

**ORDINANCE NO. 07-18            AN ORDINANCE AMENDING CHAPTER 207, ZONING,  
OF THE CODE OF THE BOROUGH OF KINNELON, TO  
ESTABLISH THE "AFFORDABLE HOUSING-2 (AH-2)  
OVERLAY ZONE"**

**WHEREAS**, on March 10, 2015, the New Jersey Supreme Court issued its decision in In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015). In that decision, the New Jersey Supreme Court transferred primary jurisdiction over affordable housing matters from the New Jersey Council on Affordable Housing ("COAH") to the New Jersey Superior Court and established a transitional process for municipalities, like the Borough of Kinnelon ("Borough"), to file declaratory judgment actions seeking to declare their Housing Element and Fair Share Plans ("HEFSPs") as being constitutionally compliant and seeking similar protections to what they would have received if they had continued to proceed before COAH; and

**WHEREAS**, on June 25, 2015, the Borough filed a declaratory judgment action with the New Jersey Superior Court seeking to declare its HEFSP as being constitutionally compliant and seeking protection and repose against exclusionary zoning litigation for a ten (10) year period; and

**WHEREAS**, the Borough negotiated and executed a Settlement Agreement with the Fair Share Housing Center ("FSHC") which included agreement on the extent of the Borough's affordable housing fair share obligation for the period from 1999 to 2025 and the methods the Borough intends to use to satisfy the obligation; and

**WHEREAS**, the New Jersey Superior Court entered a Judgment of Compliance and Repose on March 9, 2018 that granted the Borough immunity and repose from any and all Mount Laurel lawsuits through July 1, 2025, subject to the satisfaction of certain Compliance Conditions and Requirements including the adoption of overlay zoning for the Kinnelon Mall Property located at Block 45201, Lot 102 on the Official Tax Map of the Borough of Kinnelon; and

**WHEREAS**, the Borough of Kinnelon desires to amend and supplement Chapter 207, Zoning, of the Code of the Borough of Kinnelon to establish the Affordable Housing-2 (AH-2) Overlay Zone for the Kinnelon Mall Property.

**NOW, THEREFORE, BE IT ORDAINED**, by the Governing Body of the Borough of Kinnelon, County of Morris, State of New Jersey as follows:

**SECTION ONE.** Chapter 207, Zoning, of the Code of the Borough of Kinnelon is hereby amended and supplemented by the addition of the following:

**Article XX: Affordable Housing-2 (AH-2) Overlay Zone**

**Section 207-113. Purpose**

The purpose of the AH-2 Overlay Zone is to provide a realistic opportunity for the construction of low- and moderate-income housing units in conformance with the latest procedural and substantive rules for affordable housing, as determined by the Courts or other applicable authority, by permitting for a mixed-use development consisting of ground-story retail and commercial uses with residential multifamily units above. This section is created in fulfillment of a settlement agreement by and between the Borough of Kinnelon, New Jersey and the Fair Share Housing Center (FSHC).

Any provisions of this chapter or any other ordinance in conflict with the AH-2 Overlay Zone regulations and which impose more stringent standards not related to the health or safety of the public or the resident occupants of the zone shall be inapplicable.

**Section 207-114. Description.**

The AH-2 Overlay Zone shall encompass Block 45201 Lot 102 on the Borough of Kinnelon Tax Map.

**Section 207-115. Permitted Principal Uses**

The AH-2 Overlay Zone shall permit the following uses:

- A. Those uses permitted in the Restricted Commercial Zone.
- B. Mixed use developments consisting of ground-story retail/commercial/office with residential multifamily apartment units above. An apartment shall mean a multifamily dwelling unit contained in a building designed for or occupied by three or more families or households, living independently of each other with each unit containing one or more dwelling rooms with private bath and kitchen facilities. Each apartment shall comprise an independent, self-contained dwelling unit. Ground-story retail/commercial/office uses shall be required regardless of whether the existing building at the time of the adoption of this ordinance is modified, expanded, or if a new building or buildings is/are constructed.

