

RESOLUTION #149-2020

**RESOLUTION OF THE BOROUGH OF BEACH HAVEN, COUNTY OF OCEAN,
STATE OF NEW JERSEY SUPPORTING HIGH SPEED INTERNET
ACCESSIBILITY**

WHEREAS, rural areas of the State of New Jersey are serviced by service providers with respect to aerial line high-speed internet service; and

WHEREAS, having access to aerial line high-speed internet service is a necessary and vital part of living in today's society; and

WHEREAS, the recent pandemic of COVID-19 further illustrates just how vital access to aerial line high-speed internet has become to society, especially during times of crisis or emergencies and how not having access to aerial line high-speed internet has the potential to cripple a community, particularly a rural one, denying the community the capacity for remote student learning and remote working arrangements with a resident's employer; and

FURTHERMORE, during a time of crisis not having access to aerial line high-speed internet has the potential to shut down all functions of government by denying essential employees and elected officials the ability to work, communicate, distribute information, conduct meetings, and perform the other requirements of a functioning government through remote capabilities; and

WHEREAS, the Borough of Beach Haven believes that the service providers of aerial line high-speed internet in the State of New Jersey are more than capable of and financially sound enough to achieve a 100% rate of aerial line high-speed internet accessibility but choose not to pursue that goal unless forced to through regulation because the providers feel it is not profitable; and

WHEREAS, not having access to aerial line high-speed internet service is a plight on students, reducing their educational opportunities and ability to learn in a modern world; and

WHEREAS, not having access to aerial line high-speed internet service could potentially have life and death consequences for the elderly or those with various health complications; and

WHEREAS, not having access to aerial line high-speed internet service causes a great burden to businesses, places them at a disadvantage, and reduces chances for economic development in rural areas; and

WHEREAS, not having access to aerial line high-speed internet service can cause rural healthcare facilities to shut down because they cannot access required networks to function, thereby further creating negative impacts on New Jersey residents' health; and

WHEREAS, the Borough of Beach Haven is desirous of assisting and cooperating with other public entities and State officials to pursue a petition before the Board of Public Utilities to enact regulations requiring a 100% rate of aerial line high-speed internet accessibility in each individual municipality throughout the State of New Jersey; and

WHEREAS, unless the Board of Public Utilities requires service providers of aerial line high-speed internet to provide 100% aerial line high-speed internet access in all municipalities throughout New Jersey, the State will have unintentionally subverted the public's significant investment in the Highlands Preservation Zones, farmland, and open space preservation by not allowing those areas' businesses to be economically competitive



**TOWNSHIP OF WEST ORANGE
66 MAIN STREET
WEST ORANGE, NEW JERSEY 07052**

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October 8, 2020

Re: Public Hearing - Ordinance No. 2614-20

**AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER XXV
LAND USE REGULATIONS OF THE REVISED GENERAL ORDINANCES
OF THE TOWNSHIP OF WEST ORANGE**

Dear Property Owner:

I am writing to you to provide you with notice, pursuant to the requirement contained in New Jersey's Municipal Land Use Law, N.J.S.A. 40:55D-62.1, that the Township Council, the governing body of the Township of West Orange, will be considering the adoption of a zoning ordinance proposing a change to the classification of the zoning for the property located in West Orange generally located at the northern terminus of Warner Road and designated as Block 179, Lot 32 on the Official Tax Map of the Township of West Orange (the "Subject Property"). The Subject Property is currently located in the R-2 and R-3 (One-Family Dwelling) zoning districts.

The proposed Ordinance No. 2614-20 creates the IH-1 (Inclusionary Housing) zoning district and amends the Zoning Map of the Township of West Orange so as to place the Subject Property in the IH-1 Zone. You may view proposed Ordinance No. 2614-20 on the Township's website by navigating to the following internet address:

<https://www.westorange.org/AgendaCenter/ViewFile/Item/3770?fileID=10597>

You may also obtain a copy of proposed Ordinance No. 2614-20 by emailing the Township Clerk, Karen J. Carnevale, at clerk@westorange.org or by calling at (973) 325-4155.

