

11.

ORDINANCE NO. **4841 26**

TOWNSHIP OF TOMS RIVER

AN ORDINANCE ADOPTING AMENDMENTS TO THE EXISTING AFFORDABLE HOUSING ZONE KNOWN AS THE "HB-MF HIGHWAY BUSINESS MULTI-FAMILY ZONE," ATTACHED AS EXHIBIT A, TO GENERATE 4 AFFORDABLE UNITS THROUGH THE CONSTRUCTION OF TWO (2) FLOORS ATOP AN EXISTING TWO-STORY RETAIL AND COMMERCIAL STRUCTURE AT BLOCK 796, LOT 3, COMMONLY KNOWN AS 2008 ROUTE 37

WHEREAS, the Township of Toms River is a municipal corporation of the State of New Jersey authorized to regulate land use and zoning pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.; and

WHEREAS, on March 20, 2024, P.L. 2024, c. 2 was enacted, amending the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. (the "Amended FHA") and establishing the Affordable Housing Dispute Resolution Program (the "Program") to facilitate municipal compliance with constitutional affordable housing obligations for the ten-year period from July 1, 2025 through June 30, 2035 (the "Fourth Round"); and

WHEREAS, the Township elected to participate in the Program and filed a declaratory judgment action under Docket No. OCN-L-331-25 seeking review of its Fourth Round Housing Element and Fair Share Plan (the "HEFSP"); and

WHEREAS, on June 20, 2025, the Township Planning Board adopted the Township's HEFSP and, on June 30, 2025, the Township Council ratified and endorsed the HEFSP; and

WHEREAS, Fair Share Housing Center and multiple property owners, including 2008 Route 37 Associates, LLC (the "Developer"), filed challenges to the HEFSP pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b); and

WHEREAS, on February 25, 2026, the Township Council approved a Settlement Agreement (the "Settlement Agreement") with the Developer to provide the opportunity to generate 4 affordable units through the construction of two (2) floors with residential units atop an existing two-story retail and commercial structure at Block 796, Lot 3, commonly known as 2008 Route 37 (the "Affordable Housing Project"); and

WHEREAS, on April 22, 2026, the Township Council adopted Ordinance No. 4835-26 pursuant to the Settlement Agreement with the Developer, which created a new affordable housing zone to be known as the "HB-MF Highway Business Multi-Family Zone," to provide the realistic opportunity for the construction of the Affordable Housing Project; and

WHEREAS, subsequent to adoption, and pursuant to the Settlement Agreement, the Developer completed final engineering, which determined that the project must be reinforced with steel and required a cantilever of the additional two floors; and

WHEREAS, to facilitate the construction of the Affordable Housing Project, the Township's professionals have reviewed the Developer's requests for modifications to the Zoning Ordinance, which the Township's professionals find appropriate and reasonable, which include: (i) an increase of project height by 2.33 feet because of the steel reinforcement, noting that, although the ordinance requirement would be increased by 6 feet, this is because the concept plan originally measured height from the finished floor elevation whereas the Township's height definition requires same to be measured from average grade; (ii) maintaining the Ordinance's shared parking requirement but modifying the ratio of 1 space per 225 square feet to permit 1 space per 250 square feet of net floor area, provided 1 space per residential unit be reserved during business hours for the residential units; (iii) an increase of permitted building coverage from the 17.3% originally proposed to approximately 22.5% because of the use of steel reinforcement and cantilevering of the new floors, and permitting a maximum building coverage of 23%; (iv) revising the side yard setback requirement to acknowledge the 5-foot minimum shown in the Settlement Agreement's concept plans at the location of the building's new stairwell approximately 5.9 feet from the lot line; (v) revising the minimum front yard setback in order to recognize the location of the existing parking areas and circulation aisles on the Property, which will not be modified by the Affordable Housing Project; and (vi) memorialize that construction of a sidewalk is not required, similar to the prior Planning Board approvals for the Property, conditioned upon a contribution to the Pedestrian Safety Fund in lieu of construction.