**Section 207-116. Permitted Accessory Uses.**

Accessory uses and structures permitted in the AH-2 Overlay Zone are those uses and structures which are customarily incidental and subordinate to those uses permitted in the zone. Accessory uses and structures shall include, but not be limited to, the following:

- A. Street furnishings, planters, street lights, and exterior, garden-type shade structures;
- B. Fences and walls, which shall complement the architectural style, type, and design of the building(s) and the overall project design;
- C. Recreational facilities such as swimming pools, tennis courts, jogging paths, dog runs, and play lots;
- D. Parking lots serving the development;
- E. Signs;
- F. Clubhouses, which shall complement the architectural style, type, and design of the principal building(s) and the overall project design;
- G. Stormwater management facilities, and;

- H. Refuse/recycling enclosures, which shall complement the architectural style, type, and design of the principal building(s) and the overall project design.

**Section 207-117. Conditional Uses.**

None

**Section 207-118. Prohibited Uses.**

The following uses shall be prohibited:

- A. Any use other than those uses specifically permitted above are prohibited.
- B. Ground-floor residential units.

**Section 207-119. Required Conditions.**

- A. Minimum Tract Size. There shall be a minimum tract size of twelve (12) acres.
- B. Maximum Permitted Density. The maximum permitted density shall be six (6) dwelling units per acre.
- C. Minimum Setbacks. The following minimum setbacks shall apply:
  - (1) Minimum Front Yard Setback. 50 feet.
  - (2) Minimum Side and Rear Yard Setback: 50 feet where it abuts residential property. Where it abuts other than residential property, a minimum setback of 25 feet shall be required.
  - (3) Perimeter setback standards shall not apply to retaining walls, stormwater management facilities, signs, and fencing, unless otherwise required by this section.
- D. Minimum Buffer. A minimum landscaping buffer of 25 feet shall be provided where it abuts a residential property. Where it abuts other than a residential property, a minimum landscaped buffer of 15 feet shall be required.
- E. Impervious Coverage: 75% maximum
- F. Off-Street Parking: The following parking standards shall apply:
  - (1) Nonresidential uses, excluding restaurants and movie theaters. One (1)

parking space per every two hundred (200) square feet of gross floor area.

- (2) Restaurants and other similar eating and drinking establishments. One (1) parking space for every three (3) seats.
- (3) Movie theaters. One (1) parking space for every four (4) permanent seats.
- (4) Residential. Parking requirements for residential uses shall comply with those standards set forth in the Residential Site Improvement Standards (RSIS).
- (5) The applicable parking requirements may be reduced if a shared parking analysis demonstrates that a lower number of parking spaces will be sufficient.

G. Maximum Building Height: 42 feet

H. Distance Between Buildings: 30 feet

I. Signage.

(1) Freestanding signs

- (a) One (1) freestanding sign for the development shall be permitted at each vehicular entrance to the development, provided that there shall be no more than three (3) such signs.
- (b) The area of each sign shall not exceed fifty (50) square feet.
- (c) The height of each sign shall not exceed six (6) feet.
- (d) All signs shall be set back at least ten (10) feet from any street right-of-way, and shall not impact any line of sights.
- (e) The sign shall be an identification sign only, limited to the name and address of the development on-site.
- (f) The design of the freestanding signs shall be complementary to the architectural design of the buildings located on site, and shall be subject to the review and approval of the Planning Board.

(2) Attached Signs.

- (a) The area of any single sign shall not exceed ten percent (10%) of the area of the exterior wall of the tenant space to which it is attached, or one (1) square foot for each linear foot of building occupied by the tenant using the sign, whichever results in the smaller sign.

