

BOROUGH OF ROSELAND
NOTICE OF INTRODUCED ORDINANCE

Notice is hereby given that the following ordinance was introduced and passed on first reading at an Official Meeting of the Governing Body of the Borough of Roseland held via teleconference on the 16th day of February, 2021, and the same shall come up for final passage at an Official Meeting of the Governing Body to be held via teleconference on Tuesday, the 16th day of March 16, 2021, at 6:00 PM. TO JOIN THE ROSELAND COUNCIL MEETING VIA COMPUTER, LOG IN TO: [HTTPS://ZOOM.US/J/93530484582](https://zoom.us/j/93530484582). TO JOIN THE ROSELAND COUNCIL MEETING VIA TELEPHONE, DIAL: +1 646-558-8656, WEBINAR ID: 935 3048 4582, at which time any persons interested shall be given the opportunity to be heard concerning said Ordinance. Ordinance No. 06-2021: “AN ORDINANCE OF THE BOROUGH OF ROSELAND AMENDING AND SUPPLEMENTING CHAPTER 30 OF THE CODE OF THE BOROUGH OF ROSELAND, ENTITLED “ROSELAND BOROUGH LAND DEVELOPMENT ORDINANCE” BY AMENDING VARIOUS SECTIONS OF SAME TO CREATE THE R-13/AH-7 AFFORDABLE HOUSING DISTRICT”. During the week prior to and up to and including the date of such meeting, copies of the full ordinance will be available for review on the Borough website at <https://www.roselandnj.org/municipal-clerk/pages/ordinances> or by email request sent to Borough Clerk Jock Watkins at jwatkins@roselandnj.org.

Jock H. Watkins, Municipal Clerk

ORDINANCE NO. 06-2021

**BOROUGH OF ROSELAND
COUNTY OF ESSEX, STATE OF NEW JERSEY**

**AN ORDINANCE OF THE BOROUGH OF ROSELAND
AMENDING AND SUPPLEMENTING CHAPTER 30 OF THE
CODE OF THE BOROUGH OF ROSELAND, ENTITLED
“ROSELAND BOROUGH LAND DEVELOPMENT ORDINANCE”
BY AMENDING VARIOUS SECTIONS OF SAME TO CREATE
THE R-13/AH-7 AFFORDABLE HOUSING DISTRICT**

WHEREAS, in response to the New Jersey Supreme Court’s decision in In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), the Borough filed an action with the Superior Court of New Jersey (“Court”), seeking a Judgment of Compliance and Repose approving its Housing Element and Fair Share Plan, in addition to related relief, and simultaneously filed a motion for temporary immunity, which was subsequently granted by the Court and is still in force and effect; and

WHEREAS, the Borough Council of the Borough of Roseland desires to create a realistic opportunity for the creation of affordable housing within the Borough; and

WHEREAS, the Borough Council has determined that certain land comprised of approximately 9.5 acres within the OB-2 District commonly referred to as Block 30, Lot 1 is suited for inclusionary housing with affordable units and a limited amount of commercial space; and

WHEREAS, the Borough has a constitutional obligation to create a realistic opportunity for the construction of its fair share of the region’s need for affordable housing; and

WHEREAS, the Township and the Fair Share Housing Center entered into a Settlement Agreement on or about November 7, 2019, providing for the inclusionary development of the property, including 42 affordable family rental units;

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Roseland in the County of Essex and the State of New Jersey as follows:

SECTION 1: PURPOSE

The purpose of this Ordinance is to amend the Borough of Roseland’s Land Development Ordinance in accordance with the Settlement Agreement between the Borough and Fair Share Housing Center (“FSHC”) entered into on November 7, 2019, and the Borough’s Housing Element and Fair Share Plan, by adding a new §30-404.12 to establish the requirements of a new zoning district referred to as R-13/AH-7 Affordable Housing Zone, which will result in the creation of a new development including commercial and residential space, including 42 affordable family rental units.

