

ORDINANCE

O-25-2023

BOROUGH OF NORTH CALDWELL, ESSEX COUNTY, NEW JERSEY

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 107 OF THE CODE OF THE BOROUGH OF NORTH CALDWELL TO REPEAL AND REPLACE THE EXISTING IRO INCLUSIONARY RESIDENTIAL OVERLAY ZONE WITH A NEW SIRO SENIOR INCLUSIONARY RESIDENTIAL OVERLAY ZONE AND TO SET FORTH THE STANDARDS AND CRITERIA APPLICABLE THERETO

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), on or about July 2, 2015, the Township filed an action with the Superior Court of New Jersey ("Court"), entitled In the Matter of the Application of the Borough of North Caldwell, County of Essex, Docket No. ESX-L-4696-15, 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 and Fair Share Housing Center entered into a Settlement Agreement on December 11, 2018, which was subsequently approved by the Court via an Order entered on February 15, 2019, after a Fairness Hearing was held on January 25, 2019; and

WHEREAS, as part of the FSHC Settlement Agreement, and to address a portion of the Borough's combined Prior Round (1987-1999) and Round 3 (1999-2025) "unmet need", the Borough and Green Brook Realty Associates, LLC (hereinafter "Green Brook LLC"), the owner of a property located at Block 1600, Lot 1, entered into a separate Settlement Agreement on December 11, 2018 (hereinafter the "Green Brook Settlement Agreement"), which was also approved by the Court via an Order entered on February 15, 2019, after a Fairness Hearing was held on January 25, 2019; and

WHEREAS, the Green Brook Settlement Agreement contemplates that certain lands comprised of approximately 99 acres within the C Golf Course, Country Club and Open Space District, commonly referred to as Block 1600, Lot 1, is suited for inclusionary development; and

WHEREAS, the Borough wishes to foster development that provides a realistic opportunity for the construction of affordable housing, via inclusionary residential development; and

WHEREAS, the Borough desires to amend the Green Brook Settlement Agreement to repeal the existing IRO Inclusionary Residential Overlay Zone to be replaced with an overlay zone wherein all market-rate units are age restricted, such that the zone may be developed with 125 for-sale market rate age-restricted townhomes and 146 age-restricted stacked flats, 25 affordable age-restricted rental apartments and 25 affordable non-age-restricted family rental apartments, and to provide for the Borough's adoption of an overlay zoning ordinance to facilitate this senior development inclusionary development.

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

Section 1. Chapter 107 of the Code of the Borough of North Caldwell, Section 107-9, "Zoning districts enumerated" is hereby amended and supplemented by inserting the following new zone district into the list of zones (additions are underlined thus; deletions have strikethroughs ~~thus~~):

IRO Inclusionary Residential Overlay Zone

SIRO Senior Inclusionary Residential Overlay Zone

Section 2. The Borough of North Caldwell Zoning Map last dated February 12, 2001 is hereby revised by removing the IRO Zone designation from Block 1600 Lot 1 and placing these parcels in the new SIRO Zone. The overlay zone is supplemental to the underlying C Golf Course, Country Club and Open Space Zone for Block 1600 Lot 1, which shall remain in effect.

Section 3. Chapter 107 of the Code of the Borough of North Caldwell is hereby amended and supplemented by repealing Section 107-26.1, "IRO Inclusionary Residential Overlay Zone," and replacing Section 107-26.1 with the new "SIRO Senior Inclusionary Residential Overlay Zone" requirements which shall read as follows:

§ 107-26.1 SIRO SENIOR INCLUSIONARY RESIDENTIAL OVERLAY ZONE

- A. Purpose and Planning Rationale.** The purpose of the SIRO Senior Inclusionary Residential Overlay Zone is to provide a realistic opportunity for the construction of affordable housing as part of a comprehensively planned inclusionary development, and thereby help to address a portion of the Borough's combined Prior Round (1987-1999) and Round 3 (1999-2025) "unmet need" as per the terms of the Settlement Agreement entered into between the Borough of North Caldwell and Fair Share Housing Center ("FSHC") on December 11, 2018 (hereinafter "FSHC Settlement Agreement") and the Borough and Green Brook Realty Associates, LLC (hereinafter "Green Brook LLC") on December 11, 2018 (hereinafter "Green Brook Settlement Agreement"), as may be amended. This overlay zone will conform with the FSHC Settlement Agreement, the Green Brook Settlement Agreement, the Borough's Affordable Housing Ordinance (Chapter 107, Article XVI of the Borough Code), the New Jersey Fair Housing Act ("FHA"), applicable Council on Affordable Housing ("COAH") regulations, the Borough's Housing Element and Fair Share Plan, which may be amended from time to time, and any applicable order of the Court, including a Judgment of Compliance and Repose Order.
- B. Applicability.** The following standards shall apply to development within the SIRO Senior Inclusionary Residential Overlay Zone. All other provisions of Chapter 107, Zoning and Land Use, of the North Caldwell Borough Code shall apply to development in the SIRO Senior Inclusionary Residential Overlay Zone only where specifically indicated as applicable in this § 107-26.1 of the North Caldwell Code. Sections 45-1, 80-19, 80-20, and 88-17 shall not apply in the SIRO Senior Inclusionary Overlay Zone. When development of a use permitted by the SIRO Senior Inclusionary Residential Overlay Zone is proposed, only the SIRO Senior Inclusionary Residential Overlay Zoning shall apply and the C Golf Course, Country Club and Open Space District zoning shall be of no force or effect. No overlay zoning, other than the SIRO Senior Inclusionary Residential Overlay zoning, shall apply to the Tract.
- C. Definitions.** The definitions provided in Sections 107-7, 107-8, and 107-97 of the Borough of North Caldwell Code shall apply in the SIRO Senior Inclusionary Residential Overlay Zone, except as provided herein. The following definitions shall apply only within the SIRO Senior Inclusionary Residential Overlay Zone, shall supplement any non-conflicting definitions within Chapter 107 of the Borough Code, and shall supersede any conflicting definitions in the Borough Code, except for the definitions in the Borough's Affordable Housing Ordinance (Chapter 107, Article XVI of the Borough Code).

AFFORDABLE - A sales price or rent within the means of a low- or moderate-income household as defined by COAH in its applicable regulations or an equivalent controlling New Jersey state agency; in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the

rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

AFFORDABLE AGE-RESTRICTED UNIT - An Affordable housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population where the head of the household is a minimum age of either 62 years, or 55 years and meets the provisions of the 42 U.S.C. §§3601 et seq., except that due to death, a remaining spouse of less than 55 years of age shall be permitted to continue to reside.

AFFORDABLE NON-AGE-RESTRICTED UNIT - An Affordable Dwelling Unit for which there are no requirements as to the age of any occupant.

APARTMENT - A Dwelling Unit in a building having three (3) or more Dwelling Units that is leased to its occupant(s).

ATTIC - The space between the ceiling beams of the top story and the roof rafters in any building.

ATTIC STORY - An attic having, within its space, possible floor area with headroom of five feet or greater over 60% or more of the attic area.

BASEMENT - That portion of a building, wholly or partially underground, having more than one-half (1/2) of its floor to ceiling height above the average grade of the adjoining ground, which shall constitute a story.

BUILDING HEIGHT - The vertical distance measured in feet from the finished first floor to the highest point of the roof. For the avoidance of doubt, the finished first floor shall not be a Basement, Cellar, or Walkout Basement.

CELLAR - That portion of a building, wholly or partially underground, having more than one-half (1/2) of its floor to ceiling height below the average grade of the adjoining ground, or with a floor-to-ceiling height of less than 6-1/2 feet, which shall not constitute a story.

FAIRFIELD TRACT - The remainder of the existing Green Brook County Club, which includes Block 2003 Lot 1, Block 2101 Lot 8.03 and Block 19.02 Lot 13 located in Fairfield Township.

FIRST FLOOR DECK - A deck that extends from the first floor of a Townhouse that is not extended from a second floor, Townhouse Basement or Walkout Basement.

INTERNAL ROADWAYS - Private streets, roads, and/or rights-of-way connecting any two or more lots created by subdivision and located entirely in the Tract.

INTERNAL TRACT LOT LINE - The boundary between any two or more lots created by subdivision and located entirely within the SIRO Senior Inclusionary Residential Overlay Zone.

