Article, words and phrases shall have the same meanings they have pursuant to N.J.A.C. 5:94-1.4, as said provision may from time to time be amended. (Ord. #07-01, S II)~~

~~22-133.3 Uniform Affordable Housing Production Obligation Based Upon "Growth Share."~~

~~a. Residential Development.~~

~~1. All residential development proposing the construction of eight (8) or more net new market rate dwellings shall provide for their growth share obligation. Said affordable units shall be provided in accordance with the following:~~

~~a. Where affordable units will be provided on site, residential development shall set aside eleven and one tenth (11.1%) percent of said units for affordable housing as said term is defined under the Fair Housing Act of 1985 ("FHA"), P.L. 1985, c. 222 (N.J.S.A. 52:27D-~~

~~301 et seq.) and New Jersey Council on Affordable Housing (“COAH”) rules.~~

~~b. Where affordable units will be provided off site but in the Borough, residential development shall set aside twelve and one half (12.5%) percent of said market rate units for affordable housing as said term is defined under the FHA and COAH rules.~~

~~c. Any residential development that generates a fraction of an affordable unit shall be required, at the choice of the developer, to either construct the additional affordable unit or, alternatively, to make a payment in lieu of construction for that fraction of a unit. The fractional amount shall be computed by multiplying the fraction by an in-lieu payment of one hundred forty thousand (\$140,000.00) dollars.~~

~~2. For the purposes of this Article, “residential development” shall include newly constructed market rate residential units as well as new market rate residential units created from the conversion of a nonresidential building to residential unit(s) requiring the issuance of a certificate of occupancy.~~

~~b. *Nonresidential Development.* Nonresidential development shall pay a development fee.~~

~~c. *Exemptions.* The Borough exempts the following development from satisfying a growth share obligation under the terms of this Article:~~

~~1. A House of Worship. For the purposes of this exemption, a house of worship shall only include those portions of any buildings or structures that are deemed by COAH to be excluded from triggering a growth share obligation. An applicant seeking an exemption under this Section shall provide a diagram of the proposed development indicating all proposed use groups in accordance with Appendix E of N.J.A.C. 5:94-1 et seq., entitled "UCC Use Groups for Projecting and Implementing Nonresidential Components of Growth Share" for a determination of the extent of the exemption, if any.~~

~~2. Residential developments that have been zoned to produce an affordable housing set aside or that include only low and moderate income housing units shall be exempt from the growth share obligations of this Article.~~

~~3. Developments that received preliminary or final approval from the Planning Board and/or Board of Adjustment, as per the Municipal Land Use Law, (N.J.S.A. 40:55D et seq.), prior to the effective date of this Article shall be exempt from the growth share obligations of this Article unless the developer seeks a substantial change in the approved plan.~~

Editor's Note: Ordinance No. 07-01, codified herein as Section 22-133, was adopted January 22, 2007.

(Ord. #07-01, S II)

22-133.4 — Satisfaction of Affordable Housing Production Obligation.

- a. ~~For all development, the applicant may choose to satisfy its affordable housing growth share obligation through either (a) on-site affordable housing production; (b) off site affordable housing production in the Borough; (c) the purchase of existing market rate home(s) at another location in the Borough and its conversion to an affordable price restricted home (either for sale or for rental); and/or any other compliance mechanism permitted by COAH's rules set forth at N.J.A.C. 5:94 et seq.~~
- b. ~~A proposed Affordable Housing Production Plan shall be submitted at the time of application for any development requiring provision of growth share affordable housing units under this Section. The Plan shall be reviewed and must be approved by the Mayor and Borough Council for consistency with COAH rules and regulations, prior to approval of the application by the appropriate board of jurisdiction. Compliance with COAH's rules and regulations and the approved Affordable Housing Production Plan shall be a condition of development approval and may be covered by appropriate performance and maintenance guarantees as with any other required improvement.~~

(Ord. #07-01, S II)

22-133.5 — Compliance Mechanisms.

- a. ~~Affordable housing units being constructed on-site or off-site shall meet the requirements of North Plainfield Borough's Affordable Housing Ordinance and shall be in conformance with COAH's third round rules at N.J.A.C. 5:94-1 et seq. and the Uniform Housing Affordability Controls at N.J.A.C. 5:80-26.1 et seq., including, but not limited to, requirements regarding phasing schedule, controls on affordability, low/moderate income split, heating source, maximum rent and/or sales prices, affordability average, bedroom distribution, and affirmative marketing.~~
- b. ~~To the greatest extent possible, affordable housing units being provided within inclusionary developments shall be disbursed throughout inclusionary developments and shall be located within buildings designed to be architecturally indistinguishable from the market rate units otherwise being constructed within the development. To that end, the scale, massing, roof pitch and architectural detailing (such as the selection of exterior materials, doors, windows, etc.) of the buildings containing the affordable housing units shall be similar to and compatible with that of the market-rate units.~~
- c. ~~Affordable units newly constructed in the Borough must address the adaptability requirements set forth in P.L. 2005, c. 350 (C. 52:27D-311a et al.)~~
- d. ~~*Construction of Affordable Housing On Site.*~~