SECTION 2: NEW ZONING DISTRICT

§30-402.1 of Article IV of Chapter 30 the Code of the Borough of Roseland is hereby amended and supplemented by inserting the following new zone district into the list of zones:

R-13/AH-7 Affordable Housing Zone

SECTION 3: AMENDMENT TO MAP AND SCHEDULE

Section 30-402.2(b) of Article IV of Chapter 30 of the Code of the Borough of Roseland is hereby amended and supplement by inserting the following language at the end of the existing section:

3. Ordinance No. 06-2021. Lot 1 in Block 30 on the Tax Map of the Borough of Roseland has been rezoned from OB-2 to R-13/AH-7.

SECTION 4: NEW SECTION: §30-404.12.

Article IV of Chapter 30 the Code of the Borough of Roseland is hereby amended to add §30-404.12, as follows:

§30-404.12 R-13/AH-7 Affordable Housing Zone

- a. **Applicability.** The following standards shall apply to development within the R-13/AH-7 Affordable Housing Zone. Various exceptions from certain provisions of Chapter 30, Land Development, of the Roseland Borough Code as applied to the R-13/AH-7 Affordable Housing Zone are indicated herein. No overlay zoning shall apply to the Tract. Sections 30-520.1 and 20-5(b)(1)(h) of the Borough Code shall not apply to permitted uses in the R-13/AH-7 Affordable Housing Zone.

- b. **Definitions.** The Definitions provided in §30-202, Chapter 30 Article II of the Borough of Roseland Code shall apply in the R-13/AH-7 Affordable Housing Zone, except as provided herein. The following definitions shall apply only within the R-13/AH-7 Affordable Housing Zone, shall supplement any non-conflicting definitions within Chapter 30 of the Borough Code, and shall supersede any conflicting definitions in the Borough Code:
 - 1. **AFFORDABLE APARTMENT** - a dwelling unit located on one or more floors of a building containing similar units, adjoining said similar units above, below or to the side, which units may share in common facilities, such as entryways, hallways, and utility systems affordable to Very Low Income, Low Income or Moderate Income households. Affordable Apartments shall not be Senior Citizen Housing. All Affordable Apartments shall comply with the Borough’s Affordable Housing Ordinance, the Uniform Housing Affordability Controls (“UHAC”), applicable COAH affordable housing regulations, including, but not limited to, phasing requirements, any applicable order of the Court, and other applicable laws.

 - 2. **ASSISTED LIVING/INDEPENDENT LIVING/MEMORY CARE FACILITY** - A housing development which is a facility providing apartment-style housing and congregate dining and to assure that memory care and/or assisted living services are available when needed. Apartment units offer, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance. Assisted Living/Independent Living/Memory Care Facilities may include assisted living Apartments, memory care Apartments and/or independent Senior Citizen Housing Apartments. Assisted Living/Independent Living/Memory Care Facilities may include amenities to serve residents, including a fitness center and/or classes, gym, day spa, salon, barber, indoor and outdoor sale of food and beverages, including alcohol, retail sale of pantry and pharmacy items, and/or membership sales office. Assisted Living/Independent Living/Memory Care Facilities are not subject to the dwelling unit mix requirements of §30-504.3.

 - 3. **ASSISTED LIVING/INDEPENDENT LIVING/MEMORY CARE UNIT** shall mean a dwelling unit containing one or two beds in one or two rooms, with a lockable door on the unit entrance.

- c. **Application Requirements.**
 - 1. Any application for development for any portion or the entirety of the R-13/AH-7 Affordable shall be submitted in accordance with the requirements of Sections III, VI, and VIII of Chapter 30 of the Borough of Roseland Code, except as provided herein. Consistent with N.J.A.C. §5:93-10.1(b), no unnecessary cost generative requirements

shall apply to any development of permitted uses within the R-13/AH-7 Affordable Housing Zone, including but not limited to the requirements of §30-302.3, §30-302.4, §30-307(a)(20), §30-307.3(a)(37), §30-308.4, §30-308.9, §30-309.4(f) of the Borough of Roseland Code. Applicants shall not be required to submit materials pursuant to §30-311.2(d)(1)(f) and (g), §30-311.2(d)(2)-(4), or §30-509.4 if such materials have not yet been prepared by the Applicants or to the extent comparable information has been depicted on the Applicants' site plans or architectural plans, and the Planning Board may condition approval upon the submission of such materials. For R-13/AH-7 Tracts, the standards for off-tract development contributions provided by N.J.S.A.40:55D-42 shall supersede and replace the requirements of §30-310 through §30-310.4 of the Borough of Roseland Code.

