

**TOWNSHIP OF MILLBURN
ORDINANCE NO. 2542-19
AN ORDINANCE TO APPROVE A SETTLEMENT AGREEMENT
RESOLVING CERTAIN LITIGATION CAPTIONED
85 WOODLAND ROAD, LLC, et al. v. TOWNSHIP OF MILLBURN, et al.,
DOCKET NO. ESX-L-2672-18 AND TO ADOPT A ZONING ORDINANCE
IMPLEMENTING SAID SETTLEMENT AGREEMENT**

STATEMENT OF PURPOSE: The purpose of this Ordinance is to approve the terms and conditions of a Settlement Agreement resolving certain litigation brought against the Township of Millburn and the Planning Board of the Township of Millburn in the Superior Court of New Jersey, Law Division, Essex County, captioned 85 Woodland Road, LLC., et al. v. Township of Millburn, et al., Docket No. ESX-L-2672-18. The Ordinance also adopts the zoning ordinance implementing the essential terms and conditions of the Settlement Agreement. The Settlement Agreement will not become effective 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 public 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 public notice.

WHEREAS, the Township of Millburn and the Planning Board of the Township of Millburn are Defendants in certain builder's remedy litigation captioned 85 Woodland Road, LLC., et al. v. Township of Millburn, et al., Docket No. ESX-L-2672-18 (the "Litigation"); and

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 Township Committee of the Township of Millburn desires to approve the terms and conditions of the Settlement Agreement, authorize its execution as set forth herein, and adopt a Zoning Ordinance implementing essential terms and conditions of the Settlement Agreement.

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. The terms and conditions of a certain Settlement Agreement by and between plaintiffs and defendants in the Litigation, a copy of which Settlement Agreement is on file in the Office of the Township Clerk of the Township of Millburn, be and the same are hereby approved, ratified and confirmed by the Township.

Section 2. The Mayor and Township Clerk and/or appropriate officials, as required, are hereby authorized and directed to execute said Settlement Agreement upon the effective date of this Ordinance, **PROVIDED, HOWEVER,** that if the Settlement Agreement is not approved and executed by all plaintiffs in the Litigation within ten (10) days after the execution of the Settlement Agreement by the Township (as said date is ascertained from the date of the acknowledgement of the Township's execution of the Settlement

Agreement attached thereto), the Settlement Agreement and its execution shall be automatically vacated and be null and void and of no legal effect, without any further action of the Township Committee.

Section 3. Article 6 "Zoning Provisions", Section 602 "Zoning Map", is hereby amended such that Block 1904, Lots 72, 73, 74 and 75 on the Official Tax Map of the Map of the Township of Millburn shall be removed from the B-3 zone and shall then be incorporated into the RMF-AH zone.

Section 4. Article 6 "Zoning Provisions", Section 606 "Zone Requirements" is hereby amended and supplemented by adding the following new Section:

606.4.1 Residential Multi-Family Affordable Housing RMF – AH

a. Purpose.

To provide for multi-family inclusionary development with a required set aside for low and moderate income units together with ground floor medical office use.

b. Permitted Principal Uses

1. Residential apartments; with optional associated amenities and services, including but not limited to fitness center, screening room, 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.
2. Medical offices, as expressly provided herein, but not including 24 hour urgent care or emergency care services.

c. Accessory Uses

1. Off-street structured parking within the building (i.e., at grade and below grade). Surface parking that serves existing medical office space shall be permitted only if the required development components are constructed in phases as expressly provided herein, however no such surface parking shall be permitted upon completion of all required development components.
2. Any other use which is subordinate and customarily incidental to one or more of the permitted principal uses, including but not limited to leasing/sales/management offices associated with residential apartments, maintenance areas, and trash collection/recycling areas.

