

Connie Valenti

From: Ana Minkoff
Sent: Wednesday, May 13, 2020 5:04 PM
To: Connie Valenti
Subject: Connell Ordinance
Attachments: Connell Ordinance.pdf

Hi Connie,

Please see attached Ordinance that was introduced on the May 12th Township Council meeting, that has to be reviewed by the Planning Board.

This Ordinance amends the Code of the Township of Berkeley Height's Municipal Land Use Procedures Ordinance by replacing the current OR-A and OR-A1 Zones with a new Mixed-Use Zone.

Thank you,

Ana P. Minkoff
Township Clerk
Township of Berkeley Heights
29 Park Avenue
Berkeley Heights, NJ 07922
908-464-2700 ext. 2220
908-464-6081 Fax
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**NOTICE OF
INTRODUCTION**

Ordinance -2020

An Ordinance of the Township of Berkeley Heights, County of Union, State of New Jersey, Amending *The Code of the Township of Berkeley Heights*, Appendix A (“Municipal Land Use Procedures Ordinance”) to replace the current OR-A and OR-A1 Zones with a new Mixed-Use Zone

I, Ana Minkoff, Township Clerk of the Township of Berkeley Heights, do hereby certify that the foregoing Ordinance was introduced on First Reading at a meeting of the Township Council of the Township of Berkeley Heights, County of Union and State of New Jersey, on May 12, 2020 and that said Ordinance shall be submitted for consideration and final passage at the Public Hearing to be held on May 26, 2020 at 7:00 p.m. or as soon thereafter, as practical, same can be considered, at the Municipal Building, 29 Park Avenue, Berkeley Heights, NJ, and or via Zoom: <http://zoom.us/j/3575747364>, if you need to enter a meeting ID it is: 357-574-7364. At which time and place all persons interested therein or affected thereby will be given an opportunity to be heard concerning the same. During the week prior to and up to the time of Public Hearing, copies of said Ordinance will be available in the Municipal Clerk’s office in said Municipal Building, to the members of the general public who shall request the same.

Ana Minkoff
Township Clerk

ROLL CALL	AYE	NAY	ABSTAIN	ABSENT
BRAHIMAJ		✓		
COUTO	✓			
KINGSLEY			✓	
MEDEIROS	✓			
POAGE	✓			
YELLIN	✓			
TIE:				
MAYOR DEVANNEY				

(3)

EXPLANATORY STATEMENT: This Ordinance amends the Code of the Township of Berkeley Height's Municipal Land Use Procedures Ordinance by replacing the current OR-A and OR-A1 Zones with a new Mixed-Use Zone.

TOWNSHIP OF BERKELEY HEIGHTS, UNION COUNTY
ORDINANCE No. _ _ _ _ _

An Ordinance of the Township of Berkeley Heights, County of Union, State of New Jersey, Amending *The Code of the Township of Berkeley Heights*, Appendix A ("Municipal Land Use Procedures Ordinance") to replace the current OR-A and OR-A1 Zones with a new Mixed-Use Zone.

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Berkeley Heights as follows:

Section 1. *The Code of the Township of Berkeley Heights*, Appendix A ("Municipal Land Use Procedures Ordinance") is hereby amended at Articles 6.1 ("Schedule of General Regulations"), 6.2 ("Zoning Districts") and 6.3 ("Schedule of Zone District Regulations") to remove references to the "OR-A" and "OR-A1" zones and add references to the new "MU" zone, only as follows: [New language **bold and underlined**; deletions ~~stricken through~~.]

ARTICLE 6.1 – SCHEDULE OF GENERAL REGULATIONS

Section 6.1.1 – General Regulations

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OR-A	35 acres	600	600	150 (ee)	150 (ee) / 0 (ff)	150 (ee) / 0 (ff)	150 (ee)	100 (ee) / 0 (ff)	100 (ee) / 0 (ff)	150	NA	NA	65%
OR-A1	12 acres	400	800	150 (ee)	150 (ee) / 0 (ff)	150 (ee) / 0 (ff)	150 (ee)	100 (ee) / 0 (ff)	100 (ee) / 0 (ff)	150	NA	NA	80%
<u>MU</u>	<u>(See Section 6.3.5.1)</u>												