2. Notwithstanding §30-702.3, the initial escrow fee due at the time of initial filing of an application for development in the R-13/AH-7 Affordable Housing Zone shall be \$15,000, to be replenished by the Applicant as required by the Borough.
3. For the avoidance of doubt, development of principal permitted uses in the R-13/AH-7 Affordable Housing Zone shall constitute an Affordable Housing Development and be exempt from payment of Development Fees pursuant to Chapter 30, Article 10 and/or §30-1104 of the Borough Code. Other than the Affordable Housing set-aside standard specified for the R-13/AH-7 Tract by the Borough Fair Share Plan and Housing Plan Element, no affordable housing set-aside shall be applied to the Assisted Living/Independent Living/Memory Care Facility.
4. It is the intent of this ordinance for the Planning Board to expedite its review of any application for development submitted for this overlay zone within the time frames established under N.J.S.A. 40:55D-1 et. seq. Notwithstanding § 30-303, §30-311.1, and §30-311.3(b), the Planning Board may simultaneously consider waiver requests and an application for development at a single meeting, if so requested by an applicant. To that end, notwithstanding §30-305.5, an application may be deemed complete despite the pendency of an applicant's waiver request. Section 30-305.5(b) shall not apply to any application conforming with the R-13/AH-7 zone requirements. A conforming application shall not be expected to submit a sketch plan or conceptual site plan for review by the Planning Board pursuant to §30-306.
5. Application may be made simultaneously for preliminary and final major or minor subdivision and/or major or minor site plan approval. In the event application for preliminary and final approval is made simultaneously, §30-307.1, §30-307.5(b) through §30-307.8, §30-308.3, §30-308.5, §30-309.2, §30-309.3, §30-311.2(c)(5), (d)(10) and (d)(11) shall not apply to such applications; however, these provisions shall apply for applications seeking only preliminary approval.
6. Section 30-308.6, 30-308.7 and 30-308.12 shall not apply. Instead, the Applicant shall provide a performance guarantee and maintenance guarantee in accordance with N.J.S.A. 40:55D-53.

7. Notwithstanding Section 30-403.19, the front, side, and rear yards for the tract shall be as follows:
 - (a) All yards abutting any street shall be construed as front yards and shall be subject to the front yard setback requirements.
 - (b) The property line opposite and parallel to Livingston Avenue shall be the side lot line and shall be subject to the side yard setback requirements.
 - (c) The property line opposite and parallel to Becker Farm Road shall be the rear lot line and shall be subject to the rear yard setback requirements.

- d. Permitted Principal Uses and Densities. No building, structure, or premises in the R-13/AH-7 Affordable Housing Zone shall be used and no building shall be erected or altered except for the following uses:
 1. In the R-13/AH-7 District, properties may be developed multi-family residential dwellings at a maximum density of 260 total dwelling units. Up to 218 market-rate units are permitted to be age-restricted, assisted living, independent living, or memory care units. Not less than forty-two (42) housing units shall be designated for occupancy by very low, low- and moderate-income family households. All affordable units shall be family-rental units and shall comply with the Borough's Affordable Housing Ordinance, the Uniform Housing Affordability Controls ("UHAC"), applicable COAH affordable housing regulations including, but not limited to, phasing requirements, any applicable order of the Court, and other applicable laws.
 2. A maximum of 6,000 square feet of Commercial Use shall be permitted. Such uses may include retail sales and services, and traditional full-service restaurants, either within the principal structure or within a separate building on the property. No restaurant of any kind shall include drive-in or drive-through service; ordering and pickup of food shall not be permitted to take place from a vehicle, nor shall exterior playgrounds or play areas be permitted. For the purposes of this section, a bar or tavern shall be considered a restaurant. Such uses may be similar or duplicative of resident amenities included within the Assisted Living/Independent Living/Memory Care Facility.
 3. Notwithstanding §30-403.6, multiple principal permitted uses and buildings shall be permitted on a single parcel within the R-13/AH-7 District. Furthermore, the 42 Affordable Apartments shall be in a separate 100% affordable structure from the Assisted Living/Independent Living/Memory Care Facility; or shall be integrated with the Non-Age-Restricted Multi-Family Market Rate Units.