As a resident and/or property owner within 200 feet of the Subject Property, you are being notified that the Township Council will convene a public hearing and consider adoption of proposed Ordinance No. 2614-20 at the public meeting scheduled for Tuesday, October 20, 2020 beginning at 7:00 p.m. Due to restrictions in place due to the COVID-19 public health emergency, the Council meeting will be conducted virtually. If you wish to virtually attend and/or speak at the meeting, instructions on how to participate are located on the Township's website at www.westorange.org.

Karen J. Carnevale, R.M.C.
Municipal Clerk

3. Any deviation from the regulations of this section shall be considered design exceptions, not variances, subject to the statutory criteria of N.J.S.A. 40:55D- 51 for relief.
- i. Signage Regulations
 1. Development Entrance Sign. One freestanding sign shall be permitted at the entrance to the development. The sign dimensions shall have a maximum width of 10 feet and a maximum height of 8 feet. The sign may be incorporated as part of a decorative element such as a wall or fence feature, and further provided that the decorative element shall not be included in the calculation of the sign area. The top of the sign, including any decorative element framing it, shall not exceed 10 feet above grade.
 2. Identification Signage. Freestanding identification signs shall be permitted to demarcate individual buildings or sections within the development, not to exceed one such sign per building or section. The sign dimensions shall have a maximum width of 8 feet and a maximum height of 6 height, and the top of any such sign shall not exceed 8 feet above grade. This shall apply to accessory recreation or amenity uses as well, such as a clubhouse or pet service, which shall be permitted to have identification signage in accordance with the above.
 3. Building Signage. One building sign shall be permitted at each building lobby and/or building entrance. The sign dimensions for each building sign shall have a maximum width of 8 feet and a maximum height of 6 feet.

Section 2. If any provision of this Ordinance or application thereof, under any circumstances, is held invalid, the invalidity shall not affect any other provisions or applications of this Ordinance that can be given effect without the invalid provision(s) or application(s) and to this end the provisions of this Ordinance are severable.

Section 3. All other Ordinances or parts of Ordinances inconsistent with this Ordinance are hereby repealed.

Section 4. This Ordinance shall take effect upon final passage and publication in accordance with law.

Karen J. Carnevale, R.M.C.
Municipal Clerk

Michelle Casalino
Council President

Robert D. Parisi, Mayor

Introduced: August 11, 2020

Adopted: September 8, 2020

LEGISLATIVE HISTORY

This Ordinance is presented pursuant to the Affordable Housing Settlement Agreement approved by the Township Council on April 14, 2020. The Superior Court of New Jersey confirmed the Settlement Agreement on July 10, 2020.

**AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER XXV LAND USE REGULATIONS
OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF WEST ORANGE**

BE IT ORDAINED, by the Township Council of the Township of West Orange, in the County of Essex, State of New Jersey, as follows:

Section 1. Chapter XXV Land Use Regulations is hereby amended and supplemented to include the following:

25-19 IH-1 (INCLUSIONARY HOUSING) DISTRICT

a. Purpose

The purpose of the IH-1 District is to provide for inclusionary development that contributes to the region's fair share of affordable housing, in accordance with a court settlement agreement which outlines provisions for same.

b. Description of Zone Boundary

The zone boundary of the IH-1 District shall encompass the entirety of the property identified as Block 179 Lot 32, which shall hereafter be referred to as the "Tract." The zone boundary shall be coincident with the lot lines of Block 179, Lot 32. The municipal zone map is hereby amended to reflect same.