- (b) Attached signs shall be placed parallel to the face of the building, and shall not extend further than twelve (12) inches from the face of the building.
  - (c) No attached signs shall be placed above the ground floor on any building with more than one (1) story.
  - (d) There shall be no more than one (1) attached sign for each separate tenant of the premises. Where a building is served with a rear entrance opening on a parking area as approved by the Planning Board, each tenant in the building is permitted a second sign facing the rear parking area. The second sign shall not have an area exceeding one third (1/3) the maximum area permitted for the first sign as regulated in paragraph 2.(a) above
  - (e) The length of any sign shall not exceed fifty (50%) of the length of the façade occupied by the tenant using the sign, up to a maximum length of twenty-five (25) feet.
  - (f) Where a row of storefronts exists in one building, all signs shall be of common design and similar appearance.
- (3) All signs shall require Planning Board approval.
  - (4) No outdoor flashing or lighted signs or signs with moving parts will be permitted except by special permission of the Planning Board. In no case shall these signs be operated between 12:00 midnight and 6:00 a.m.

## **Section 207-120. Site Design and Performance Standards.**

### **A. Building Design**

- (1) Mixed use buildings shall be designed and incorporated in an integrated and coordinated manner with regard to building and façade design.
- (2) Jogs of a minimum of four feet to create visual breaks on the exterior of a building are required.
- (3) Angled walls, varied widths or enlarged foyer or atrium areas are encouraged.
- (4) Open balconies and decks are encouraged.
- (5) Distance window wall to window wall that are parallel in the same building: 65 feet.
- (6) Temporary solid waste and recycling storage shall be provided on each floor

of residential use.

- (7) Storage areas shall be provided on each residential floor for residential units.
- (8) Entrances for residential uses shall be distinct and separate from those entrances for nonresidential uses.

B. Sidewalks. Sidewalks between parking areas and principle structures, along aisles and driveways and wherever pedestrian traffic shall occur shall be provided with a minimum width of four (4) feet of passable area and raised six (6) inches or more above the parking area, except when crossing streets or driveways. All sidewalks and curbing shall be in compliance with the applicable provisions of the Americans with Disabilities Act.

C. Landscaping

- (1) Landscaping shall be provided as an integrated element of site plan design. It shall be provided in public areas adjacent to building, in parking and loading areas, and around the perimeter of the site.
- (2) Landscaping shall be designed so as to promote a desirable visual element, to accentuate building design, define entrance ways, screen parking and loading areas, mitigate adverse visual impacts, provide windbreaks for winter winds, and provide summer cooling for the development.
- (3) Planting and other landscaping material 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 also be given to accenting site entrances and unique areas with special landscaping treatment.
- (4) Landscaping shall include plant materials such as trees, shrubs, ground cover, perennials, annuals, and other materials such as rocks, water, berms, wall fences, and paving materials.
- (5) The use of indigenous/native plant material is to be encouraged to establish sustainable landscapes that blend with the natural environment as well as reduce the use of pesticides and irrigation.

(6) Design of buffers. The following parameters are established for buffers:

- (a) Arrangement of plantings in buffers shall provide maximum protection to adjacent properties and avoid damage to existing plant material. Potential arrangements include planting in parallel, serpentine, or broken rows.
- (b) If planted berms are used, the maximum side slope shall be 2:1.
- (c) Existing vegetation within the perimeter buffer shall be preserved, as determined appropriate to the extent practical. It shall be supplemented with shade-tolerant naturalistic massed plantings where necessary to complete screening where deemed appropriate.
- (d) Plant materials shall be sufficiently large and planted in such a fashion to screen parking, refuse, and loading areas.
- (e) Such strips shall be planted with evergreens and deciduous plant material as deemed appropriate by the reviewing Board.
- (f) All proposed deciduous trees in a perimeter buffer shall be of a two-and-one-half to three-inch caliper, measured six inches from grade.

D. Trash enclosures. Trash and garbage collection areas shall be fully screened. Enclosures shall be constructed of materials that complement the architectural style, type, and design of the buildings and the overall project design.

E. Loading and unloading areas. Loading and unloading areas shall be fully screened. Screening materials shall complement the architectural style, type, and design of the buildings and the overall project design. Loading areas shall not be located in any front yard.