- e. Permitted Accessory Uses. The following accessory uses are permitted in the R-13/AH-7 District:
 1. Private garages.
 2. Buildings for storage of maintenance equipment.
 3. Off-Street parking, including surface parking.

4. Parking garages for automobiles
 5. Signs in accordance with 30-403.17. For the avoidance of doubt, signs for the Assisted Living/Independent Living/Memory Care Facility and Affordable Apartments shall conform to 30-403.17(f)(2), with each such use constituting a separate development. Notwithstanding the foregoing, each sign permitted pursuant to 30-403.17(f)(2)(a) shall be permitted to be sixty (60) square feet in area. Signs for the R-13/AH-7 Commercial Use shall conform to 30-403.17(g) governing the B-2 Zone. Each permitted use within the R-13/AH-7 Zone shall be permitted separate signage pursuant to this section, regardless of whether the R-13/AH-7 Zone is subdivided.
 6. Private recreation facilities, which may include swimming pools; clubhouse; recreational facilities; sports facilities, including but not limited to fields, courts, putting greens; lobbies; fitness facilities; outdoor barbecues; fire pits; gazebos; indoor and outdoor sale of food and beverages, including alcohol; retail sale of pantry and pharmacy items; leasing and management offices; club rooms; lounges; libraries; business centers; day spas; salons; barbers; game rooms; pool rooms; community gardens; rec rooms; children's play rooms; private theater rooms; community kitchens for tenant use; locker rooms; mail rooms; package storage areas; valet spaces; or related mechanical equipment; and/or similar interior tenant amenities, intended for use by residents of the Assisted Living/Independent Living/Memory Care Facility and/or the Affordable Apartments and their guests.
 7. Dog park or dog run.
 8. Earth Station Antennas.
 9. Storage spaces unattached to Affordable Apartments, but used by occupants of Affordable Apartments, which are incorporated into the Affordable Apartments building.
 10. Storage spaces unattached to Assisted Living/Independent Living/Memory Care units, but used by occupants of such units, which are incorporated into the Assisted Living/Independent Living/Memory Care Facility.
 11. Maintenance facilities.
 12. Common outdoor public and private spaces.
 13. Fences, retaining walls
 14. Trash, wastes, and recycling receptacles and dumpster enclosures
 15. Electric automobile charging stations with the capacity to charge two (2) vehicles in total shall be provided.
- f. Required Conditions. The following zoning standards shall apply to development within the R-13/AH-7 District:

1. Minimum Tract Area - nine (9) acres.
2. Maximum Residential Density - not to exceed 260 dwelling units. Permitted commercial uses shall not be counted towards residential density.
3. Minimum affordable units– A minimum of 42 family-rental dwelling units shall be deed restricted for very-low, low- and moderate-income households.
4. Minimum front yard building setback from tract boundary – sixty (60) feet. A freestanding commercial building may be setback a minimum of twenty (20) feet from the tract boundary.
5. Minimum side yard building setback from tract boundary – forty (40) feet, except that a freestanding Non-Age Restricted Multi-Family Apartments Building may be setback a minimum of five (5) feet from the side property line.
6. Minimum rear yard building setback from tract boundary – forty-five (45) feet
7. Maximum Building Coverage: thirty (30%) percent of tract
8. Maximum Impervious Coverage: sixty (60%) percent of tract
9. Maximum Building Height: four stories/65 feet for Assisted Living/Independent Living/Memory Care Facility and four stories/56 feet for Non-Age Restricted Multi-Family Apartments
10. Parking – Adequate provision shall be made for off-street parking in accordance with the State’s Residential Site Improvement Standards. Commercial uses shall provide adequate parking spaces in accordance with §30-520.1, including the provision of at least one loading space. No additional parking spaces shall be required for amenities within the Assisted Living/Independent Living/Memory Care Facility.
11. The Tract may be subdivided into a maximum of three (3) Lots. To the extent necessary, access, drainage, and utilities to subdivided lots within the Tract may be provided for via cross-easements. The requirements of §30-403.18 shall not apply to Lots created via subdivision.

g. Accessory Structures.