c. General Provisions

1. The development regulations set forth herein shall apply to the Tract as a whole, not to individual lots which may be created within the Tract.
2. The Tract shall be permitted to be subdivided into one or more lots, and one or more buildings or uses shall be permitted on a single lot.
3. The Tract shall be permitted to be constructed in one or more phases consistent with N.J.A.C 5:97-6.4 (d).
4. Any street within the Tract shall be permitted to be public or private.
5. Development of the Tract shall be exempt from all bulk, design, and environmental regulations of the West Orange Land Use Regulations Ordinance, unless otherwise indicated herein, and further provided that nothing herein shall circumvent or contravene the procedural requirements of the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) nor the regulatory requirements of outside agencies including but not limited to New Jersey Department of Environmental Protection and Hudson-Essex-Passaic Soil Conservation District.

d. Use Regulations

1. Permitted Principal Uses.

- (a) Multifamily residential
- (b) Open space

2. Permitted Accessory Uses

- (a) Residential amenities including but not limited to the following, by way of example: clubhouse buildings, swimming pools, fitness centers, lounges, common or private terraces and balconies, courts or open lawn areas for multipurpose use such as lawn games i.e. corn hole, bocce, badminton, croquet, and the like; work space or meeting space for tenants, tenant storage, dog parks and/or dog playgrounds. Rooftop amenities shall be permitted including observation areas or rooms, multipurpose or recreation rooms, vestibules, outdoor terraces, pergolas, shade structures, or the like.
- (b) Pet-friendly amenities. As part of the amenity package, in addition to dog parks and/or playgrounds above, a development shall be permitted to include an onsite pet service that shall be permitted to offer walking services, pet-sitting services, a pet spa or grooming service, overnight boarding, or related services, which shall be permitted to operate indoors as part of a building and/or as a stand-alone building.
- (c) Residential accessory uses such as leasing and management offices, maintenance buildings, dwelling units for onsite building superintendents, and model units
- (d) Parking, which shall be permitted to be structured or surface, and further provided that tandem parking shall be permitted where such spaces are assigned to the same unit
- (e) Fences and walls
- (f) Signs
- (g) Any use that is customarily incidental to a permitted principal use

e. Bulk Regulations

- 1. The total number of dwelling units shall be 496, and the total number of units shall be permitted to be lowered without variance at the sole discretion of the developer and/or based on outside agency requirements. Model apartments and onsite housing for the building superintendent and maintenance/management staff shall not be included as part of the unit count.
- 2. The affordable housing set-aside shall be twenty percent (20%) of the total units actually constructed in the development (excluding model apartments and onsite housing for the building superintendent and maintenance/management staff).
- 3. There shall be no minimum lot size requirement.

4. The maximum area of disturbance for the entire Tract shall be 30 acres. Trails, deer fencing, and buffer planting shall not be counted as part of the area of disturbance.
5. Unrestricted site access (ingress and egress) shall be permitted from Warner Drive and Kuzik Drive.
6. Emergency access (ingress and egress) shall be permitted to Block 179.17, Lots 8 and 9 to the north and Bayowski Road to the south.
7. The affordable units shall consist of moderate-income, low-income, and very low-income units in accordance with the requirements of the settlement agreement. The minimum unit sizes for the affordable units shall be as follows:
 - (a) One-bedroom 650 square feet
 - (b) Two-bedroom 875 square feet
 - (c) Three-bedroom 1,150 square feet
8. The maximum building height shall be 75 feet, and further subject to the standards set forth below, which shall supersede any regulation to the contrary in the West Orange Land Use Regulations Ordinance:
 - (a) 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.
 - (b) 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.
 - (c) The building height shall not be measured based on the grading around the building.
9. The maximum number of stories per building shall be 4 stories, and further subject to the standards set forth below which shall supersede any regulation to the contrary in the West Orange Land Use Regulations:
 - (a) 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.
 - (b) Any level with a finished floor entirely below grade or partially below grade shall not be considered a story, such as cellars and basements, including walk-out basements and "garage-under" levels.
 - (c) Any level that contains 10 or more parking spaces shall not be considered a story.
 - (d) Mezzanines shall not be considered a story, provided the floor area of the mezzanine is no greater than 33 percent of the floor area below it.

