

ZONING ORDINANCE 2273-21

AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 540, ZONING ORDINANCE OF THE BOROUGH OF HAWTHORNE, PASSAIC COUNTY, NEW JERSEY SO AS TO CREATE THEREUNDER ARTICLE XXVIII, MULTIFAMILY AFFORDABLE HOUSING REDEVELOPMENT ZONE

WHEREAS, the Borough of Hawthorne has filed a lawsuit entitled, In the Matter of the Application of the Borough of Hawthorne, County of Passaic, Docket No. PAS-L-2412-15, the purpose being the satisfaction of the Borough's Fair Share obligation to provide the realistic opportunity for the creation of low- and moderate-income housing pursuant to the 2015 decision rendered by the New Jersey Supreme Court regarding the same; and

WHEREAS, Ronson 3, LLC, the owner of property known as Block 89 Lot 6 and Block 90 Lots 1, 2.01 and 2.02 on the Tax Map of the Borough of Hawthorne, filed an Answer to the Complaint filed by the Borough and was granted intervenor status by the Superior Court of the State of New Jersey, County of Passaic; and

WHEREAS, the Borough and representatives of 3 Ronson, LLC, with assistance of the Court Appointed Special Master, engaged in Court proceedings and conferences with the purpose of attempting to reach settlement of the litigation as to said parcel of land, thereby partially satisfying the obligation of the Borough as determined by the New Jersey Supreme Court; and

WHEREAS, as a result of those actions the parties reached settlement of all issues pertaining to the litigation as it relates to the parties and have created a Settlement Agreement, the same being subject to final Court approval, which includes the rezoning of the subject properties and designating such as a redevelopment area as to meet in part the obligation of the Borough to create the realistic opportunity for the development of affordable housing; and

WHEREAS, the Governing Body authorized the Planning Board to conduct an investigation of the subject area pursuant to N.J.S.A. 40A:12A, the Local Redevelopment and Housing Law (LRHL); and

WHEREAS, the Planning Board conducted a public hearing on November 10, 2020 and determined that the subject area qualified as an area in need of redevelopment pursuant to statute and made this recommendation to the Governing Body; and

WHEREAS, upon the recommendation of the Borough Planning Board the Governing Body designated the subject area as an area in need of redevelopment by resolution adopted April 7, 2021; and

WHEREAS, upon such determination the Governing Body authorized Burgis Associates to prepare the necessary redevelopment plan; and

WHEREAS, pursuant to the Governing Body's authorization a redevelopment plan dated April 29, 2021 was prepared by Burgis Associates, the Borough's planning consultant;

BE IT ORDAINED by the Governing Body of the Borough of Hawthorne, New Jersey that it does hereby amend and supplement the Zoning Ordinance of the Borough of Hawthorne as follows:

SECTION 1. Article I §540-4 **Establishment of zones** is hereby amended and supplemented to add the following new zoning district:

R-12-R Multifamily Affordable Housing Redevelopment Zone

SECTION 2. The official Zoning Map of the Borough of Hawthorne is hereby amended to zone tax lots 1, 2.01, 2.02 within Block 90 and tax lot 6 within Block 89 as R-12-R, Multifamily Affordable Housing Redevelopment Zone subject to the regulations of Article XXVIII created herein.

SECTION 3. New **Article XXVIII, Multifamily Affordable Housing, R-12-R Zone** is hereby added as follows:

§ 540-197 Purpose

Purpose. The purpose of this district is to encourage the production of low and moderate-income multifamily housing in conformance with the latest procedural and substantive rules for affordable housing as determined by the Courts or other applicable authority, by permitting inclusionary multifamily development subject to the R-12-R regulations enumerated herein. This ordinance is created in fulfillment of a Settlement Agreement by and between the Borough of Hawthorne, New Jersey, 3 Ronson, LLC and the Fair Share Housing Center in connection with the Borough of Hawthorne’s declaratory judgment action captioned “In the Matter of the Application of the Borough of Hawthorne” bearing docket number PAS-L-2412-15 pursuant to *In re the Adoption of N.J.A.C. 5:96 and 5:97 by the Council on Affordable Housing*, 221 N.J. 1 (2015).