- d. Maximum Development Yield
 - 1. The total number of multi-family residential units shall not exceed 62.
 - 2. The total gross floor area of medical office use shall not exceed 10,000 square feet.
- e. Affordable Housing Requirements. A total of twelve (12) 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). Such affordable units shall include: three (3) three-bedroom units; seven (7) two-bedroom units; and two (2) one-bedroom units. Half of the 12 affordable units (i.e., six units) shall be set aside for low income households, and the other half (i.e., six units) shall be set aside for moderate income households, as defined by COAH and/or UHAC. In addition, of the 12 affordable units, 13 percent, or two units, 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. Required Courtyard/Plaza
 - 1. Location. In order to break down the mass and scale of the building and provide an attractive amenity for building residents as well as the general public, a courtyard or plaza is required along Woodland Road. The courtyard/plaza shall be centrally located and shall be at the same grade as the lowest level of residential apartments immediately to the south along Woodland Road.
 - 2. Dimensions. The courtyard/plaza shall comprise at least 6,000 square feet. It shall have a minimum width, measured parallel to Woodland Road, of 60 feet; and a minimum depth, measured perpendicular to the building façade along Woodland Road, of 80 feet at all points.
 - 3. Connection to public sidewalks. A portion of the courtyard/plaza shall form a level connection to the sidewalk on Woodland Road. Where the remainder of the plaza is below the grade of the adjoining public sidewalk, a generously-proportioned set of steps shall be provided to step down from the sidewalk into the plaza, so that the plaza may be entered from any portion of the adjoining sidewalk. The stairs shall be designed in a manner similar to shallow, wide, amphitheater seating, rather than steep and narrow.
 - 4. Active uses along perimeter. The courtyard/plaza shall have active building uses on at least two sides and for at least two-thirds of its

perimeter, including residential apartment units on the south side and residential amenity space(s) such as fitness rooms or multi-purpose rooms on the north side. Active uses for residential amenity space shall have a high proportion of window glazing overlooking the courtyard. These active uses shall be located at the same finished grade as the courtyard.

- g. Required Development Components and Application for Site Plan Approval
1. Along Chatham Road and along Woodland Road north of the courtyard/plaza, the following shall be required:
 - (a) Three levels of parking (with two levels of parking below the grade of Chatham Road, and one level at-grade);
 - (b) Medical office space at the grade of Chatham Road (the first floor);
 - (c) Residential apartments on the second and third floors;
 - (d) Residential amenity space on the first floor as well as on the floor below the first floor (garage level), which will front onto the required courtyard/plaza.
 2. Along Woodland Road south of the courtyard/plaza the following shall be required:
 - (a) A level of parking that is below the grade of the courtyard/plaza.
 - (b) Residential apartments on the first, second, and third floors, with the lowest residential level being at the grade of the required courtyard/plaza.
 3. Application shall be made for preliminary site plan approval for the entire tract. Application for final site plan approval may be made separately for a portion of the tract or simultaneously with the application for preliminary site plan approval.
 4. Nothing contained herein shall preclude the phased construction of the required development components as set forth in 1. (Phase 1) and 2. (Phase 2) above.
 5. Any deviations from the design requirements set forth in § 606.4(j)-(k) shall be considered as exceptions from the requirements for site plan approval in accordance with N.J.S.A. 40:55D-51.

h. Area, Bulk and Setback Requirements

1. The minimum tract area shall be 1.5 acres.
2. Required minimum building setbacks shall be as follows:
 - (a) Along Chatham Road, the minimum setback shall be seven (7) feet; except for a permitted area of encroachment of up to one hundred twenty-five (125) feet in length, as measured parallel to Chatham Road, from the westernmost property line. Within this area of encroachment, the building may be set back two (2) feet from the property line.
 - (b) Along the shared property line with Lot 76 in Block 1904, the minimum setback shall be one (1) foot.
 - (c) Along Woodland Road, the minimum setback shall be eight (8) feet; except for a permitted area of encroachment of up to fifty (50) feet in length, as measured parallel to Woodland Road, from the southernmost property line. Within this area of encroachment, the building may be set back three (3) feet from the property line.
 - (d) Along the shared property line with Lot 107 in Block 1904, the minimum setback shall be five (5) feet.
 - (e) Along the shared property line with Lot 77 in Block 1904, the minimum setback shall be seven (7) feet.
3. Building height. Building height shall be measured with respect to the adjoining finished grade at each point around the building perimeter and shall not exceed the permitted height at each specified location. Height shall be measured to the deck level of the roof. For purposes of measuring height, stairways, 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.
 - (a) Along the segment of the building fronting on Chatham Road, the maximum height shall be 38 feet.
 - (b) Along the segment of the building fronting on Woodland Road north of the required courtyard/plaza, the maximum height shall be 40 feet.