F. Outdoor lighting.

(1) Site lighting shall be provided in all areas of the AH-2 Zone which are accessible to the public as follows:

(a) Average Maintained Footcandles for Parking Lots and Access Drives:  
0.4 to 1.0

(b) Average Maintained Footcandles for Pedestrian ways and Sidewalks:  
0.5

(2) All lighting from fixtures shall be shielded and cut off at property lines adjoining residential zones. All sky-glow effects shall be prohibited. The maximum permissible luminary mounting height shall not exceed 15 feet above ground level.



- (3) The use of creative lighting to highlight building facades and related areas of a site shall be encouraged. Exterior neon lights and lighting generating glare shall be prohibited.
- (4) Wherever possible, light poles should be integrated into landscaped islands.
- (5) Lighting fixtures shall employ energy efficient LED or similar luminaires into the proposed light standards for the development.

**Section 207-121. Affordable Housing.**

- A. A minimum of twenty percent (20%) of all units shall be set-aside for very-low, low-, and moderate-income housing.
- B. All affordable units are to be constructed on-site.
- C. All very-low, low- and moderate-income housing units shall be in conformance with the requirements of the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq. ("FHA"); applicable regulations of the New Jersey Council on Affordable Housing ("COAH"); applicable requirements of the Courts of the State of New Jersey; and all applicable regulations on affordability controls and other regulations of the New Jersey Housing and Mortgage Finance Agency ("NJHMFA") including, without limitation, the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. ("UHAC").
- D. Bedroom distribution of very-low, low- and moderate-income housing units. The bedroom distribution of very-low, low- and moderate-income units for affordable units constructed in the AH-2 Overlay Zone shall be as follows:
  - (1) No more than twenty percent (20%) of the very-low, low-, and moderate-income units shall be one-bedroom units.
  - (2) At least twenty percent (20%) of the very-low, low-, and moderate-income units shall be three-bedroom units.
  - (3) At least thirty percent (30%) of the very-low, low-, and moderate-income units shall be two-bedroom units.
- E. Very-low, Low- and moderate-income unit split. At least 50% of the affordable units will be available to very low income and low-income households and the remainder of which will be available to moderate income households as defined in the FHA and UHAC and other applicable statutes and regulations. A minimum of 13% of the affordable units will be made available to very low income households, defined as households earning 30% or less of the regional median income by household size.
- F. Procedures regarding affirmative marketing of very-low, low- and moderate-

income units and other requirements of inclusionary development units are subject to and determined by UHAC and COAH rules or other rules determined appropriate by the court.

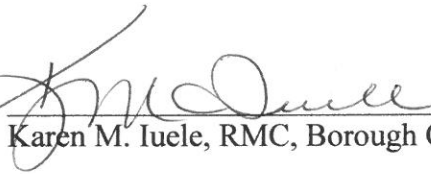
**SECTION TWO.** All Ordinances of the Borough of Kinnelon which are inconsistent with the provisions of this Ordinance are hereby repealed as to the extent of such inconsistency.

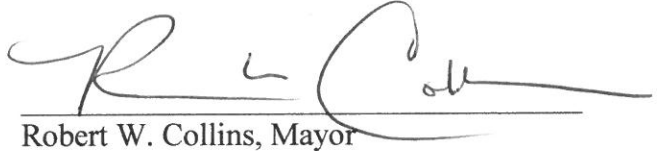
**SECTION THREE.** Any section, subsection, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid by any Court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.

**SECTION FOUR.** This Ordinance shall take effect as provided by law.

ATTEST:

BOROUGH OF KINNELON

  
Karen M. Iuele, RMC, Borough Clerk

  
Robert W. Collins, Mayor

### CERTIFICATION

I, Karen M. Iuele, Borough Clerk of the Borough of Kinnelon, County of Morris, State of New Jersey, do hereby certify the foregoing to be a true copy of an Ordinance introduced, read by title and passed on the first reading at the regular meeting of the Borough held on

June 21, 2018 and adopted by the Governing Body at a regular meeting of the Borough held on July 19, 2018.

  
Karen M. Iuele, RMC, Borough Clerk