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~~(ee) Exterior – For purposes of evaluating the front, side and rear yard setbacks, exterior lot lines are measured from Route 78 and Plainfield Avenue right-of-way lines. OR-A fronts on Plainfield Avenue and OR-A1 fronts on Route 78.~~

~~(ff) Interior – For the purpose of evaluating side and rear yard setbacks, interior lot lines are measured along all lot lines, except Plainfield Avenue and Route 78.~~

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ARTICLE 6.2 – ZONING DISTRICTS

Section 6.2.1 – Establishment of Zoning Districts

The territory of the Township of Berkeley Heights is hereby divided into the following Zoning Districts:

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MU Mixed Use Zone

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~~OR A — Office and Research Zone~~

~~OR A1 — Office, Residential and Retail Zones~~

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ARTICLE 6.3 – SCHEDULE OF ZONE DISTRICT REGULATIONS

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Section 6.3.5 – OR, ~~OR-A,~~ and OR-B: Office and Research Zones

A. Permitted Principal Uses:

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6. In the OR-B Zone (but not the OR and ~~OR-A~~ Zones), the following shall also be Permitted Principal Uses:

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B. Permitted Accessory Uses:

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This restriction shall not apply to such uses located within Hotels or Fitness Centers ~~or within the OR-A1 Zone~~. Such facilities and uses located within Hotels or Fitness Centers ~~or within the OR-A1 Zone~~ shall be considered part of the permitted Hotel or Fitness Center ~~or OR-A1 Zone~~ uses and may be provided to the general public as well as members and guest of the subject facilities.

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~~5. In addition to those permitted uses set forth above, and provided that the applicant receives any and all necessary state and federal governmental approvals, heliports shall be permitted anywhere in the OR-A Zone at a location chosen by the applicant in its sole discretion (including without limitation, on any building, parking deck or other structure) subject to site plan review and the following conditions only:~~

- ~~a. no refueling, repair, or maintenance activities shall be permitted;~~
- ~~b. there shall be a minimum setback of one hundred fifty (150) feet from Plainfield Avenue. There shall be a minimum setback of one hundred fifty (150) feet from any residential uses;~~
- ~~c. any ground heliport, including the landing pad, shall be reasonably screened and buffered (with either natural vegetation or a structure, at the option of the applicant) from Plainfield Avenue, provided, however, such screening or buffering shall not be required if not acceptable to any State or federal governmental agency having jurisdiction over heliports. Notwithstanding the foregoing, no such screening or buffering shall be required for heliports located on any building, parking deck or other structure.~~

~~65. Parking decks in the OR-B Zone accessory to a permitted principal use on the same lot.~~

~~76. Swimming pools in the OR-B Zone and Structures used in conjunction therewith. Swimming pools and such Structures, whether deemed Accessory Uses or Permitted Principal Uses, shall be exempt from the regulations set forth in Section 3.1.1.B.4 and Section 3.1.7 of the Township Zoning Ordinance, the Swimming Pool Ordinance referenced therein, or any other Township swimming pool regulations.~~

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~~E. Maximum Development in the OR-A Zone.~~

~~The gross floor area of development in this zone shall not exceed 800,000 square feet of commercially rentable office and/or research space or space normally associated with office and/or research use.~~

Section 2. *The Code of the Township of Berkeley Heights*, Appendix A (“Municipal Land Use Procedures Ordinance”) is hereby amended at Part 6 (“Zoning”), Article 6.3 (“Schedule of Zone District Regulations”) to replace the current Section 6.3.5.1 (“OR-A1 Zone: Office,

Residential and Retail Zone”) in its entirety with a new Section 6.3.5.1 entitled “MU: Mixed-Use Zone”), which shall read as follows: [New language **bold and underlined.**]

ARTICLE 6.3 – SCHEDULE OF ZONE DISTRICT REGULATIONS

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Section 6.3.5.1 – MU: Mixed-Use Zone

