

11-21-19

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**ORDINANCE AMENDING
CHAPTER 335, ZONING AND LAND USE,
TO CREATE THE R-5 ZONING DISTRICT**

**BOROUGH OF BERLIN
COUNTY OF CAMDEN, STATE OF NEW JERSEY**

WHEREAS, the Borough Council of the Borough of Berlin (“Borough Council”), a municipal corporation in the County of Camden, State of New Jersey, finds that the public health, safety, morals, and general welfare of the community shall be promoted by the settlement of litigation by and between *Nexus Properties, Inc. v. The Borough of Berlin and the Planning Board of the Borough of Berlin*; and *Armstrong Capital, LLC v. The Borough of Berlin and the Council of the Borough of Berlin and the Planning Board of the Borough of Berlin* (the “Parties”); and

WHEREAS, the Borough Council has determined that the revision and adoption of amendments to the Zoning and Land Use Ordinance and Zoning Map of the Borough is consistent with the Settlement Agreement between the Parties and shall effectuate such settlement; and

WHEREAS, the Planning Board of the Borough of Berlin has adopted a Master Plan that comprehensively provides for the appropriate use and development of lands in the Borough in a manner which shall promote the public health, safety, morals, and general welfare; and

WHEREAS, the Municipal Land Use Law at *N.J.S.A. 40:55D-62a* requires substantial consistency of the provisions regulating zoning and land use with the adopted Land Use Plan Element, however the governing body may adopt an ordinance amendment inconsistent with such element provided a majority of the full authorized Council shall approve the amendment and place their reasons on the record; and

WHEREAS, the Planning Board has determined that the creation of the R-5 Apartment and Townhouse District and corresponding amendment to the Zoning Map is consistent with the Settlement Agreement, represents sound land use planning and therefore favorably recommends to the Borough Council that the Zoning and Land Use Ordinance be so amended; and

WHEREAS, the amendment will further the goal of providing affordable housing within the municipality in accordance with the Fair Housing Act, *N.J.S.A. 52:27D-301 et seq.*; and

WHEREAS, while this Ordinance creates a classification and boundary change that has not been recommended in a periodic general reexamination of the master plan (*N.J.S.A. 40:55D-89*), the Borough Council nonetheless finds that its adoption will further the health, safety and general welfare of its citizens, settle litigation among the Parties and represents sound planning; and

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Berlin that the Zoning and Land Use Ordinance be hereby amended as follows:

Section 1. §335-13, Fees and escrow deposits, shall be amended by modifying – B(2) to add –(g) “planned development review” after –(f) “fire prevention review”:

B. (2) Application fees.

(g) Planned development review. The fees shall be as follows:

[1] Planned unit residential development and residential cluster:
\$1,000.

[2] All other planned development: \$2,000.

Section 2. §335-75, Zoning Map, shall be modified by applying the R-5 Apartment and Townhouse District to Block 1700, Lots 1 and 3 as designated on the tax assessment maps of the Borough of Berlin.

Section 3. §81.2, R-5 Apartment and Townhouse District, shall be added to Chapter 335 as follows:

§ 335-81.2. R-5 Apartment and Townhouse District.

A. Purpose. This district is intended to provide for apartment, townhouse and/or single family detached dwellings with an affordable housing setaside in a location proximate to other higher intensity uses. The affordable housing component of the development will address a significant portion of the Borough’s affordable housing obligation and settle litigation in the matter of *Nexus Properties, Inc. v. Bor. of Berlin*, Docket Number L-2285-06.

B. Permitted principal uses. The following shall be permitted principal uses in the R-5 District:

Borough of Berlin, Camden County
R-5 ZONING DISTRICT

- (1) Townhouse dwellings.
- (2) Apartment dwellings.
- (3) Single family detached dwellings.
- (4) Parks and open space areas.
- (5) Combinations of principal permitted uses hereinabove.
- (6) Utility buildings for primarily serving the R-5 district.