LOT - A piece, plot or parcel of land existing in common ownership, whether acquired in separate parcels or as a whole, abutting on a street or Internal Roadway, the location, dimension or boundaries of which are determined by the latest office record in the Register's Office of Essex County.

MARKET-RATE - Housing not restricted to low- and moderate-income households.

MARKET-RATE AGE-RESTRICTED UNIT - a housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted population such that the units are occupied by at least one person that is 55 years or older, except that due to death, a surviving co-owner or beneficiary residing in the unit of less than 55 years of age shall be permitted to continue to reside. Children under the age of 19 shall not be permitted to permanently reside in Market-Rate Age-Restricted Units.

RESIDENTIAL LIVING AREA - The acreage of the Tract to be developed with Market Rate Age-Restricted Stacked Flats, Market Rate Age-Restricted Townhouses, Affordable Age-Restricted Apartments, and/or Affordable Non-Age-Restricted Apartments.

RESIDENTIAL LIVING USES - Market Rate Age-Restricted Stacked Flats, Market Rate Age-Restricted Townhouses, Affordable Age-Restricted Apartments, and/or Affordable Non-Age-Restricted Apartments.

STACKED FLAT - A portion of a Building or Structure designed for, or occupied by, no more than one Family or household and attached to one (1) or more Stacked Flats within the same Building or Structure by one (1) or more party walls. Up to eight (8) Stacked Flats may be located within one building. Stacked Flats, or portions of Stacked Flats may be located above another Stacked Flat and/or parking. Furthermore, each Stacked Flat shall be provided with a maximum of two bedrooms, one study, and cooking and sleeping facilities for the use of each family or household of the flat. Each Stacked Flat shall have at least two outside exposures.

STORY - That portion of a building, exclusive of cellars and townhouse basements, but inclusive of basements and walkout basements, contained between the surface of any floor above the average grade elevation and the surface of the floor next above it, or if there is no floor above it, then the space between the highest floor and the top of the roof beams above it. Walkout basements shall be considered a story in all instances.

TOWNHOUSE - A portion of a Building or Structure designed for, or occupied by, no more than one Family or household and attached to one (1) or more Townhouses within the same Building or Structure by one (1) or more party walls extending from the foundation. Townhouses, or portions of Townhouses may not be located above another Townhouse. Each Townhouse shall be provided with cooking, sleeping and sanitary facilities for the use of each Family or household of the Townhouse. Title to a Townhouse may be held in a fee simple, condominium, or cooperative ownership, or any combination thereof.

TRACT - The entirety of the parcel of land comprising the SIRO Senior Inclusionary Residential Overlay Zone, meaning Block 1600, Lot 1, including parcels subdivided therefrom.

TRACT IMPERVIOUS COVERAGE - The percentage of the Tract that is developed with an Impervious Surface, excluding any roads, streets, and Internal Roadways. To calculate Tract Impervious Coverage, the denominator shall be the gross acreage of the Tract and the numerator shall be the acreage

of the Tract developed with Impervious Surfaces, excluding roads, streets, and Internal Roadways.

WALKOUT BASEMENT - A Basement of a Townhouse that has direct access via a doorway to the exterior of the Townhouse from the Basement, which shall count as a building story.