WHEREAS, the Township Council further finds that the amendments adopted herein remain consistent with the Settlement Agreement and continue to provide a realistic opportunity for the construction of the Affordable Housing Project.

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Toms River (the "Township Council") as follows:

Section 1. Incorporation of Findings.

The foregoing WHEREAS clauses are hereby incorporated as though fully set forth herein.

Section 2. Adoption of Implementing Zoning Provisions.

The Township hereby adopts the amended zoning provisions set forth at Exhibit A attached hereto and made a part of this Ordinance.

Section 3. Exhibit Adopted.

The following Exhibit is hereby adopted with the same force and effect as if set forth at length in the body of this Ordinance:

Exhibit A: Overlay zone entitled "HB-MF Highway Business Multi-Family Zone," establishing site-specific zoning for Block 796, Lot 3, commonly known as 2008 Route 37, in order to generate 4 affordable units.

Section 4. Severability.

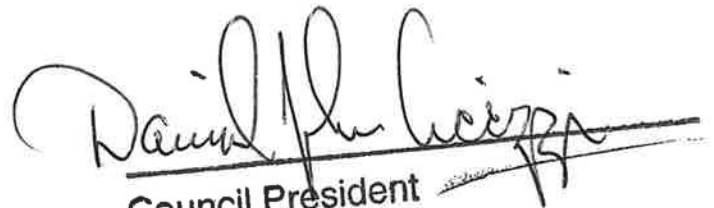
If any section, subsection, paragraph, sentence, clause, or provision of this Ordinance or any Exhibit hereto is adjudged invalid, such adjudication shall not affect the validity of the remaining portions.

Section 5. Effective Date.

This Ordinance shall take effect upon final passage and publication according to law.

SO ORDAINED, as aforesaid.



Mayor

Council President

Final Passage:
6/10/26

Section 1

A new section 348-10.____ shall be created entitled “HB-MF Highway Business Multi-Family Zone”

§348-10.____ Purpose

It is the intent and purpose of this district, known as the **HB-MF Highway Business Multi-Family Zone (“HB-MF”)**, to facilitate creation of inclusionary development that will diversify housing opportunities within the Township and satisfy a portion of the Township’s Round 4 fair share obligation. This ordinance permits a mixed-use 20-unit inclusionary development in which 20 percent, or 4 affordable units, shall be set-aside as affordable units for very low-, low- and moderate-income households.

§348-10.____ Conflicts

- A. To the extent there is a conflict between this ordinance and any other section of the Township’s ordinances, this ordinance shall apply. When there is a conflict between the Township ordinances and the New Jersey Uniform Housing Affordability Controls standards (UHAC), the UHAC standards shall apply.
- B. To the extent there is a conflict between this ordinance and New Jersey Residential Site Improvement Standards (RSIS), RSIS standards shall apply.

§348-10.____ District Area

- A. The district shall encompass the lands known as Block 796, Lot 3 on the official tax maps of the Township of Toms River.

§348-10.____. Permitted uses

A. Permitted principal uses:

- (1) Multifamily units above ground-level retail and second-floor office uses (mixed use) permitted in § 348-10.26, Subsection A(1) through (4) with a maximum density of 20 units per acre. Multi-family units shall be subject to the affordable housing provisions of § 348-11.
- (2) Maximum of 16 market rate units
- (3) Minimum of 4 affordable units
- (4) All permitted principal uses listed under Section 348-10.26A of the Township ordinance, unless otherwise specified in Subsection D as a use requiring a conditional use

B. Required accessory uses

- (1) Off-street parking. Shared parking between retail/office uses in mixed-use developments shall be permitted as of right with a minimum of 1 parking space required per dwelling unit during business hours in addition to 1 space per 250 net square feet of floor area for the retail/office uses.
- (2) Off-street loading subject to the provisions of Section 348-8.19.