§ 540-198 Principal permitted uses.

Permitted principal uses shall be limited to residential multifamily development as regulated by this Article.

§ 540-199 Permitted accessory uses

- (1) Any use which is ordinarily subordinate and customarily incidental to the principal permitted uses R-12-R zone.
- (2) Surface parking.
- (3) Signs as permitted by ordinance.
- (4) Retaining walls as regulated by **§ 540-204**
- (5) Fences as permitted by ordinance.

§ 540-200 Development Requirements

The total number of residential units permitted in the R-12-R Zone shall not exceed 116 units plus 1 caretaker unit and the total number of required affordable housing units shall not be less than 17.

§ 540-201 Area and Bulk Requirements

A. Lot area, external yard and bulk requirements.

(1) Minimum lot area (acres):	6.0
(2) Minimum distance between buildings (feet):	60
(3) Minimum setbacks from external lot lines (feet):	
(a) Front yard (feet):	85
(b) Side yard (feet):	
i. Buildings with direct frontage on Goffle Road.	30
ii. Buildings setback within 350 feet to Goffle Road	75
iii. Buildings setback within 480 feet to Goffle Road	60
(4) Rear yard (feet):	60
(5) Maximum number stories and building height (stories/feet):	4 /45*
(6) Maximum impervious lot coverage (percent):	50 percent
(7) Maximum building length (feet):	260

*height shall be measured from the finished floor of the first residential level above parking but in no event shall any portion of a building exceed the height of 55 feet as measured from the average finished grade of the building as determined by measurements taken at the midpoint of the length of each building wall at the foundation to the ridge line of the building.

§ 540-202 Parking and Circulation requirements

Residential Site Improvement Standards (RSIS) shall apply.

§ 540-203 Fire Access Lanes

- A. A secondary emergency access road serving any development within the R-12-R Zone shall be provided subject to the review and approval of the Planning Board.
- B. A dedicated and unobstructed 15-foot wide fire lane shall be provided for any building with direct frontage on Goffle Road.

§ 540-204 Retaining Walls

Retaining walls may be located within a perimeter buffer or elsewhere on-site as needed subject to the following:

- A. Retaining walls shall be tiered wherever possible.
- B. Retaining walls shall have a landscaped shrub base when wall height exceeds 5’.
- C. Retaining walls adjacent to existing residential properties where the exposed face of wall faces such properties (i.e. the proposed improvements are above the adjacent residential property) shall be setback from the property line minimally the same height of the proposed retaining wall but in no event shall an outward facing retaining wall exceed a maximum height of 8 feet.
- D. Retaining walls adjacent to existing residential properties AND greater than 200’ setback from Goffle Rd. where the exposed face of wall faces away from such properties (i.e. the proposed improvements are below the adjacent residential property) shall not exceed 25’ feet in height. Such walls serve to lessen visual height impact on adjacent single-family homes.
- E. Walls setback less than 100’ from Goffle Rd. shall not exceed 10’ in height.
- F. Retaining wall color shall be of earth-tone and complimentary to proposed structure finishes.
- G. Retaining walls shall have a protective, black vinyl coated chain link fence on top for safety when wall height is more than 3’.
- H. Retaining walls are permitted within all required setbacks and buffers.

§ 540-205 Required Buffers

A planted landscaped perimeter buffer shall be provided subject to the following standards in addition to § 540-209 as follows:

- A. No less than a 50-foot planted buffer shall be maintained along the front yard.
- B. No less than a 15-foot planted buffer shall be maintained along the northerly side and rear yards.
- C. No less than a 30-foot planted buffer shall be maintained along the southerly side yard for a distance of no less than 300 feet as measured from the intersection of the rear lot line with the southerly lot line extending east.
- D. No accessory structures, parking, or storage of materials shall be permitted within the required buffer. Circulation drives, pedestrian walkways and stormwater swales are permitted within all required buffers except that not more than 10% of the required buffer shall be affected. All underground utilities are permitted within required buffer areas.
- E. Buffer Areas. Buffers shall comply with the following standards:
 - (1) Buffer planting shall provide year-round visual screen in order to minimize adverse impacts from a site on an adjacent property or from adjacent areas. It may consist of evergreen and deciduous trees and shrubs, berms, boulders, mounds, or combinations thereof to achieve the

stated objectives as approved by the appropriate land use board. While fencing may be installed to delineate the property line, the use of fencing or walls shall not be relied upon as the primary source of screening.