- (c) Along the segment of the building fronting on Woodland Road south of the courtyard/plaza, the maximum height shall be 44 feet.
 - (d) For all other segments of the building where there are 3 levels of parking, the maximum height shall be 50 feet. In addition, in no event shall there be 3 full levels of parking exposed along any such segment of the building. Further, where more than 2 levels of parking are exposed, the developer shall employ landscape berms and/or planting materials to provide the appearance that only 2 parking levels are exposed.
 - (e) For all other segments of the building where there is 1 level of parking, the maximum building height shall be 45 feet.
4. Required building setbacks along Woodland Road.
- (a) North of the courtyard/plaza, a setback is required at the top floor at the corner of the courtyard/plaza and Woodland Road. Specifically, on the top floor a setback from the courtyard/plaza shall be provided with a minimum ten (10) foot depth (i.e., as measured perpendicular to the façade facing the courtyard/plaza), and minimum 30-foot length (i.e., as measured parallel to the courtyard/plaza, and extending at a minimum along the length of a full unit and the common hallway).
 - (b) South of the courtyard/plaza, a setback is required at the top floor at the southerly corner of the building along Woodland Road facing Lot 107 in Block 1904. Specifically, on the top floor a setback shall be provided with a minimum ten (10) foot depth (i.e., as measured perpendicular to the façade facing Lot 107 in Block 1904), and minimum 30-foot length (i.e., as measured parallel to this same façade).
 - (c) At the southerly end of the building, a setback is required at the top floor. Specifically, on the top floor a setback shall be provided with a minimum ten (10) foot depth (i.e., as measured perpendicular to the façade facing Lot 107) and minimum 30 foot length (i.e., as measured parallel to this same façade).

Setback areas shall be designed as terraces for one or more adjoining residential units, with sliding patio or French doors from the units, decorative flooring or paving, and a railing at the outer edge for safety.

i. Circulation and parking

1. Vehicular entry points. Two vehicular garage entries are permitted from Chatham Road into the building. Both entry driveways shall be located at the western end of the building, away from the corner of Woodland Road. One vehicular garage entry from Woodland Road is permitted, south of the required courtyard/plaza.
2. Sidewalks. Sidewalks shall be provided along Chatham and Woodland Roads.
3. Parking requirements. The required parking shall be as follows:

Residential: Compliant with RSIS

Medical office: 5 spaces per 1,000 square feet of gross floor area
4. Parking garage. Each of the three permitted parking garage entries shall not exceed 25 feet in width as measured at the garage door opening.

j. Building Design

The building should have a traditional appearance, including a stone or masonry base, brick facades with white accents, flat roof, a division into pedestrian-scaled bays, and generous detailing at the roofline.

1. Vertical articulation: Bays
 - (a) Along all facades the building shall be divided into series of alternating major and minor bays.
 - (i) A major bay is distinguished by having a significant change in plane with respect to the adjoining minor bays, equivalent to an outward projection at least two (2) feet deep so as to create a significant break in the mass. Major bays shall include flat roofs and parapets that make them appear taller than adjoining minor bays. Along the building segments fronting on Chatham Road and Woodland Road north of the courtyard/plaza, each major bay shall range from 15 to 30 feet wide. Along the building segment fronting on Woodland Road south of the courtyard/plaza a wider variation in major bay size is permitted, with each between 10 and 35 feet wide.
 - (ii) Minor bays, which alternate with major bays along the façade, shall not exceed 50 feet in width. Minor bays shall have the same level of detailing and transparency as major bays.