1. ~~If the market rate units are provided in multifamily buildings, the affordable housing units may be provided within the multifamily buildings if the market-rate units are provided as single family detached or attached buildings, the affordable housing units may be provided within single family detached or attached buildings, duplex buildings, triplex buildings or quadriplex buildings designed to resemble as nearly as possible the market rate units otherwise being constructed within the development. Duplex, triplex and quadriplex buildings containing low and moderate income housing units only shall be deemed to be permitted uses in the underlying zone when created for the purpose of meeting a growth share obligations on-site.~~
2. ~~No density increase shall be granted for the construction of the affordable housing units on site.~~
3. ~~All required setbacks, building height, open space requirements and coverage limits for the zone shall be met on all lots.~~

~~e. *Creation of Affordable Housing Units Off Site but Within the Borough.*~~

1. ~~Applicants electing to create affordable housing units elsewhere within the Borough of North Plainfield may do so through new construction and/or within existing buildings, whether converted, reconstructed or purchased for buy down, in any residential zone of the Borough of North Plainfield, as set forth and regulated herein.~~
2. ~~All such units shall meet or shall be improved to meet UCC requirements and shall be certified to be in standard condition prior to their conveyance or occupancy.~~
3. ~~All required setbacks, building height and impervious coverage limits for the zone shall be met on the lot, except that existing setback deficiencies and other non-conformities of the lot and/or building(s) located thereon may be continued for as long as the buildings remain on site, without the need for additional variances.~~

~~f. *Payment In-Lieu of Construction.*~~

1. ~~Payments in lieu of construction of affordable housing units shall be established based on a per unit cost of one hundred forty thousand (\$140,000.00) dollars per affordable unit. Fractional contributions shall be computed by multiplying the fractional affordable housing obligation by one hundred forty thousand (\$140,000.00) dollars.~~

~~g. *Low and Moderate Income Split and Compliance with COAH Rules.*~~

- ~~1. If only one (1) affordable unit is required to be produced pursuant to this Section, said unit shall be made available to a qualified low income individual or household. Where more than one (1) affordable units is produced, the designation of units shall be evenly split between low and moderate income individuals and households. If an odd number of low and moderate income housing units are required to be provided, the majority of the units shall be designated for low income individuals or households.~~
- ~~2. Where there are an insufficient number of affordable units provided to meet the bedroom distribution requirements of COAH's Rules, the first and third units shall be two bedroom units and the second unit shall be a three bedroom unit. Otherwise, the bedroom distribution shall be in strict accordance with COAH's Rules.~~
- ~~3. All affordable units created pursuant to this Section shall comply with COAH's Rules pertaining to the phasing, integration, low/moderate income split, controls on affordability, bedroom distribution, affirmative marketing, heating source and administration of the affordable units, as set forth in N.J.A.C. 5:94-4 and/or as otherwise provided for by COAH's Rules.~~
- ~~4. It shall be the developer's responsibility, at its sole cost and expense, to contract with an administering agency approved by COAH and the Mayor and Borough Council to ensure full COAH compliance and to timely file such certifications, reports and/or monitoring forms as may be required by COAH to verify COAH compliance of each affordable unit. Execution of said contract shall be a condition of approval of any development subject to this Article. Failure to comply with the requirements of this Section may be cause for refusal of issuance of building permits and/or certificates of occupancy.~~

(Ord. #07-01, S II)

~~22-134 22-135 RESERVED.~~

* Additions in text indicated by underline; deletions by ~~strikeouts~~.

NOW, THEREFORE, BE IT FURTHER ORDAINED that:

1. All ordinances or portions of ordinances that are inconsistent with this Ordinance shall be repealed as to their inconsistencies only.
2. If any provision or paragraph of this Ordinance shall be held invalid by any court of competent jurisdiction, the same shall not affect the other provisions or paragraphs of this

Ordinance, except so far as the provision or paragraph so declared invalid shall be separable from the remainder or any portion thereof.

3. This Ordinance shall take effect, after final passage, twenty (20) days following action or inaction by the Mayor as provided by law or an override of a mayoral veto by the council, whichever is applicable and publication in accordance with law, unless a resolution is adopted, pursuant to *N.J.S.A. 40:69A-181(b)*, declaring an emergency and providing that this Ordinance shall take effect at an earlier date.

INTRODUCED: November 13, 2017
PASSED: November 13, 2017
PUBLISHED: November 16, 2017
ADOPTED: November 27, 2017

ROLL CALL: AYES: Miller, Schaefer, Singleterry, La Ronde
NAYS: None
ABSTAIN: None
ABSENT: Merrill, Righetti, Stabile

APPROVED BY THE MAYOR: Yes xxx No _____

The above is a true copy of the Ordinance adopted by the Borough of North Plainfield on 27 November, 2017

ATTEST: BOROUGH OF NORTH PLAINFIELD

Richard K. Phoenix, RMC
Borough Clerk
Borough of North Plainfield

Lawrence La Ronde, Council President

Date signed: 27 November 2017

Date signed: 27 November 2017

Michael Giordano, Mayor

Date signed: 27 November 2017