- A. Zone Area and Intent – The MU Zone consists of Block 4102, Lot 1; Block 4301, Lots 1.011, 1.012 and 1.02. The MU Zone is intended to provide a flexible zoning framework that will facilitate the transformation of a traditional suburban office park into a commercially viable, integrated multi-use facility that provides work, residential, hospitality, retail, entertainment and recreation opportunities. The MU Zone shall be developed so as to ensure a functionally and physically interconnected variety of land uses and open spaces, including outdoor recreational amenities.**

- B. Application Requirements – Development within the MU Zone may take place in phases. Any request for preliminary and final site plan approvals with respect to one or more portions of the MU Zone must comply with Part 10 of this Municipal Land Use Procedures Ordinance.**

- C. Permitted Principal Uses**
 - 1. Offices**
 - 2. Research and development facilities**
 - 3. Multifamily residential dwellings**
 - 4. Retail (as defined in Section 2.1.1), including without limitation, food and beverage establishments, including breweries**
 - 5. Fitness centers**
 - 6. Recreational facilities**
 - 7. Entertainment venues**
 - 8. Hotels**
 - 9. Dog parks, parks and playgrounds**
 - 10. Municipal buildings and other governmental uses**
 - 11. Places of worship including parish homes and religious school buildings**
 - 12. Schools or other educational institutions**

D. Permitted Accessory Uses and Structures

1. Any use or structure that is customarily incidental and subordinate to one or more permitted principal use in the MU Zone
2. Health facilities (not open to the general public)
3. Automated storage and retrieval facilities for grocery stores
4. Parking facilities
5. Swimming pools and structures used in connection therewith, which pools and structures shall be exempt from the regulations set forth in Section 3.1.1B.4 and Section 3.1.7 of this Municipal Land Uses Procedures Ordinance, the Swimming Pool Ordinance referenced therein, or any other Township swimming pool regulations.
6. Heliports, subject to the following requirements:
 - a. no more than one heliport shall be allowed within the MU Zone;
 - b. no refueling, repair, or maintenance activities shall be permitted;
 - c. there shall be a minimum setback of one hundred fifty (150) feet from Plainfield Avenue. There shall be a minimum setback of one hundred fifty (150) feet from any residential uses;
 - d. any ground heliport, including the landing pad, shall be reasonably screened and buffered (with either natural vegetation or a structure, at the option of the applicant) from Plainfield Avenue, provided, however, such screening or buffering shall not be required if not acceptable to any State or federal governmental agency having jurisdiction over heliports. Notwithstanding the foregoing, no such screening or buffering shall be required for heliports located on any building, parking deck or other structure.

E. Prohibited Uses

1. Any use not specifically permitted shall be prohibited.
2. Big-box general retail stores, defined as a retail store with a gross floor area of 50,000 square feet or more in which the general merchandise, including, but not limited to, the following, comprise over 40% of the gross floor area: toys, clothing, sporting goods, automotive supplies, electronics, appliances, home and garden supplies, pool supplies and equipment, discount dollar items, bedding, photo processing, a portrait studio, cell phone sales, a bank, pet shop,

video rental, hair and/or nail salon, hardware, jewelry, banks and fast-food outlets.

3. Drive-thru facilities, whether principal or accessory.

F. Standards for Multifamily Residential Dwellings

1. The number of multifamily residential dwellings within the MU Zone shall not exceed 328 units.
2. The multifamily rental residential housing shall include an inclusionary affordable housing component (when combined with any off-site development of affordable housing) of 13.7% of the maximum total residential units of three hundred twenty-eight (328), which is restricted by the Maximum Buildable Area for the MU Zone; and any proposed increase in the number of residential units above the three hundred twenty-eight (328) units within the constraints of the Maximum Buildable Area (as defined in in Paragraph I.c. of this Section 6.3.5.1), which would require amendment to the Development Agreement between the Township of Berkeley Heights and The Connell Company approved by the Township on October 13, 2016 (the "Connell Development Agreement"), shall thereafter have an affordable housing component of fifteen (15) percent of the total residential units, if any. Pursuant to the Settlement Agreement between the Township of Berkeley Heights and Fair Share Housing Center entered on September 20, 2016, which was incorporated in a Court Order dated October 17, 2016, in the litigation entitled In the Matter of the Application of the Township of Berkeley Heights, County of Union, Docket No. UNN-L-2405-15, any site plan proposed for the MU Zone shall provide for a minimum total of three hundred twelve (312) residential rental units. A "for sale" market residential project would require a renegotiation of the percentage of affordable set aside between the Township and the Developer.
3. All affordable housing development within the MU Zone shall be subject to the Township's affordable housing ordinances, including Title 18 and 18A of the Township Code, except as otherwise set forth in this Section 6.3.5.1.