- (iii) Where a major or minor bay is equal to or more than 20 feet wide, it shall be visually divided into two to three smaller vertical components, each averaging 10 to 15 feet wide, by means of common window patterns, projecting bay or box windows, recessed or projecting balconies, dormer windows on the top floor, or other features.

2. Horizontal articulation: Base, middle, top

- (a) The building shall be divided into a base, middle, and top.
 - (i) 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. Along the segments of the building fronting on Chatham Road and Woodland Road north of the courtyard/plaza, the ground-floor facades of major bays shall be capped by a generously-proportioned projecting belt cornice. The office and residential entries shall be recessed from the primary façade plane and accented with stone or masonry detailing. Façade-mounted lighting shall be included on both sides of entry doors.
 - (ii) Middle detailing. The middle of the building shall include variations in plane by means of the major and minor bays, as well as further architectural components such as bay windows and Juliet balconies, to help create variety and visual interest.
 - (iii) Roofline detailing. Within each bay, the top of the building shall be highlighted as the entire top floor or just at the roofline. For major bays along the segments of the building fronting on Chatham Road and Woodland Road north of the courtyard/plaza, the roof shape of major bays shall be flat, and the roofline shall include a tall decorative parapet. For major bays along the segment of the building fronting on Woodland Road south of the Courtyard/Plaza, a cornice or a parapet shall be used to emphasize the top of major bays. For minor bays, a simpler and visually-receding roofline shall be used on the top floor. For the segments of the building fronting on Chatham Road and Woodland Road north of the courtyard/plaza, a mansard or faux-mansard roof shape shall be used on minor bays, with a shingled or metal-

clad facing on the steeply-pitched slope of the mansard roof. For the segment of the building fronting on Woodland Road south of the courtyard/plaza, a visually lighter-weight material or design is encouraged on minor bays, such as wood or fiber-cement cladding or metal paneling, and/or a higher proportion of window openings. Alternately, a simple cornice, coping, or parapet may be used.

3. Transparency

The window and door openings on each floor shall together occupy between 25 and 50 percent of the façade area. Doors and windows facing onto the courtyard/plaza shall have the same design and level of detail as those on the street-facing facades.

(a) Ground-floor entries along public streets

Pedestrian building entries are required in the locations set forth below. All such required entries shall comprise fully-glazed double-doors; side lite glazing is encouraged to further increase transparency at entries. One prominent entry into the medical office space shall be provided from Chatham Road. The main pedestrian entry and lobby to the residential apartments north of the courtyard/plaza shall be located along Woodland Road adjacent to the courtyard/plaza, and at the same finished floor level as the medical office entryway. This apartment entry shall be accessed via stairs from Woodland Road connecting to a generous-width stoop or porch. A projecting flat canopy shall be included to create shelter and frame the doorway. South of the courtyard/plaza, at least one individual unit entry, with stoop or porch facing and connecting to Woodland Road, shall be provided for residential unit(s) near the corner of the courtyard/plaza and Woodland Road at the same finished floor level as the courtyard.

(b) Ground-floor entries along the courtyard/plaza

To keep the required courtyard/plaza occupied with human activity, entries to and windows on adjoining uses are required. Along the north side, at least one shared-use resident entry shall be provided, leading into the fitness center or other common residential amenity space, or to a common hallway. Along the west side (back of the courtyard/plaza), a common-use residential corridor or hallway shall be provided, with a generous proportion of window glazing affording views onto the courtyard. Along the south side, a common entry door shall be provided for

the apartments; it is encouraged that this door be sited together with a lobby to serve as the main pedestrian entryway for this side of the building. The door and any associated lobby space shall be fully-glazed in order to strengthen the connection between interior space and the courtyard. In addition, individual entries to residential units at this level are encouraged along the courtyard, to help further activate the space.

(c) Windows

Windows shall align vertically from floor to floor, and the window widths and proportions should be the same at each level within each bay. Windows shall have dimensional trim on all sides, or at a minimum deep lintels and sills. All windows at all levels shall be vertically-proportioned. Two to three vertically-proportioned window units may be grouped together, separated by vertical mullions, to create larger expanses of glazing. All windows at all levels shall have a double-hung appearance and have divided lites, with each sash of the window having a pattern of 3 wide by 2 tall, or similar.