D. Application Requirements.

- (1) Any application for development for any portion or the entirety of the SIRO Senior Inclusionary Residential Overlay Zone shall be submitted in accordance with the requirements of §107-5 and §107-6, § 107-34 through § 107-41 and § 107-43 through § 107-45 of the Borough of North Caldwell Code, except as provided herein. An application for development of permitted uses within the SIRO Senior Inclusionary Residential Overlay Zone shall delineate the boundaries of New Jersey Department of Environmental Protection regulated riparian buffers, flood plains, freshwater wetlands, freshwater wetland buffers, all existing wooded areas, excepting vehicular access and utilities which may be within such buffers. An application for development in the SIRO Senior Inclusionary Residential Overlay Zone shall also include existing setback dimensions, width and direction of flow of watercourses, existing wooded areas, signs, utility poles, electric lines, telephone lines, principal and accessory buildings or structures, catch basins, storm drainage facilities, sanitary sewers and utilities, design data supporting the adequacy of such existing facilities, curbs, sidewalks, driveways, fences, retaining walls, parking space areas and the layouts thereof and all off-street loading areas on the site and within 100 feet of the site.
- (2) Consistent with N.J.A.C. §5:93-10.1(b), the New Jersey Fair Housing Act (N.J.A.C. 52:27D-301 et seq.), and Section 7 of the Green Brook Settlement Agreement, no unnecessary cost generative requirements shall apply to any development of permitted uses within the SIRO Senior Inclusionary Residential Overlay Zone, including but not limited to the Planning Board/Zoning Board of Adjustment application checklist requirements B(5)(j), B(5)(o)(1), and B(7) and §107-36C(7) and (12) and D(3), §107-38A(1), B(1), (3), (6), and (8), 96-3A through E, 96-4, 96-6, and 96-7. Further to that end, notwithstanding §107-36C and 107-38A, an application for development of permitted uses within the SIRO Senior Inclusionary Residential Overlay Zone shall not be required to delineate trees 6 inches or over in diameter, or existing landscaping but shall be required to delineate all existing wooded areas. Additionally, notwithstanding § 107-41B, no application for development in the SIRO Senior Inclusionary Residential Overlay Zone shall be required to include the location of gas and electric transmission lines, telephone service or any other wire services, except that the location of all easements to be imposed, including easements for public utilities or copies of all easements, including those to public utilities, shall be provided to the extent practicable.
- (3) Application for development of permitted uses in the SIRO Senior Inclusionary Residential Overlay Zone shall not be deemed an application for a Residential Cluster Plan.
- (4) For the avoidance of doubt, the North Caldwell Planning Board shall be the "Municipal Agency" to which all submissions shall be made and reviewed in connection with proposed development in the SIRO Senior Inclusionary Residential Overlay Zone, including but not limited to those required by §107-36D unless otherwise set forth herein.
- (5) The application fee for preliminary and final major subdivision and site plan approval in the SIRO Senior Inclusionary Residential Overlay Zone shall be subject to

\$107-45 and shall be determined at the time of the filing pursuant to the fee structure in place at the time of filing, but in no event shall exceed \$10,000. The initial escrow fee due at the time of initial filing of an application for development in the SIRO Senior Inclusionary Residential Overlay Zone shall be as determined by the joint decision of the Borough Engineer, the Borough Planner and the Borough Attorney. The initial escrow fee shall be subject to increase and replenishment by the applicant as necessary to cover project costs from application through construction inspection subject to the joint decision of the Borough Engineer, the Borough Planner and the Borough Attorney.

- (6) Stormwater Management. Application for development in the SIRO Senior Inclusionary Residential Overlay Zone shall not be subject to §53-5 or §53-28 through 38. Applications for development in the SIRO Senior Inclusionary Residential Overlay Zone shall comply with the stormwater management standards of the Residential Site Improvement Standards and N.J.A.C. 7:8.
- (7) For the avoidance of doubt, development of permitted uses in the SIRO Senior Inclusionary Residential Overlay Zone shall constitute an Affordable Housing Development and be exempt from payment of Development Fees to the Affordable Housing Trust Fund pursuant to N.J.S.A. 52:27D-329.2 and § 107-95 through 107-106 of the Borough Code. Under no circumstances will Borough Affordable Housing Trust Fund money be used for project.
- (8) All Sections in Chapter 107 of the Borough Code shall apply to the SIRO Senior Inclusionary Residential Overlay Zone unless otherwise modified herein. Application may be made simultaneously for preliminary and final subdivision (minor or major) and/or site plan approval. Application for development to the Planning Board shall be deemed to also serve as application for an excavation and regrading permit, diversion permit, soil movement permit, grading, drainage and erosion control permit pursuant to Chapter 54, stormwater permit, tree removal permit, signs, retaining walls, fencing and sight line variances. The Planning Board has the authority to approve and issue, in conjunction with all other applicable agencies, excavation and regrading permits, diversion permit, stormwater permits, soil movement permits, grading, drainage, and erosion permits pursuant to Chapter 54, tree removal, signs, retaining walls, fencing, and sight line variance applications in connection with any development proposed via application in the SIRO Senior Inclusionary Residential Overlay District.
- (9) Recognizing that because the existing structures have been refurbished periodically and as recently as 2003, the Tract is not a historic site, so no application or review by the Historic Preservation Commission shall be required in connection with any application for development.
- (10) With the exception of such on and off-tract infrastructure necessary to provide potable water, wastewater, and stormwater service to permitted uses to be developed on the Tract, is further the intent of this ordinance to not require off-site or off-tract improvements for development, unless the need for such improvements arise from the development and conditions within the Tract nor shall the approving authority require items deemed as "cost-generating" as prohibited by the Fair Housing Act (N.J.S.A. 52:27D-314), or as further prohibited and defined by COAH Prior Round Regulations (N.J.A.C. 5:93-10.1 to 10.5). A developer of the Tract shall cooperate with the Borough, Essex County and all public entities, public utilities, and private entities and individuals to assess the impact of any proposed development of the