C. Permitted accessory uses and structures.

- (1) For –B(1), -B(2), B(4) and –B(5) uses on the same lot and used in conjunction with a permitted principal use:
 - (a) Off-street parking, private garages and car sheds.
 - (b) Community center and community rooms for the use of residents and guests.
 - (c) Community swimming pools and indoor recreation for the use of residents and guests.
 - (d) Outdoor recreational facilities, including tennis or other court sports.
 - (e) One management and/or rental office.
 - (f) Superintendent and maintenance dwellings whose primary occupants shall be employed on site by the operating entity.
 - (g) Maintenance building.
 - (h) Gatehouse on a private street only.
 - (i) Tool, storage or garden shed for fee simple townhouse dwellings only.
- (2) For –B(3) uses on the same lot and used in conjunction with a permitted principal use:
 - (a) Private garage.
 - (b) Swimming pool.
 - (c) Cabana.
 - (d) Tool, storage or garden shed.

- (3) For all permitted principal uses.
 - (a) Bus shelter.
 - (b) Utility services as defined in this Chapter.
 - (c) Radio, television and satellite antennae and dishes consistent with §335-77B.
 - (d) Fences and walls consistent with §335-77F, except as may be modified herein.
 - (e) Signs consistent with §335-77R.
 - (f) Accessory uses customarily incidental to and occupying the same lot as a principal use.

D. General development requirements.

- (1) Affordable housing requirements. The minimum percentage of dwelling units affordable to households with low and moderate incomes as defined by the Fair Housing Act (*N.J.S.A. 52:27D-301 et seq.*) shall be 15% of the total number of units (excluding the superintendent/maintenance dwellings) developed if the affordable units are for rent and 20% if the affordable units are for sale. Of the total number of affordable housing units, no less than 10%, rounded, shall be affordable to very low income households and no more than 50% shall be affordable to moderate income households. Any development within the R-5 district shall comport with Chapter 193, Affordable Housing, of the Code of the Borough of Berlin, and any other applicable affordable housing law and regulation.
- (2) The minimum tract area shall be 30 acres of contiguous land.
- (3) Maximum total tract coverage: 75% of the gross land area.
- (4) The amount of land to be reserved for active recreation facilities shall be equal to or greater than 150 square feet per dwelling. Adequate recreation areas shall be set aside in suitable locations to provide for the recreation needs of residents based on accepted methods of determining the population by age cohorts in the development. Active recreation shall count towards any open space requirement. Active recreation shall include, but not be limited to, any clubhouse area (including any clubhouse parking area), walking and/or fitness trails (including any fitness station area(s) on or along such trails), tot lot areas and/or sitting areas as provided at -(D)(6), below. Walking and/or fitness trails shall not be required to be paved, but shall be delineated grass areas.
- (5) Pedestrian circulation. There shall be a comprehensive system of pedestrian walks serving all facilities within the development, providing access to dwellings, parking areas, open spaces, recreational and other communal facilities. Pedestrian walkways

shall have adequate lighting and shall include landscaping along them as approved by the board with jurisdiction during site plan review. In general, such landscaping shall consist of landscaping beds at major intersections, occasional trees and sitting areas with clusters of shrubs and ornamental trees. Such sitting areas shall count towards the recreational land area component of the development.

- (6) The standards of §335-35 shall not apply to the R-5 Apartment and Townhouse District, except that all development shall be served by public water and public sanitary sewer.
- (7) Phasing. Development within the zoning district shall be permitted in phases, or distinct geographic stages of development, as approved by the board with jurisdiction taking into account the adequacy of plans for utilities, circulation and open space, including recreation, necessary to serve that phase independently.