- (e) Lofts serving individual dwelling units as permitted by building code shall not be considered a story.
 - (f) Rooftop amenities and rooftop features shall not be considered a story or fractional portion thereof.
 - (g) 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.
10. The grading around buildings shall be subject to the following:
- (a) The maximum exposure of perimeter walls for basements, cellars, or building foundations shall not exceed 50% of the total surface area of such walls, which shall be based on the aggregate area of all perimeter walls, not each wall individually.
 - (b) 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 50% exposure threshold set forth above for all perimeter walls shall still apply.
11. The minimum buffer width around the entire Tract boundary shall be 100 feet. The buffer shall remain undisturbed except for roads and accessways, utilities and stormwater management improvements, signs, fences, walls, and associated grading.
12. The east face of the Watchung Mountain shall remain undisturbed from the peak of the ridgeline, except that utility construction shall be permitted east of the ridgeline
13. Any deviation from the above requirements shall be considered a “c” variance.
- f. Parking Regulations
- 1. Principal uses. The quantity and dimensions of off-street parking spaces shall be in accordance with the Residential Site Improvement Standards (RSIS). Any deviation shall be considered a de minimis exception from RSIS, not a variance. Tandem parking arrangements shall be permitted in accordance with the use regulations of this Chapter as set forth above. Automated or mechanical parking shall be permitted to meet the RSIS parking count requirement, and shall be exempt from RSIS parking stall size requirements, subject to review and approval of manufacturer’s specifications.
 - 2. Accessory uses. Accessory uses such as clubhouses or recreation areas shall be exempt from parking requirements.
- g. Tree Removal and Replacement

The removal of trees shall be permitted, and the replacement of trees shall be in accordance with formula below. Any other regulation pertaining to tree removal and replacement in the

Township of West Orange Code shall not apply to the Tract, and shall be superseded by the regulations set forth below, except where otherwise indicated herein.

1. Tree Baseline. The existing tree count on the Tract shall be established at 212 trees per acre.
2. Tree Baseline Loss.
 - (a) Tree Baseline Loss shall be established by multiplying the proposed number of acres disturbed by the existing 212 trees per acre on the Tract; by way of example, a proposed disturbance area of 25 acres shall be calculated to a Tree Baseline Loss of 5,300 trees, which figure would increase or decrease based upon the final acreage disturbed).
 - (b) Tree Baseline Loss shall be reduced for each healthy major tree (greater than 6 inches) within the proposed area of disturbance that is not removed in connection with a proposed development
 - (c) Tree Baseline Loss shall be reduced for each non-invasive major tree or minor tree (as defined in the Township of West Orange Code) proposed as part of a landscape plan. The tree replacement calculation shall apply one credit for each such tree which is a native species and $\frac{1}{4}$ credit for each such tree which is not a native species.
 - (d) The Tree Baseline Loss shall be reduced by 212 trees for each acre of forest outside the area of disturbance enclosed by a controlled, gated access deer fence that is eight (8) feet in height, the purpose of which is to regenerate the growth of the native forest, and which deer fencing shall be maintained in perpetuity;
3. Adjusted Tree Baseline Loss.
 - (a) Adjusted Tree Baseline Loss shall be calculated as the Tree Baseline Loss after crediting.
 - (b) If the Adjusted Tree Baseline Loss calculates to zero (0), or less than zero, the developer shall have no further obligation regarding tree removal or replacement in connection with a proposed development.
 - (c) If the Adjusted Tree Baseline Loss calculates to a number greater than zero, then the development shall satisfy the requirements of the West Orange Tree Ordinance only with respect to the Adjusted Tree Baseline Loss.
- h. Landscape Regulations
 1. Street Trees. Street trees shall be provided in accordance with the West Orange Land Development Code.
 2. Additional Trees. The developer shall plant new trees and landscaping along or near the southern border of the Tract for the purpose of supplementing the buffering of the nearest residential units to the south.