Tract to assure the stability of existing utility and access points along the Green Brook.

- (11) To the extent consistent with N.J.S.A. 40:55D-53, § 107-42 (regarding performance guarantees and inspection fees) and § 88-47 (maintenance bond) of the North Caldwell Code shall apply.

E. Permitted principal uses area as follows:

- (1) Market Rate Age-Restricted Stacked Flats.
- (2) Market Rate Age-Restricted Townhouses.
- (3) Affordable Age-Restricted Apartments.
- (4) Affordable Non-Age-Restricted Apartments.

F. Accessory Uses.

- (1) Required Uses Accessory to Residential Living Units are as follows. Market-rate Residential Living Required Accessory Uses shall utilize all or portions of or replace applicable amenities existing on the Tract.
 - (a) Clubhouse
 - (b) Outdoor swimming pool
 - (c) Fitness center
 - (d) Outdoor patio/barbecue area
 - (e) Dog Park
- (2) Permitted Accessory Uses to All Permitted Uses in the SIRO Senior Inclusionary Residential Overlay Zone are as follows:
 - (a) Signs.
 - (b) Buildings and uses customary and incidental to the principal use.
 - (c) Recreational facilities, clubhouse, lobbies, fitness facilities, outdoor barbecues, fire pits, gazebos, leasing and management offices, club rooms, lounges, libraries, business centers, 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, interior tenant amenities, provided that such amenities serve only the residents of the Tract and their guests.
 - (d) Attached private garages to the building in which they serve that are intended for the shelter and storage of motor vehicles and providing off-street parking.
 - (e) Mechanical Equipment.
 - (f) Sports facilities, including but not limited to, paddle, bocce, or similar courts, putting greens and swimming pools.
 - (g) Tennis courts.
 - (h) Playground facilities.
 - (i) Dog park or dog run.
 - (j) Storage spaces unattached to Residential Living Units, but used exclusively by occupants of Residential Living Units, which are incorporated into the Building where the user's Residential Living Unit is located.
 - (k) Waste and recycling receptacles and dumpster enclosures.
 - (l) Fences and walls.
 - (m) Surface parking.
 - (n) Home-based business operations as may be permitted by law.
 - (o) Maintenance facilities.
 - (p) Leasing Offices.

G. Height Restrictions. The following limitations on Building Height shall apply to each Permitted Use.

Permitted Use	Maximum Permitted Building Height
Market-Rate Age-Restricted Stacked Flats	2 Stories/40 feet

Age-Restricted Townhouses	3 Stories/45 feet
Age-Restricted and Non-Age Restricted Affordable Apartment Buildings	3 Stories/45 feet