G. Standards for Retail and Entertainment Uses

1. The maximum square footage of retail and entertainment venue uses available to the public within the MU Zone shall not exceed 250,000 square feet.
2. No single retail tenant within the MU Zone shall exceed 50,000 square feet.
3. A maximum of 185,000 square feet of retail and entertainment venue space may be located within standalone retail and entertainment buildings or mixed-use buildings in which the primary use is multi-family residential. A minimum of 60,000 square feet out of the total allowed retail and entertainment square

footage shall consist of or be reserved for entertainment venues, such as bowling alleys and movie theaters.

4. The remaining 65,000 square feet of allowed retail and entertainment space is limited to publicly accessible retail and entertainment uses located within buildings in which the primary use is office or research and development.
5. Any cafeterias or amenity spaces exclusively limited to serving tenants of office or research and development buildings are not included within the 250,000 maximum square footage of retail and entertainment venue uses available to the public within the Zone.

H. Standards for Open Spaces

1. A minimum of 5 acres of open spaces shall be provided within the Mixed-Use Zone. Open spaces may consist of walking trails, parks, dog parks, publicly-accessible plazas for seating and events, playgrounds, sports courts and other fitness areas.
2. The minimum of 5 acres of open spaces shall be constructed as part of the initial phase of development within the MU Zone.
3. Any off-leash dog park area shall be confined by a fence with a minimum height of 5 feet.

I. General Development Requirements

1. One or more permitted use may be located in one building or lot.
2. Subdivisions of the overall development tract comprising the MU Zone shall be permitted in phases.
3. The gross floor area of all buildings, excluding structured parking facilities, in the MU Zone shall not exceed a total of 2,250,000 square feet of gross floor area (the "Maximum Buildable Area").

J. Bulk Requirements

1. All requirements set forth in this Section 6.3.5.1 shall be calculated based on the entire land area included within the MU Zone, regardless of any existing or future subdivisions or tax lots.
2. Maximum building height: 150 feet
3. Maximum impervious coverage: 75%

4. Setbacks: all buildings within the MU Zone shall be setback a minimum of 125 feet from the boundary of the MU Zone along Plainfield Avenue and a minimum of 25 feet from all other boundaries of the MU Zone. The building setback requirements shall not be applicable to accessory structures, including, but not limited to, walking trails and fitness equipment.

K. Parking Requirements

1. Requirements by Use: Notwithstanding the requirements set forth in Section 11.1.2, the following shall be the parking requirements applicable to all uses permitted within the MU Zone.
 - a. Office, Research and Development: 1 space per 400 square feet of gross floor area
 - b. All other permitted principal non-residential land uses: 1 space per 300 square feet of gross floor area, except that any portion of a retail use that is occupied by an automated storage and retrieval system for retail goods shall be subject to a requirement of 1 space per 1,000 square feet of gross floor area.
 - c. Multifamily residential dwellings:
 - i. 1 bedroom: 1 space per unit
 - ii. 2 bedroom: 1.5 spaces per unit
 - iii. 3 bedroom: 2 spaces per unit
2. Shared parking is strongly encouraged within the MU Zone in order to maximize the efficiency of parking facilities. The cumulative parking requirements for all land uses within the MU Zone may be reduced if it can be demonstrated that the peak usage of multiple land uses occur at different times. In order to obtain approval for a reduction of the cumulative parking requirement based on shared parking principles, a Shared Parking Plan prepared by a licensed engineer or planner shall be submitted to the Township Planner for administrative review and approval. The Shared Parking Plan shall be based on a shared parking model published by the Institute of Transportation Engineers (ITE), the Urban Land Institute (ULI) or another other widely accepted industry model.