E. Area, yard, density, height and coverage requirements or limitations.

- (1) The minimum tract perimeter setback for a principal building shall be 50 feet, with the following exceptions:
 - (a) Community center when adjacent to an existing street: 35 feet
 - (b) Garages and car sheds: 25 feet, except when adjacent to an existing street, 50 feet
 - (c) Gatehouses: 25 feet
 - (d) Bus shelters may be placed on the front property line.
- (2) The maximum density shall not exceed 16 dwellings per acre, or a maximum of 470 dwellings, whichever is less, except that up to an additional two (2) superintendent/maintenance dwellings may be built and occupied without counting towards the total number of dwellings allowed.
- (3) Maximum dwellings per building type.
 - (a) Building with all townhouses: 8 dwellings
 - (b) Building with townhouses and apartments: 24 dwellings, not to exceed 8 townhouses
 - (c) Building with all apartments: 24 dwellings
- (4) Building separation requirements for non-fee simple development, except as modified by -F(3) below:
 - (a) Minimum distance from building front to building front: 50 feet

Borough of Berlin, Camden County
R-5 ZONING DISTRICT

- (b) Minimum distance from building front to building side: 50 feet
 - (c) Minimum distance from building front to building rear: 50 feet
 - (d) Minimum distance from building side to building rear: 50 feet
 - (e) Minimum distance from building rear to building rear: 50 feet
 - (f) Minimum distance from building side to building side: 20 feet
- (5) Lot requirements for fee simple townhouses.
- (a) Minimum lot size: 1,600 sf.
 - (b) Minimum lot width: 16 ft.
 - (c) Minimum lot depth: 100 feet
 - (d) Maximum lot coverage: 80%
 - (e) Minimum front yard, short axis frontage of lot: 22 feet
 - (f) Minimum front yard, long axis frontage of lot: 12 feet
 - (g) The following minimum rear yard by lot type shall be required.
 - [1] Tract perimeter lot: 50 feet
 - [2] Any other lot: 20 feet
 - (h) Minimum side yard: 10 feet; 0 feet with a common partition wall
 - (i) Accessory uses. No accessory structure shall be permitted in a front yard or tract perimeter buffer, excepting fences and signs as otherwise allowed herein. Other accessory structures, excluding fencing, shall be set back 5 feet from a side property line and 10 feet from a rear property line, except that tool, storage or garden sheds may be set back 5 feet from a rear property line.
- (6) Lot requirements for single family detached dwellings.
- (a) Minimum lot size: 5,000 sf.
 - (b) Minimum lot width: 50 feet
 - (c) Minimum lot depth: 100 feet
 - (d) Minimum front yard: 25 feet

Borough of Berlin, Camden County
R-5 ZONING DISTRICT

- (e) Minimum side yard: 5 feet for one side yard
and 15 feet aggregate for both side yards
- (f) Minimum rear yard: 25 feet
- (g) Maximum lot coverage: 60% of total lot area
- (h) Maximum height.
 - [1] Principal dwelling: 35 feet
 - [2] Accessory structure heights shall be as applicable under –E(8)(d).
- (i) Accessory buildings and structures. No accessory structure or building shall be permitted in a front yard or tract perimeter buffer, excepting fences and signs as otherwise allowed herein. Tool, storage and garden sheds shall be permitted within 5 feet of a side or rear property line. All other permitted accessory buildings and structures, excluding fencing, shall be set back 5 feet from a side property line and 10 feet from a rear property. No detached garage shall be permitted within 15 feet of the principal building. All swimming pools shall be set back a minimum of 10 feet from any property line and 15 feet from a house foundation, measured from the closest edge of water.
- (7) Lot requirements for -B(4) and –B(5) uses shall be as stated in the Institutional District, §335-88.E, except that such uses shall comply with the tract perimeter setbacks as specified in –E(1) herein.
- (8) Building dimension limitations. Minimum and maximum building dimensions for –B(1) and –B(2) uses shall be as follows:
 - (a) Minimum width of townhouse dwelling: 16 feet
 - (b) Maximum building length through the long axis: 260 feet
 - (c) Maximum building height, principal use: 3 stories and 48 feet
 - (d) Maximum building height, accessory uses and structures.
 - [1] Garages and car sheds: 16 feet
 - [2] Community center: 28 feet
 - [3] Manager and rental office: 28 feet
 - [4] Maintenance building: 24 feet
 - [5] Gatehouse, cabana: 14 feet