- (2) Where required, buffers shall be measured from property lines and street rights-of-way. Compliance shall be determined by the Planning Board, and any approvals required pursuant to this Section shall be obtained at the time of site plan and subdivision review. Buffer areas may overlap required setbacks.
- (3) The landscaping shall be designed to provide a visual screen along the majority of the buffer area. Planting shall be installed at a variety of sizes which conform to the following minimum sizes:

Shade Trees	2 ½-3-inch caliper
Evergreen Trees	7-8 feet
Shrubs	18-24 inches

- (4) Existing vegetation within the required transition buffer shall be preserved to the extent feasible and as determined appropriate by the Planning Board. It shall be supplemented with shade tolerant naturalistic massed plantings where necessary to provide screening of adjoining land uses.

§ 540-206 Soil Movement

Any development within the R-12-R Zone shall comply with § 540-420 of the Borough code regulating the movement of soil.

§ 540-207 Steep Slope Regulations

The Borough's steep slope regulations (Ch. 540, Art. XXI) and steep slope disturbance provisions in Sec. 540-160 Limitation on Site Disturbance are not applicable to the R-12-R Zone.

§ 540-208 Design Standards

Development within the R-12-R Zone shall be subject to the following design standards. Relief from any required site design standard under § 540-209, shall be considered a design standard exception pursuant to N.J.S.A. 40:55D-51 (b) and not a variance.

A. Architectural Design Standards

- (1) Rooflines. Rooflines are not to be flat but pitched. Roofline offsets, dormers or gables shall be provided in order to provide architectural interest and variety to the massing of a building and to relieve the effect of a single, long roof.
- (2) Fenestration shall be architecturally compatible with the style, materials, colors and details of the building. Windows shall be vertically proportioned.

- (3) All buildings should relate harmoniously to the site's natural features and existing buildings, as well as other structures in the vicinity that have a visual relationship and orientation to the proposed buildings. Such features should be incorporated into the design of building form and mass, and assist in the determination of building orientation in order to preserve visual access to natural and man-made community focal points.
- (4) Buildings with expansive blank walls are prohibited. Appropriate facade treatments should be imposed to ensure that such buildings and facades are integrated with the rest of the development and the entirety of the building.
- (5) Refuse and recycling shall be located interior to a building or alternatively, be placed such that they are conveniently located for residents. If located outside, the refuse area shall be appropriately screened by fencing not to exceed 6 feet.

B. Landscaping

- (1) Landscaping shall be provided to promote a desirable visual environment, to accentuate building design, define entranceways, screen parking areas, mitigate adverse visual impacts and provide windbreaks for winter winds and summer cooling for buildings, and enhance buffer areas. The impact of any proposed landscaping plan at various time intervals shall be considered. Plants and other landscaping materials shall be selected in terms of aesthetic and functional considerations. The landscape design shall create visual diversity and contrast through variation in size, shape, texture and color. The selection of plants in terms of susceptibility to disease and insect damage, wind and ice damage, habitat (wet-site, drought, sun and shade tolerance), soil conditions, growth rate, longevity; root pattern, maintenance requirements, etc., shall be considered. Consideration shall be given to accenting site entrances and unique areas with special landscaping treatment. Flowerbed displays are encouraged.
- (2) Parking rows longer than 20 parking spaces should provide for a landscape island to break the pavement where practical and feasible.
- (3) Landscaped islands should be at least six feet in width to accommodate plantings.
- (4) Landscaping within sight triangles shall not exceed a mature height of 30 inches.
- (5) Shade trees shall be pruned up to an 8-foot branching height above grade.
- (6) All areas that are not improved with buildings, structures and other man-made improvements shall be landscaped with trees, shrubs, and ground cover.
- (7) Shade trees should be a 2.5 to 3-inch caliper with a canopy height of at least the minimum American Nursery and Landscape Association Standards for this caliper.