1. Setbacks. Section 30-403.7 shall not apply. Instead, accessory building shall meet the R-13/AH-7 Tract Minimum Front Yard, Side Yard, and Rear Yard Building Setbacks. Swimming pools, tennis courts and other surfaced recreation facilities shall likewise meet the R-13/AH-7 Tract Minimum Front Yard, Side Yard, and Rear Yard Building Setbacks. Retaining walls, sidewalks, public or private streets, walkways, railings, perimeter fences, freestanding signs, parking spaces, driveways, patios, pathways, appurtenances such as HVAC units, stationary generators, pedestrian structures such as stairs, pads, roof overhangs, trash

enclosures, above and below-ground storm water detention basins and/or facilities, and underground utilities as needed, landscaping, and lighting shall be permitted within the R-13/AH-7 Tract Minimum Front Yard, Side Yard, and Rear Yard Building Setbacks.

2. Height. The maximum height of an accessory building, including but not limited to a clubhouse, shall be thirty (30) feet.
 3. Design. Architectural design and materials used in construction of accessory buildings shall conform to those used in the construction of principal buildings.
- g. Open Space. Exclusive of internal roadways and parking areas, there shall be provided a minimum of fifteen (15%) percent of the entire tract for common open space.
- h. Affordable Apartments.
1. In the event of any conflict between the R-13/AH-7 Affordable Housing zoning and the Borough's Affordable Housing Ordinance or UHAC, the zoning for the Borough's Affordable Housing Ordinance shall control. This includes but is not limited to, phasing requirements under N.J.A.C. 5:93-5.6(d), proper bedroom mix (at least 20% three bedroom units and no more than 20% one bedroom units), and proper unit income breakdown (13% very low, 37% low and 50% moderate income).
 2. Deed Restriction Period. All Affordable Apartments shall be deed restricted as Affordable to Very Low, Low, or Moderate Income Households for a period of at least thirty (30) years from the date of the initial occupancy of each affordable unit (the "Deed-Restriction Period"), so that the Borough may count each affordable unit against its obligation to provide affordable housing. As per N.J.A.C. 5:80-26.11(b), the affordability controls shall continue in effect until the date on which the individual Affordable Apartment shall become vacant, provided that the occupant household continues to earn a gross annual income of less than eighty percent (80%) of the applicable median income. If, at any time after the Deed Restriction Period, a rental household's income is found to exceed eighty percent (80%) of the regional median income, the rental rate restriction shall expire at the later of the next scheduled lease renewal or sixty (60) days.
 3. The Borough shall not require that the units in the Assisted Living/Independent Living/Memory Care Facility or Multi-Family Market Rate Units be deed restricted as Affordable.
 4. The Affordable Apartments shall be required to comply with the requirements of the R-13/AH-7 Zone. Section 30-404.2 and 30-405.9 shall not apply.
 5. The requirements of §20-9(b) shall not apply to the Non-Age Restricted Multi-Family Apartment Building. However, the Applicant shall comply with all other provisions of the Borough's Soil and Soil Moving ordinance.
- i. Circulation.