- [6] Bus shelter: 12 feet
- [7] Private tool sheds: 10 feet
- (9) Building setbacks, streets. The minimum building setbacks from a public or private street applying to sites that are not subdivided into individual lots, excepting gatehouses and bus shelters, shall be as follows:
- (a) Front or rear façade: 22 feet
- (b) Side façade: 15 feet
- (c) Any façade facing an existing collector or higher order street: 50 feet
- (10) Setbacks, parking lots. Where parking lots are proposed, no parking space shall be closer than 10 feet to a building and within 25 feet of a tract perimeter. This subparagraph shall not be construed to apply to driveways associated with individual dwellings.
- F. Additional Requirements. The following additional requirements shall pertain to development in the R-5 district:
- (1) No shed shall exceed 10 feet in height and 100 square feet in floor area. Only one shed per lot shall be permitted. Detached private garages and car sheds shall be located behind the rear building line. Notwithstanding any other provision to the contrary, two garages on separate individual lots may be attached along one common party wall at the side property line. On other types of lots, garages and car sheds may be attached together provided that the length through the long axis does not exceed 100 feet and is a minimum of 12 feet from the rear building line.
- (2) Buffers. The buffer areas shall adhere to the design requirements of §335-77C but shall be installed within all of the perimeter tract setback yards of the development. The width of planted area excluding groundcover shall be a minimum of 15 feet. No storm water management basin, parking lot and private tool shed shall be permitted within a required planted buffer area. No fencing shall be permitted within a required planted buffer area for any lot fronting on a collector or higher order street, except that decorative fencing more than 75% open, incorporated as part of the overall landscape design for the property, may be permitted when approved by the board of jurisdiction.
- (3) Storage minimum. All dwellings shall have adequate storage interior to the unit for clothing, outdoor equipment and other personal belongings. In the affordable units, such storage areas shall be at least as large as the storage areas in the market units having the same number of bedrooms and shall be readily accessible to the ground floor level of the building.

- (4) Dwelling variation. Architectural elements such as bay windows, balconies, building offsets, variation of building materials, textures and/or colors and/or other architectural elements that achieve visual interest shall be provided.

Section 4. Continuation. In all other respects, the Zoning and Land Use Regulations Ordinance of the Borough of Berlin shall remain unchanged.

Section 5. Severability. If any portion of this Ordinance is for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of the Zoning and Land Use Regulations Ordinance as a whole, or any other part thereof.

Section 6. Repealer. All ordinances or parts of ordinances which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency only.

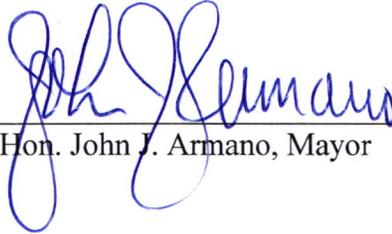
Section 7. Enactment. This Ordinance shall take effect upon the filing thereof with the Camden County Planning Board after final passage, adoption, and publication by the Borough Clerk of the Borough of Berlin in the manner prescribed by law; and approval of the Fairness and Compliance Plan Hearing in the matter *Nexus Properties, Inc. v. The Borough of Berlin and the Planning Board of the Borough of Berlin* (CAM-L-2285-06).

Borough of Berlin, Camden County
R-5 ZONING DISTRICT

Introduced: **INTRODUCED** 11/27/2012

Adopted:

BOROUGH OF BERLIN IN THE
COUNTY OF CAMDEN



Hon. John J. Armano, Mayor

Attest:



Charleen Santora, RMC, Borough Clerk