- (8) Ornamental Trees shall be installed at a minimum size of 6 feet in height.
- (9) Shrubs shall be planted at a minimum size of 18 to 24 inches.
- (10) All plant material shall meet the minimum latest American Nursery and Landscape Association Standards.
- (11) Irrigation shall be provided for all buffer plantings and sodded lawn areas in a manner appropriate for the specific plant species. A growth guarantee of two growing seasons shall be provided and all dead or dying plants shall be replaced by the applicant, as required, to maintain the integrity of the site plan.
- (12) Landscape Plantings. A minimum of 30 percent of the plantings proposed shall be indigenous to the region.
- (13) Landscape Plan Content. A landscape plan shall be submitted with each major site plan or major subdivision application. In addition to the major site plan or subdivision submission requirements, the landscape plan shall include and identify the following information:
 - (a) Existing and proposed underground and above ground utilities such as site lighting, transformers, hydrants, manholes, valve boxes, etc. existing wooded areas, rock outcroppings and existing and proposed water bodies.
 - (b) Location of individual existing trees noted for preservation within the area of development and 30 feet beyond the limit of the disturbance. Trees 4 inches in diameter (measured 4 1/2 feet above the existing ground level) shall be located and identified by name and diameter unless the wooded area is shown with a specific limit line. In this case, specimen trees shall be located within thirty feet of the line. Indicate all existing vegetation to be saved or removed.
 - (c) Existing and proposed topography and location of all landscaped berms.
 - (d) Location, species and sizes of all proposed shade trees, ornamental trees, evergreen trees and shrubs and areas for lawns or any other ground cover. Different graphic symbols shall be used to show the location and spacing of shade trees, ornamental trees, evergreen trees, shrubs and ground cover. The size of the symbol must be representative of the size of the plant shown to scale.
 - (e) A plant schedule indicating botanical name, common name, size at time of planting (caliper, height and spread), quantity, root condition and any special remarks (spacing, substitutions, etc.) for all plant material proposed. Plants within the plant schedule shall be keyed to the landscape plan utilizing the first letter of the botanical plant name.

(f) Planting and construction details and specifications.

C. Lighting

- (1) All lighting fixtures and foot-candle standards for parking areas and recreation facilities should be consistent with the standards outlined by the Illuminating Engineering Society of North America (IESNA) and regulations of the Borough of Hawthorne.
- (2) The intensity, shielding, direction and reflecting of lighting shall be subject to site plan approval by the approving authority.
- (3) All parking areas, walkways, building entrances, and driveways required for uses in this zone shall be adequately illuminated during the hours of operation that occur after sunset. Any adjacent residential zone or use shall be shielded from the glare of illumination from site lighting and automobile headlights.
- (4) The use of creative lighting schemes to highlight building facades and related areas of a site shall be encouraged. The use of traditional style lanterns and similar fixtures shall also be encouraged. Exterior neon lights and lighting generating glare and unnecessary night-glow impacts shall be prohibited.
- (5) Whenever possible, light poles should be integrated into landscaped islands.

D. Green infrastructure

- (1) All development shall be in accordance with the regulations set forth in the Borough's Stormwater Management Ordinance (Chapter 437). Site design is encouraged to incorporate green design elements to achieve the following goals: reduce stormwater volume, minimize impervious coverage, decrease and delay peak discharge, reduce pollution and recharge groundwater.
- (2) Various design elements may be incorporated into site design with the following specifically low impact development techniques encouraged: rain gardens, bio-infiltration planters, infiltration basins, vegetated swales and pervious paving.

§ 540-209 Application Requirements.

A. Application Requirements

- (1) An applicant for development in the R-12-R Zone shall submit a site plan indicating the manner in which the site is to be developed. Said plan shall include all the data required by ordinance for site plan review unless otherwise waived by the Board.