H. Tract Requirements

- 1) The Tract may be subdivided into multiple Lots, such that each permitted use or a combination of permitted uses may be located on a separate lot. Notwithstanding the foregoing, the Tract shall be subdivided such that no Affordable Apartments shall be located on the same Lot as the Market Rate Age-Restricted Stacked Flats or the Market Rate Age-Restricted Townhouses. To the extent necessary, access, drainage, and utilities to subdivided lots within the Tract may be provided for via cross-easements. Any subdivision of land creating not more than three (3) Lots shall be classified as a "Minor" subdivision, even in the event that a new road or utilities are to be extended to a Lot created by the subdivision.
- 2) Tract Design Requirements. The exterior building materials of the Affordable Buildings on the Tract shall be the same as those utilized on the Market-Rate Buildings on the Tract.
- 3) Impervious Coverage. Tract Impervious Coverage shall not exceed 33%.
- 4) Encroachments. Provided that notwithstanding the following, no encroachment shall be permitted within one hundred (100) feet of residential lots in North Caldwell immediately adjacent to, but not included in the Tract, the following encroachments shall be permitted within required setbacks:
 - (a) Balconies, porches, appurtenances such as HVAC units, stationary generators, and pedestrian structures such as stairs, pads, roof overhangs may extend into any required setback by no greater than six (6) feet.
 - (b) Decks, patios, and privacy partitions may extend into any required setback by no greater than ten (10) feet.
 - (c) Parking spaces, trash enclosures, and above and below ground storm water detention basins and/or facilities, shall be permitted within any setback required in the SIRO Senior Inclusionary Residential Overlay Zone, but shall be setback minimally five (5) feet from all Internal Tract Lot Lines or Internal Roadway boundaries and twenty-five (25) feet from public roads.
 - (d) Retaining walls, sidewalks, walkways, and lighting shall be permitted within any setback required in the SIRO Senior Inclusionary Residential Overlay Zone, but shall be setback minimally five (5) feet from all Internal Tract Lot Lines, Tract, or road boundaries.
 - (e) Public and private streets, driveways, underground utilities as needed, and landscaping shall be permitted within any setback.

I. Municipal Boundary Lines. For the avoidance of doubt, setbacks shall be required from all municipal boundary lines.

J. Requirements for Residential Living Uses.

- (1) Area, Yard and Bulk Requirements. The area, yard, and bulk requirements for the Residential Living Uses are as follows:

Minimum Residential Living Area	87 Acres
Maximum Residential Living Units	321
Minimum Building Setbacks from Green Brook Road.	100 Feet (Age-Restricted Townhouses) 200 Feet (Age-Restricted Stacked Flats) 100 Feet (Affordable Apartments)
Minimum Building Setbacks from Central Avenue.	100 Feet (Age-Restricted Townhouses) 200 Feet (Age-Restricted Stacked Flats) 100 Feet (Affordable Apartments)
Minimum Building Setbacks:	
From Internal Roadways	25 Feet
Building to Building	25 Feet
Internal Tract Lot Lines	25 Feet
Municipal Lot Line	25 Feet
Parking	2.0 spaces/Unit (Age-Restricted Townhouses and Stacked Flats) 1.5 spaces/Unit (Affordable Apartments)

- (2) Buffer requirement. Buffer requirement. Where residential living uses abut an existing single-family residential lot or public right-of-way in North Caldwell, but outside of the tract, there shall be a one hundred-foot setback, which shall include a twenty-five-foot buffer immediately adjacent to such single-family lot, intended to provide year-round screening which may be composed of a combination of the following: berming, fencing, existing landscaping, vegetation and/or proposed landscaping, subject to Planning Board approval. Notwithstanding the foregoing, retaining walls, sidewalks, shielded lighting on public and private streets, driveways, underground utilities, and landscaping shall be permitted in such buffer.

K. Market-Rate Age Restricted Stacked Flats and Townhouse Requirements.

- (1) Maximum Units. The total of all Market-Rate Age-Restricted Stacked Flats and Market-Rate Age-Restricted Townhouses may not exceed 271 Dwelling Units.
- (2) Market-rate age restricted units shall have deed restrictions for such use.
- (3) Townhouse units shall be "for sale" and including no more than three (3) bedrooms in any configuration.
- (4) Townhouse buildings shall include no more than 5 attached townhouse units.
- (5) All townhouse units shall have either a first floor master suite or second floor master suites of at least 500 square feet, including a bathroom, closet and accessory and appurtenant spaces thereto.