Juliet balconies are encouraged on some bays as a further means to create visual interest at windows and soften views into interiors.

(d) Blank walls

Along facades facing public streets, the required courtyard/plaza, and Lot 107 in Block 1904, no area of blank, windowless wall shall exceed ten (10) feet in width at any level.

4. Materials

Primary permitted façade materials are brick, cultivated stone or other masonry facing, fiber cement siding, and metal. Stucco is discouraged. EIFS is prohibited. The ground floor of buildings should be brick or heavier-weight stone or masonry. White fiber-cement clapboard or paneling shall be used as an accent material, particularly on upper floors. Slate or simulated slate shingles or standing-seam metal roofing should be used on mansard roof portions. Rubber roofs are permitted for flat roofs. No more than three 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, not just street-facing facades.

Materials should be extended around corners and extensions to a logical break in plane, in order to avoid a “pasted on” appearance.

5. Service areas

(a) Mechanical rooms

Where possible, 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 garage. They are prohibited immediately adjacent to an outer wall adjoining a public street. They are prohibited immediately adjacent to the courtyard/plaza unless they are separated by an active residential hallway.

(c) Rooftop mechanical equipment

All major mechanical equipment located on the roof shall be screened from view of all street-level sidewalk vantage points along Chatham and Woodland Roads, using a material harmonious to that used in the façade of the building.

6. Parking garage entry design and screening

(a) Façade-mounted lighting shall be installed on either side of each garage entry. A lintel shall be provided across each garage opening to frame the opening and create the appearance of a logical structural support.

(b) Parking garage window openings. Garage window openings are required along the entire street-facing façade along Woodland Road south of the courtyard/plaza. Garage window openings shall have a similar size and spacing as the windows in the building mass above the parking level. Each garage window opening shall include a high-quality metal mesh panel or grille with a decorative pattern or texture in a dull or black metal finish.

- (c) Parking garage planting bed. To soften the ground-level facades where the garage is exposed to Woodland Road, a raised planter bed shall be required along the entire perimeter of the building south of the courtyard/plaza. The only permitted breaks in the planter shall be for a vehicular garage entry, a stoop to an individual apartment, a pedestrian entry, or an emergency exit.

k. Open Space and Landscaping .

1. Courtyard design and landscaping

The required courtyard/plaza along Woodland Road shall be surfaced with a mix of decorative hardscape paving and landscaped vegetated areas. Lush landscaping with a mix of low plantings, turf lawn areas, and shade trees is required. Seating areas in sun and shade shall be provided, with a mix of fixed benches and moveable chairs and tables. Trash receptacles shall be provided. Water features and shade structures are encouraged.

2. Landscaping along street-facing frontages

Along all street frontages, the required front setback area shall include in-ground or raised planter beds, landscaped with a variety of grasses, flowers, low bushes, and small ornamental trees, having a mix of deciduous and evergreen plantings for year-round visual interest. The planting bed shall be a minimum of three (3) feet wide, measured horizontally and perpendicular to the building façade, and shall include drip irrigation. Low planters incorporating a seating wall are encouraged. Street trees shall be provided within the public sidewalk right-of-way, spaced at regular intervals of not more than 50 feet on center, in generously-dimensioned tree pits. A grass or landscaped planting strip, designed to permit stormwater infiltration, is encouraged as part of the tree planting area in the public sidewalk.

3. Parking garage planter bed landscaping

Vegetation for the required raised planter bed along the exposed garage frontage south of the courtyard/plaza should be planted so as not to obstruct garage window openings.

l. Building Signage

1. Medical office façade sign

One (1) façade sign is permitted for the medical office use along the Chatham Road frontage.

2. Residential façade sign

One (1) façade sign identifying the name of the residential apartment building is permitted along the Woodland Road frontage.