- (2) The application shall contain, in addition to the site plan application checklist provisions, a report detailing the total number of dwelling units by bedroom count. The total number of units shall be indicated and intensity of use of the entire tract shall be noted.

B. Application Process.

Notwithstanding the provisions of § 540-210 A. above, it is the intent of this ordinance for the Planning Board to expedite its review of any application submitted for this zone within the time frames established under N.J.S.A. 40:55D-1 et. seq. It is further the intent of this ordinance to not require off-site or off-tract improvements for development, unless the need for such improvements arise from the development within the zone nor shall the approving authority require items deemed as “cost-generating” as defined by N.J.A.C 5:93-10.1 et. seq.

§ 540-210 Low and Moderate-Income (Mount Laurel) Housing Requirements

The following requirements as to the density and distribution of low-and moderate-income dwelling units shall apply.

A. Low- and moderate-income (Mount Laurel) housing requirements:

- (1) Market-rate and minimum low- and moderate-income housing set aside: The total number of housing units shall not exceed 116 units plus 1 caretaker unit and the total number of affordable housing units shall not be less than 17.
- (2) All low- and moderate-income housing units shall be in conformance with the latest applicable rules for affordable housing as determined by the Council on Affordable Housing, the Courts or other applicable authority, as determined appropriate, including such issues as phasing of building low- and moderate-income units in concert with market rate units.
- (3) Bedroom distribution of low- and moderate-income housing units. Subject to the most current applicable COAH or other rules, the bedroom distribution of low- and moderate-income units for affordable units constructed in the R-12-R Zone shall be as follows:
 - (a) No more than 20 percent of the low- and moderate-income units shall be one bedroom units.
 - (b) At least 20 percent of the low- and moderate-income units shall be three bedroom units.
 - (c) At least 30 percent of the low- and moderate-income units shall be two bedroom units.

(4) Low- and moderate- income unit split. The distribution of inclusionary affordable units to be provided as part of this development shall be in accordance with those requirements as set forth by COAH rules or otherwise deemed appropriate by the Court.

B. Procedures regarding affirmative marketing of low- and moderate-income units and other requirements of inclusionary development units are subject to and determined by COAH rules or other rules determined appropriate by the Court.

SECTION 4. The Redevelopment Plan, a copy of which is annexed hereto and made a part of this Ordinance, is adopted in accordance with N.J.S.A. 40A:12A-7.

SECTION 5. This Ordinance constitutes an amendment to the zoning district map included in the Borough's zoning ordinance.

SECTION 6. All ordinances or parts of ordinances of the Borough of Hawthorne which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 7. If any section, paragraph, subdivision, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to such section, paragraph, subdivision, clause or provision and the remainder of this Ordinance shall be deemed valid and effective.

SECTION 8. This Ordinance shall take effect immediately upon final adoption and publication in the manner prescribed by law.

Frank E. Matthews, Council President

Attest:
Lori Fernandez, RMC, CMC
Borough Clerk

NOTICE OF PENDING ORDINANCE

The Ordinance published herewith was introduced and passed upon first reading at a meeting of the Municipal Council of the Borough of Hawthorne, in the County of Passaic, New Jersey, held on May 5, 2021. It will be further considered for final passage after public hearing thereon, at a meeting of said Municipal Council to be held in the Municipal Building, 445 Lafayette Avenue, in said Borough, or by way of virtual platform, on June 2, 2021 at 7:00 p.m., at which time and place all interested members of the public who desire will be given an opportunity to be heard in connection with said Ordinance, and during the week prior to and up to and including the date of such meeting, copies of said Ordinance will be made available at the Borough of Hawthorne website, www.hawthornenj.org and through the Clerk's Office in said Municipal Building at no cost to the members of the general public who shall request the same.

Lori Fernandez, RMC, CMC, Borough Clerk

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF AN ORDINANCE ADOPTED BY THE MUNICIPAL COUNCIL OF THE BOROUGH OF HAWTHORNE AT A REGULAR MEETING VIRTUALLY VIA GOTO MEETING ON JUNE 2, 2021.