C. Permitted accessory uses and structures

- (1) Fences subject to the provisions of Section 348-8.13
- (2) Signs subject to the provisions of Section 348-8.26
- (3) Bulk storage subject to the provisions of Section 348-8.6
- (4) Other customary accessory uses and buildings which are clearly incidental to the principal use and building, Except 348-8.28 A for refuse areas shall conform with the setbacks noted in this ordinance for front setbacks and distance from property lines for refuse storage areas shall comply with the side yard setback.
- (5) Outdoor display of goods subject to Sections 348-5.20 and 348-5.37
- (6) Umbrellas subject to the provisions of Section 348-8.36
- (7) Tents subject to the provisions of Section 348-8.37
- (8) Electric Vehicle Charging and Service Equipment

D. Conditional Uses subject to the provisions of Article IX of this chapter

- (1) Public utilities (Section 348-9.6).
- (2) Boatyards and marinas (Section 348-9.10).
- (3) Farmers' markets or auction markets (Section 348-9.20).
- (4) Bulk storage of fuel, provided that the storage area is used solely in conjunction with a retail or wholesale outlet and the storage containers are built below the ground or in accordance with the regulations adopted by the State of New Jersey.

§348-10. ____ . Area restrictions and regulations

A. Overall tract requirements

- (1) The maximum permitted residential density shall be 20 units.
- (2) Architectural elements such as bay or box windows, balconies, building offsets, variation of building materials, setbacks, colors, foundation plantings, textures and other architectural elements that achieve visual interest shall be considered and included in the project design.

B. Bulk requirements:

- (1) Minimum lot area: 15,000 square feet
- (2) Minimum lot width: 100 feet
- (3) Minimum lot depth: 150 feet
- (4) Minimum lot frontage: 100 feet

(5) Minimum front yard setback: 60 feet

a) Refuse storage areas: 25 feet fronting on Adams Avenue

(6) Minimum side yard setback: 5 feet

a) Refuse Storage Areas: 5 feet (also pertains to other property lines, other than front yard setbacks)

(7) Minimum rear yard setback: 60 feet

(8) Maximum building coverage: 23%

(9) Maximum impervious coverage: 80%

(10) Maximum building height: 51 feet/4 stories

C. Consistency with concept plan:

(1) Residential development pursuant to the HB-MF Zone shall be generally consistent with the illustrative concept plan included herein.

(2) Ordinance Section 348-8.27(I) shall not apply. Ordinance Section 348-8.27(A) shall apply, except that, due to the property's dual frontage, a screened refuse area shall be permitted within the front yard setback along Adams Avenue, provided that no refuse area shall be located within the front yard setback along Route 37.

§348-10. Affordable Housing Requirements

A. In accordance with the Fair Housing Act, and the Uniform Housing Affordability Controls (UHAC), a minimum of 20% of all residential dwelling units built within this district shall be set aside for very-low, low, and moderate income households. Should there be any conflict between the municipal ordinance and UHAC, the UHAC standard shall apply.

B. At least half of the affordable units shall be affordable to very low and low income households; and the remaining affordable units shall be affordable to moderate income households. The very low income units shall equal at least 13 percent of the total affordable units. A typical percentage of affordable housing units shall be 13 percent very low, 37 percent low and 50 percent moderate income units. The affordable units shall be located on site and shall be dispersed and integrated throughout the development in compliance with UHAC. The affordable housing shall be constructed in accordance with the affordable housing phasing schedule set forth in N.J.A.C. 5:97-6.4(d). Each affordable unit shall be deed-restricted to conform with the UHAC standards and shall be affirmatively marketed consistent with UHAC standards. No development fee shall be charged in addition to the set-aside requirement.

Section 2

The Township's Zoning Map shall be amended so that Block 796, Lot 3 shall be placed within the newly created HB-MF Highway Business Multi-Family Zone ("HB-MF"), as established by this ordinance.