

ORDINANCE #08-2025

AN ORDINANCE OF THE BOROUGH OF MENDHAM, COUNTY OF MORRIS, STATE OF NEW JERSEY, REPEALING AND REPLACING CHAPTER 215, ARTICLE XVIII “AFFORDABLE HOUSING OVERLAY-AHO ZONE” SECTIONS 215-64 THRU 215-70 AND ESTABLISHING NEW ZONING AND LAND USE STANDARDS TO CREATE A REALISTIC OPPORTUNITY FOR THE CONSTRUCTION OF AFFORDABLE HOUSING AT BLOCK 18.01, LOT 5 IN THE BOROUGH.

WHEREAS, the New Jersey Supreme Court, through its decisions in Southern Burlington County NAACP v. Mount Laurel, 67 N.J. 151 (1975) (*Mount Laurel I*), and Southern Burlington County NAACP v. Mount Laurel, 92 N.J. 158 (1983) (*Mount Laurel II*), has determined that municipalities have a constitutional obligation to provide through their local land use regulations a realistic opportunity for the construction of good and decent affordable housing for low-and moderate-income families; and

WHEREAS, the above and several subsequent decisions of the New Jersey Supreme Court have since come to be known as the *Mount Laurel* doctrine; and

WHEREAS, in response *Mount Laurel I* and *Mount Laurel II*, New Jersey Legislature has since adopted the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq. (“FHA”), which was subsequently amended in March 2024; and

WHEREAS, the *Mount Laurel* doctrine and the FHA require municipalities adopt land use regulations that affirmatively afford a reasonable opportunity for a variety of housing, including low-and moderate-cost housing, to meet the needs of the region; and

WHEREAS, municipalities that comply with the FHA are deemed in compliance with the *Mount Laurel* doctrine; and

WHEREAS, the Borough of Mendham (hereinafter “Borough”) has a demonstrated history of compliance with the *Mount Laurel* doctrine and the FHA; and

WHEREAS, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (*Mount Laurel IV*), in July 2015, the Borough filed a Declaratory Judgment Action in Superior Court, Law Division, Morris County, under Docket No. MRS-L-1637-15 (“2015 Action”); and

WHEREAS, in order to resolve the Borough’s 2015 Action and secure a judgment of compliance and repose entitling the Borough from immunity from exclusionary zoning and builder’s remedy litigation, the Borough was directed by the court to designate Block 18.01 Lot 5 in the Borough as an affordable housing overlay zone (“AHO Zone”) and to adopt certain zoning and land use and development standard to permit the property to be development/redevelopment for inclusionary affordable housing; and

WHEREAS, pursuant to Borough Ordinance #08-2020, on July 27, 2020 the Borough

adopted the current version of the land use and zoning provisions with respect to the AHO Zone; and

WHEREAS, since then the contract purchaser of the property has provided conceptual plans and engineering reports with respect to the construction of an inclusionary development in the AHO Zone, which demonstrate that the existing zoning and land use standards for the AHO Zone no longer present a realistic opportunity for the construction of affordable housing as required by the Mt. Laurel doctrine and the FHA, as amended, in 2024; and

WHEREAS, as a result of the 2024 amendments to the FHA, the Borough must now take action to repeal and replace certain land use and development standards and provisions of the AHO Zone in order to maintain its immunity from exclusionary zoning and builder's remedy litigation and remain in compliance with the *Mount Laurel* doctrine and the FHA; and

WHEREAS, the Borough's Professional Planner, Engineer and Municipal Attorney have recommended that Borough repeal and replace various provisions of currently set forth within the AHO Zone code, and are of the opinion that the proposed amendments to the AHO Zone code are reasonable, appropriate and proper in order to create a reasonable opportunity for the construction of safe and decent affordable housing in accordance with the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq., the *Mount Laurel* doctrine, the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., and the New Jersey Home Rule Act, N.J.S.A. 40:48-1 et seq.; and

WHEREAS, the Mayor and Council wish to adopt the Borough professionals' recommendations and revise the Borough Code at Chapter 215, Article XVIII, Affordable Housing Overlay Zone, at Sections 215-64 thru 215-70 to reflect same.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Mendham, County of Morris, State of New Jersey, as follows:

SECTION 1. Sections 215-64 thru 215-70 of Chapter 215, Article XVIII, "Affordable Housing Overlay - AHO Zone," as it currently reads in the Borough Code, are hereby repealed.