1. Roadways shall comply with Residential Site Improvement Standards. Driveways shall not be considered private streets.
- j. Residential Site Improvement Standards. To the extent any waiver, exemption, or exception is required from the Residential Site Improvement Standards due to an inconsistency with this zoning or otherwise, the Borough Planning Board may liberally grant such waiver, exemption, or exception so as to refrain from imposing cost-generative requirements upon the application and/or development.
 - k. Retaining Walls. No single retaining wall or retaining wall tier shall exceed a height of 15 feet. There shall be a minimum of four feet between retaining wall tiers. The use of retaining wall tiers to accommodate severe grade changes shall be permitted.
 - l. Drainage and Stormwater Management. Applications for development in the R-13/AH-7 Affordable Housing Zone shall comply with the Residential Site Improvement standards and N.J.A.C. 7:8, as may be modified and/or supplemented by the State of New Jersey or Borough Code.
 - m. Lighting. Exterior lighting shall comply with §30-510.
 - n. Buffers and screens shall not be required for conforming uses in the R-13/AH-7 zone, notwithstanding §30-403.9.
 - o. Grading and Topsoil Removal shall be consistent with the standards provided by §30-517.1 unless otherwise waived by the Planning Board or Borough Engineer.
 - p. Solid Waste Disposal
 1. Requirements set forth in the Borough of Roseland Municipal Ordinance Number 28-1986, the amendments, and the New Jersey Statewide mandatory Source Separation and Recycling Act and subsequent revisions shall be complied with.

SECTION 5: INCONSISTENT ORDINANCES

All ordinances or parts of ordinances inconsistent with or in conflict with this ordinance are hereby repealed to the extent of such inconsistency.

SECTION 6: PARTIAL INVALIDITY

If any section, paragraph, clause or provision of this ordinance is adjudged invalid, such adjudication shall apply only to the section, paragraph, clause or provision so adjudged and the remainder shall be deemed valid and effective.

SECTION 7: COPIES OF ORDINANCE

At least three copies of this full Ordinance are on file in the Office of the Borough Clerk for public examination and acquisition. Copies are available for inspection or acquisition during regular

weekday working hours and arrangements have been made for the publication of said proposed Ordinance in pamphlet or other similar form which will be available for purchase from the Borough Clerk. The ordinance is also available for public inspection on the Borough of Roseland webpage at the following web address: <https://roselandnj.org>. Individuals lacking the resources or know-how for technological access to the ordinance should contact the Borough Clerk, Jock Watkins, by telephone at (973) 226-8080, or by e-mail at jwatkins@roselandnj.org for assistance in accessing the application, plans and other documents.

SECTION 8: NOTICE

The Borough Clerk is directed to give notice at least ten (10) days prior to a hearing on the adoption of this Ordinance to the Essex County Planning Board and to all others entitled thereto pursuant to N.J.S. 40:55D-15, and N.J.S.A. 40:55D-63 (if required). Upon adoption of this Ordinance, after public hearing thereon, the Borough Clerk is further directed to publish notice of passage thereof and file a copy of this Ordinance as finally adopted with the Essex County Planning Board as required by N.J.S. 40:55D-16 and with the Borough Tax Assessor.

SECTION 9: PLANNING BOARD REVIEW

After introduction, the Borough Clerk is hereby directed to submit a copy of the within Ordinance to the Planning Board of the Borough of Roseland for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64. The Planning Board is directed to make and transmit to the Borough Council, within 35 days after referral, a report including identification of any provisions in the proposed ordinance which are inconsistent with the master plan and recommendations concerning any inconsistencies and any other matter as the Board deems appropriate.

SECTION 10: EFFECTIVE DATE

This ordinance shall take effect upon publication as provided by law.

DATE OF INTRODUCTION: February 16, 2021

Motion to Introduce by: Councilwoman Perrotti

Motion Seconded by: Councilman Trillo

Introduction Approved: 6-0 Voice Vote

DATE OF ADOPTION:

COUNCIL	MOTION	SECOND	AYE	NAY	ABSTAIN	RECUSE	ABSENT
Councilman Bardi							
Council President Fishman							
Councilman Freda							
Councilwoman Perrotti							
Councilwoman Tolli							
Councilman Trillo							
Mayor Spango (In case of tie)							
		VOTE:					

I hereby certify that the above Ordinance was duly adopted by the Mayor and Council of the Borough of Roseland at a meeting of Borough Council held on the _____day of _____, 2021.

James R. Spango, Mayor

Jock H. Watkins, Borough Clerk