3. Façade sign placement, size, and design

Façade signs should not obscure architectural features of the building. They should be located within the first-floor facade, and not extend into the façade of upper floors. The area of each permitted façade sign shall not exceed thirty (30) square feet. 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.

4. Signage lighting

All façade signs shall be externally lit by wall-mounted, focused, directional lights such as goose neck lights or sconces. The lighting source should be shielded and the bulb exposure limited to that sufficient to illuminate the sign content.

5. Directional and wayfinding signs

Directional signs shall not exceed six (6) square feet and shall be permitted at each driveway access point

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.

Section 5. 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.

Section 6. 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 7. This Ordinance shall be so construed as not to conflict with any provision of New

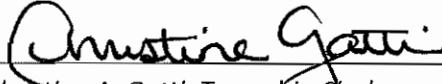
Jersey law.

- Section 8.** 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 9.** This Ordinance may be renumbered for purposes of codification.
- Section 10.** Sections 1 and 2 of this ordinance shall be effective upon final passage and publication as required by law, **SUBJECT, HOWEVER,** 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. Sections 3 and 4 of this ordinance shall become effective after final passage and publication as required by law and filing with the Essex County Planning Board, **SUBJECT, HOWEVER,** 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 11.** 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.

1st Reading and Introduction: 09/03/2019
1st Publication: 09/05/2019
Referral to Planning Board: 9/4/2019
Notice to County Planning Board Prior to Adoption: 9/4/2019
Notice to Clerks of Adjoining Municipalities: 9/4/2019
Notice to Office of Planning Advocacy: 9/4/2019
Notice to Commander of Registered Military Facility: N/A
Notice to Affected Property Owners: 9/4/2019
2nd Reading and Adoption: 09/17/2019
2nd Publication: 09/23/2019
Filing with County Planning Board: 09/28/2019

I, Christine A. Gatti, Township Clerk of the Township of Millburn, do hereby certify this document to be a true copy of the original which is on file in my office. The ordinance was introduced by the Millburn Township Committee on September 3, 2019 and adopted on September 17, 2019.

Date: 9/18/2019


Christine A. Gatti, Township Clerk
Township of Millburn

**TOWNSHIP OF MILLBURN
RESOLUTION NO. 19-222
RESOLUTION SETTING FORTH REASONS FOR THE TOWNSHIP COMMITTEE'S
ADOPTION OF ORDINANCE 2542-19 WHICH IS PARTIALLY
INCONSISTENT WITH CERTAIN ELEMENTS OF THE 2018
MILLBURN TOWNSHIP MASTER PLAN REEXAMINATION AND UPDATE AND
THE 2018 HOUSING ELEMENT AND FAIR SHARE PLAN
AS REQUIRED UNDER N.J.S.A. 40:55D-62a.**

WHEREAS, the Township of Millburn ("Township") and the Planning Board of the Township of Millburn ("Planning Board") are Defendants in certain builder's remedy litigation in the Superior Court of New Jersey, Law Division, Essex County, captioned 85 Woodland Road, LLC, et al. v. Township of Millburn, et al., Docket No. ESX-L-2672-18 (the "Litigation"); and

WHEREAS, as a result of Court-ordered mediation, a certain Settlement Agreement was reached by and among the parties; and

WHEREAS, Ordinance 2542-19 introduced by the Township of September 3, 2019, approves the terms and conditions of the Settlement Agreement and enacts a Zoning Ordinance to implement the Settlement Agreement; and

WHEREAS, after introduction, Ordinance 2542-19 was referred to the Planning Board in accordance with N.J.S.A. 40:55D-26 to determine consistency of said Ordinance with the Master Plan of the Township as set forth in the 2018 Millburn Township Master Plan Reexamination and Update ("2018 Master Plan") and the 2018 Housing Element and Fair Share Plan ("2018 HEFSP") and to make any recommendations with regard to said Ordinance; and

WHEREAS, by Memorandum dated September 11, 2019, the Planning Board Secretary issued a report to the Township wherein the Planning Board finds that Ordinance 2542-19 is consistent with Objective 1.05 of the 2018 Master Plan, but is not consistent with the 2018 Master Plan and the 2018 HEFSP with regard to rezoning of Block 1904, Lots 72, 73, 74 and 75 to permit mixed use inclusionary development at the scale, intensity and height proposed in Ordinance 2542-19; and

WHEREAS, the Township intends to, or has adopted Ordinance 2542-19 on September 17, 2019; and

WHEREAS, in accordance with N.J.S.A. 40:55D-62a, the Township desires to set forth the reasons for the adoption of Ordinance 2542-19.