SECTION 2. New sections 215-64 thru 215-70 of Chapter 215, Article XVIII, "Affordable Housing Overlay - AHO Zone," are hereby adopted to establish new land use and development standards in the AHO Zone to read as follows:

§215-64 Permitted Uses.

A. Multifamily and townhouse dwelling units for the provision of inclusionary affordable housing pursuant to "low- and moderate-income housing requirements" below shall be permitted uses in the AHO Zone District in addition to those uses already existing and in active use as per the underlying zone district provided that sufficient sewer and water capacity is available to serve the units proposed.

B. Shared driveways providing current ingress and egress to an existing current use on adjacent property(s) are permitted, including existing access for Schiff Nature Preserve.

§215-65 Zone Standards.

A. Inclusionary residential development (“Inclusionary Development”) may include the following residential uses:

(1) Townhouses as defined below:

(i) Two or more single-family dwelling units which are attached to each other by a common wall, together with individual rear and/or front entrances. A townhouse unit may have a front and/or rear yard design as an integral part of each unit, or all townhouse units in a complex may share common outside facilities in conformance with an approved site plan. A townhouse dwelling unit has its own separate storage area and heating system and is considered to be an independent operating unit.

(2) Accessory structures and uses customary to residential developments such as pools, clubhouses, playgrounds, picnic areas, maintenance buildings, etc.

B. Area and bulk requirements:

AHO Zone Bulk Standards	
Maximum density (du/acre)	6
Maximum building coverage	30 percent
Maximum lot coverage	65 percent
Minimum distances from building	
Front to building front	80 feet
Front to building side	50 feet
Side to building rear	30 feet
Side to building side	20 feet
The wall containing a window to another wall containing a window	30 feet
Minimum building depth through the short axis	30 feet
Maximum building length through the long axis	180 feet
Maximum height townhouses	3 stories (35 feet)
Maximum height accessory buildings	2 stories (30 feet)
Building setback from the edge of paving or curbing of primary roadway, excluding alleys for garage access	10 feet
Parking requirements	As required by RSIS

§215-66 Affordable Housing Standards.

- A. Not less than 20% of the total number of units shall be affordable to low- and moderate-income households. Any computation resulting in a fraction of less than 0.5 shall be rounded down; any computation resulting in a fraction of more than 0.5 shall be rounded up. Said low- and moderate- income housing units shall be constructed on site.
- B. Any affordable housing units within the AHO Zone must meet State standards for affordable housing administration found in the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq., and the Borough's Affordable Housing Ordinance.

§215-67 Parking Standards.

The Parking standards for the AHO Zone shall use standards of Residential Site Improvement Standards (RSIS) and applicable Federal and State accessibility standards.

§215-68 Buffer Requirements.

- A. The perimeter buffer shall be a minimum width of 30 feet.
- B. The minimum landscaped width shall be 20 feet and suitable for its function of site enhancement, screening, and control of climatic effects.
- C. The landscape buffer design should retain existing vegetation which is of high quality and appropriate density.
- D. Where existing vegetation is unsuitable, it shall be augmented or replaced by new plantings in accordance with a landscape plan submitted to and approved by the Planning Board.
- E. Notwithstanding subparagraphs (B) and (C), the following shall be permitted within the perimeter buffer: road crossings and/or accessways; walkways, bike paths, and/or footpaths; stormwater management improvements and utilities such as, by way of example, site mechanical systems, underground water chambers, and/or wastewater disposal fields; site improvements such as landscaping, signs, fences, and/or walls; and associated grading.

§215-69 Landscaping Requirements.

Landscaping must be provided to promote a desirable and cohesive natural environment for residents and neighboring properties. Landscaping must also be utilized to screen parking and provide windbreaks for winter winds and summer cooling for buildings, streets, and parking, according to the following standards:

A. All landscaping must have a two-year maintenance guarantee. If any planting material dies within two years of planting, it must be replaced the following planting season.

B. Tree and shrub replacement. A limit of disturbance line shall be established during the review of an application for development taking into account grading, utility placement, and anticipated construction activities. Within the area encompassed by the limit of disturbance, there shall be no requirement for the replacement of trees. Within the area to be disturbed by construction activities, the redeveloper shall liberally install trees, shrubs, and groundcover in accordance with a landscape plan submitted to and approved by the Planning Board.

C. In the design of the landscaping plan, the use of native species is encouraged. Non-native, nonharmful, naturalized species shall be permitted in lieu of native species where they are more appropriate and/or effective. Under no circumstances shall invasive species be permitted, such as, by way of example, bamboo or barberry.

D. Landscaping should be used to accent and complement buildings and provide for climate control and appropriate visual buffering from residentially developed adjacent properties.