L. Signs

Notwithstanding anything to the contrary in Part 5 of this Municipal Land Use Procedures Ordinance:

1. A total of three monument signs shall be permitted within the MU Zone, consisting of two along Plainfield Avenue (one at the entrance to the flyover

ramp and one at Connell Drive) and one along Oak Way, subject to the following requirements.

- a. The total area of a monument sign shall not exceed 100 square feet (each face), inclusive of its base.
 - b. The maximum height of a monument sign shall not exceed 10 feet, inclusive of its base.
 - c. The monument sign may contain panels for individual retail tenants which shall have a maximum letter height of 12 inches. The materials and color for the individual tenant panels shall be uniform in color and consistent with the overall design of the monument sign.
 - d. All monument signs shall be set back at least 10 feet from the MU Zone boundary.
 - e. All monument signs shall have an attractive base with decorative landscaping.
 - f. All monument signs shall be externally illuminated.
2. Wall signs shall be permitted on each building façade facing a parking area or internal roadway, subject to the following requirements:
- a. Permitted signage area for the existing hotel use within the MU Zone shall be as follows:
 - ii. Maximum signage area on the west elevation of a building shall be 1,450.6 square feet;
 - iii. Maximum signage area on a south area of a building shall be 341.4 square feet;
 - iv. Maximum total signage area shall be 2,620.8 square feet.
 - b. No tenant shall be permitted more than one wall sign on a single building façade. No more than 2 wall signs are permitted per tenant.
 - c. The total area of a wall sign for any retail tenant renting less than 20,000 square feet shall not exceed 48 square feet.
 - d. The total area of a wall sign for any retail tenant renting 20,000 square feet or more shall not exceed 120 square feet.
 - e. Any building with multiple tenants shall be required to submit a sign plan indicating the location and size of all wall signs.
 - f. Wall signs shall be halo-illuminated (back-lit channel letters) or externally illuminated.

- Section 3.1.2 (General Regulations), Paragraph G only
- Section 3.1.10 (Dish Antennae – General Regulations), Paragraphs A and C
- Article 5.3 (DEFINITIONS), under definition of “Office and Research Zone”
- Section 7.1.5 (Conditional Uses Enumerated), Paragraph G

Section 4. *The Code of the Township of Berkeley Heights*, Appendix A (“Municipal Land Use Procedures Ordinance”) is hereby amended to delete all references to the “OR-A” zone, only in the following sections:

- Section 3.1.2 (General Regulations), Paragraph A only
- Section 5.4.4 (OR, OR-A, and OR-B Zones), Header and Paragraph 1
- Section 19.4.1 (Application)

Section 5. The provisions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found to be invalid for any reason by any court of competent jurisdiction, such judgment shall be limited in its effect only to that portion of the Ordinance actually adjudged invalid and shall not be deemed to affect the operation of any other portion thereof, which shall remain in full force and effect.

Section 6. This Ordinance is not meant to repeal any provisions of the Municipal Land Use Procedures Ordinance or any other ordinance other than those designated herein, and all ordinances or portions of ordinances which are inconsistent or in conflict with the provisions of this Ordinance are repealed only to the extent of such inconsistency or conflict.

Section 7. The Township Clerk is directed to give notice at least ten days prior to a hearing on the adoption of this ordinance to the Union County Planning Board and to all other persons entitled to notice under N.J.S.A. 40:55D-15 and N.J.S.A. 40:55D-63.

Section 8. After introduction, the Township Clerk is hereby directed to submit a copy of this Ordinance to the Planning Board of the Township of Berkeley Heights for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64.

Section 9. This Ordinance shall be presented to the Mayor for her approval and signature, which approval shall be granted or denied within ten days of receipt of same, pursuant to N.J.S.A. 40:69A-149.7. If the Mayor fails to return this Ordinance with either her approval or objection to same within ten days after it has been presented to her, then this Ordinance shall be deemed approved.

Section 10. This Ordinance shall take effect upon passage and publication according to law.

INTRODUCED the _____ day of _____, 2020.

ADOPTED the _____ day of _____, 2020.

By: _____
Angie Devanney, Mayor

ATTEST:

Ana Minkoff, Township Clerk