NOW, THEREFORE, BE IT RESOLVED by the Millburn Township Committee, County of Essex, State of New Jersey, as follows:

1. The Township agrees that Ordinance 2542-19 is consistent with Objective 1.05 of the 2018 Master Plan which is for the Township through its land use regulations to create the realistic opportunity to provide for its fair share of the region's affordable housing.

2. Despite the inconsistencies as articulated by the Planning Board at their meeting of September 4, 2019 and noted in the September 11, 2019 Memorandum, the Township finds that the following reasons justify the adoption of Ordinance 2542-19:
 - i. The implementation of the Settlement Agreement of the Litigation enables the Township to continue the satisfaction of its constitutional affordable housing obligation and advances the strength of the Township's position in related Declaratory Judgment litigation captioned In the Matter of the Township of Millburn, Docket No. ESX L2778-18 ("DJ Action") in which the Township seeks a Judgment of Compliance and Repose which, among other things, will confirm the Township's satisfaction of its constitutional affordable housing obligation.
 - ii. As part of the DJ Action, the Township is relying upon the 2018 HEFSP which, among other things, establishes that the Township has insufficient vacant land to satisfy in full the diverse number of affordable housing units as proposed from a variety of sources. As such, land that is offered for the satisfaction of a portion of its affordable housing obligation must be considered for higher density development in order to produce a reasonable maximum number of affordable units.
 - iii. In a builder's remedy lawsuit, the property proposed for development by the Plaintiff is required to be considered for rezoning and is entitled to rezoning, provided that, among other things, the developer sets aside a substantial number of affordable units as part of the overall development. In this case, the developer has proposed a 19.4% set-aside of affordable units which is in excess of the traditional 15% set-aside for affordable units in a rental project. To the extent known, any environmental constraints on the property can be remediated or accommodated, but in the event that they cannot be so accommodated, the development will be unable to move forward.
 - iv. The property being rezoned is currently zoned as B-3, a Business Zone. There is a train line and train station across the street from this property. It is surrounded by business uses; multi-family, two-three-story garden apartments; vacant land owned by the Township; and the Arboretum. Allowing a mixed use and residential zoning on this 1.56 acres is not incompatible with those immediately adjacent uses.
 - v. While it is acknowledged that there is a single-family, detached neighborhood beyond some portions of the immediately adjacent property, and while there will be an impact on that neighborhood as well (which impact would occur with any redevelopment of this property), the Township's need to satisfy its constitutional obligation as a result of the Litigation instituted, adequately supports the rezoning of this property as set forth in Ordinance 2542-19.
3. In accordance with N.J.S.A. 40:55D-62, the Municipal Clerk is hereby directed to record these reasons and this Resolution in the official minutes of the Township Committee.

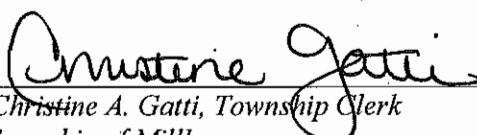
4. The Municipal Clerk and all appropriate officials, employees and professionals of the Township are hereby authorized and directed to take any steps necessary as required under law with regard to this Resolution.

5. This Resolution shall take effect simultaneously with the adoption of Ordinance 2542-19.

Adopted by Township Committee on September 17, 2019

I, Christine A. Gatti, Township Clerk of the Township of Millburn, do hereby certify this document to be a true copy of the original which is on file in my office.

Date: 9/18/2019


Christine A. Gatti, Township Clerk
Township of Millburn