§215-70 Supplemental Regulations.

A. Building Height. The maximum building height shall be subject to the standards set forth below which shall supersede any regulation to the contrary in the Mendham Borough Code.

(1) The building height shall be a vertical dimension measured in a straight line from first story finished floor elevation to the roof line elevation of a flat roof, or the midpoint elevation of a pitched roof.

(2) The first story shall mean the lowest story that has its finished floor entirely above grade. Cellars and basements shall not be considered a first story.

(3) The building height shall not be measured based on the grading around the building.

B. Number of Stories. The maximum number of stories per building shall be subject to the standards set forth below which shall supersede any regulation to the contrary in the Mendham Borough Code.

(1) “Story” shall mean the space of a building between the surface of a floor and any floor next above it, or if there be no floor above it, then the space between the floor and the ceiling above it, and as further refined below.

(2) Any level with a finished floor entirely below grade or any level partially below grade with a cellar or basement, including walk-out basements and “garage-under” levels shall not be considered a story.

(3) Lofts serving individual dwelling units as permitted by building code shall not be considered a story.

(4) Architectural roof design features such as attics, mansards, parapets, cupolas, and other similar architectural design features and/or appurtenances shall not be considered a story or fractional portion thereof and shall be exempt from height measurements.

C. Grading. The grading around buildings shall be subject to the following:

(1) The area of the perimeter walls is defined as the exposed wall surfaces below the average grade across the front of each individual building (e.g. the front building wall has no exposed surface).

(2) The maximum exposure of perimeter walls for basements, cellars, or building foundations shall not exceed 80% of the total surface area of such walls, which shall be based on the aggregate area of all perimeter walls, not each wall individually.

(3) Walkout basements and “garage under” designs shall be permitted and shall be permitted to have one or more perimeter walls entirely exposed, and further provided that the 80% exposure threshold set forth above for all perimeter walls shall still apply.

(4) With respect to compliance with Chapter 202 Tree Removal and Replacement, proposed evergreen trees at least 5 ft. in height shall count towards tree replacement. As part of any site plan, the applicant shall submit a landscape plan that provides for the type / species, size, number, location and the percentage of trees planted within the following categories: street trees, buffer trees, and ornamental trees.

D. Exemptions. In an effort to reduce or eliminate potential cost generative features from affordable housing as required by N.J.A.C. 5:93-10.1, the following sections of the Mendham Borough Code shall not apply to the development of this site:

(1) Section 215-12.4. Steep Slope regulations. Instead, with respect to steep slopes, the developer/applicant of the Inclusionary Development shall be required to prepare and submit a soil erosion and sediment control plan and grading plan to develop the Inclusionary Development in a manner as approved by the Borough Engineer and Morris County Soil Conservation District.

(2) Section 215-12.6. Wireless telecommunications technology. Except that Developer shall submit competent documentary proof that the pre-existing cell tower's operation is in compliance with applicable FCC and NJDEP radio frequency exposure limits with respect to the future occupants of the Inclusionary Development as part of its application to the Joint Land Use Board. The Joint Land Use Board will retain its own consultant to review and opine upon the report to be submitted by the Developer.

(3) Chapter 27. Historic Preservation Commission with the exception of any signage proposed on West Main Street.

(4) Section 215-18. Development standards for historic buildings.

(5) Section 215-19. Development standards for non-historic buildings.

All other portions and sections of Chapter 215, Article XVIII not addressed herein shall remain unchanged

SECTION 3. All ordinances or parts of ordinances inconsistent herewith are repealed as to such inconsistencies.

SECTION 4. The Mayor, Borough Administrator, Borough Attorney, and Borough Clerk and all other proper officers and employees of the Borough are hereby authorized and directed to take any and all steps necessary to effectuate the purposes of this Ordinance.

SECTION 5. If 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 apply only to those portions held unconstitutional and/or invalid and such invalid or unconstitutional provisions shall be deemed severed, and such decision shall not affect the remaining portions of this Ordinance and the remainder of this Ordinance shall remain in full force and effect.

SECTION 6. This Ordinance may be renumbered for purposes of codification.

SECTION 7. This Ordinance shall take effect upon final passage, approval and publication as required by law.

INTRODUCED: AUGUST 13, 2025

ADOPTED:

EFFECTIVE DATE:

BOROUGH OF MENDHAM,
COUNTY OF MORRIS,
STATE OF NEW JERSEY

ATTEST:

Lauren McBride, Acting Clerk

James R. Kelly, Mayor