L. Affordable Apartments Requirements.

- (1) Affordable Non-Age-Restricted Units and Buildings Per Tract. Twenty-five (25) Affordable Non-Age Restricted Family Rental Apartments shall be provided.
- (2) Affordable Age-Restricted Units and Buildings Per Tract. The Total of Affordable Age-Restricted Apartments on the Tract shall be twenty-five (25) age-restricted rental Dwelling Units.
- (3) The Affordable Non-Age Restricted Units and Affordable Age-Restricted Units shall be located in two or more buildings, located on one or more Lots on the Tract. No other principal permitted use shall be located within a Building containing Affordable Apartments.
- (4) Age-Restricted Affordable Units shall have deed restrictions for such use.
- (5) Residents of the Affordable Age-Restricted Apartments shall have access to all site amenities available to Market-Rate Age-Restricted Units.
- (6) The Affordable Buildings and/or Lots on which Affordable Buildings are located shall have amenities available solely to the Affordable Non-Age-Restricted Units. Residents of the Affordable Non-Age-Restricted Units shall not have the right to access the site amenities available to Age-Restricted Units.
- (7) Washer and dryer facilities shall be provided in each individual affordable unit or in an area of the building intended to serve all residents of the building.
- (8) Trash.
 - (a) Trash produced by the Affordable Apartments may be stored inside the Affordable Apartment building(s) and/or in outdoor trash containment areas.
 - (b) All outdoor trash containment areas must be enclosed with a six (6) foot high enclosure to prevent windblown litter. The enclosure shall be opaque and constructed of materials consistent with the principal building(s) which it serves.
 - (c) Landscape plantings shall be located to blend the outdoor trash enclosures into the visual environment and obscure them from view.

M. Other Requirements.

- (1) Utilities. Applicant(s) for development in the SIRO Senior Inclusionary Residential Overlay Zone shall be responsible for creating, extending or improving on- and off-site infrastructure necessary to provide adequate potable water, wastewater, and stormwater service to the lot, including control of stormwater generated by the development of the Tract, which is the subject of an application for development.
- (2) Affordable Housing. In accordance with the FSHC Settlement Agreement, the Green Brook Settlement Agreement, the Borough's Affordable Housing Ordinance (Chapter 107, Article XVI of the Borough Code), the Borough's Housing Element and Fair Share Plan, and any applicable Order of the Court, including a Judgment of Compliance and Repose Order, the following requirements for Affordable Housing shall apply:
 - (a) Except as provided herein, all Affordable Apartments within the SIRO Senior Inclusionary Residential Overlay Zone shall comply with the Borough's Affordable Housing Ordinance at Article XVI, § 107-107 through § 107-128 of the Borough Code, applicable Council on Affordable

Housing ("COAH") regulations, Uniform Housing Affordability Controls, N.J.A.C. 5:80:26-1 et seq. ("UHAC"), the Borough's Housing Element and Fair Share Plan, and any applicable Order of the Court, including a Judgment of Compliance and Repose Order. In the event of any conflict between the zoning for the SIRO Senior Inclusionary Residential Overlay Zone, and UHAC, the zoning for the SIRO Senior Inclusionary Residential Overlay Zone shall control, as long as it still complies with the Borough's Affordable Housing Ordinance (Chapter 107, Article XVI of the Borough Code).

- (b) Deed Restrictions. 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") in accordance with Section 107-116 of the Borough Code. All Age-Restricted Units shall be deed restricted to maintain their age-restricted status indefinitely.
- (c) Income Distribution. Thirteen percent (13%) of the total number of Affordable Apartments must be for Very Low-Income Households, thirty-seven (37%) shall be for Low-Income Households, and fifty percent (50%) of shall be for Moderate Income Households. This distribution shall be met both cumulatively across all Affordable Apartments (age-restricted and non-age-restricted), and separately for each of the Affordable Age-Restricted Apartments and Affordable Non-Age-Restricted Apartments.
- (d) Number of Affordable Units. The developer shall provide a minimum of fifty (50) affordable units to be incorporated in the development of the tract in accordance with the FSHC Settlement Agreement and the Green Brook Settlement Agreement. Twenty-five (25) of the affordable units shall be family rental units in one building and twenty-five (25) units shall be age-restricted senior rental units restricted to seniors (55 and over) located in a second building.
- (e) Bedroom Distribution.
 - [1] Affordable Age-Restricted Apartments. Affordable Age-Restricted Apartments may be efficiency, one- or two-bedroom units, or any combination thereof, provided that the number of bedrooms shall equal the number of Affordable Age-Restricted Apartments. This standard may be met by one-bedroom units or by including a two-bedroom unit for each efficiency unit provided.
 - [2] Affordable Non-Age-Restricted Apartments. At least five (5) Affordable Non-Age-Restricted Apartments shall be three bedroom units. No more than four (4) of the Affordable Non-Age-Restricted Apartments shall be one-bedroom units. The remainder of the Affordable Non-Age-Restricted Affordable Apartments may be two or three bedroom units, or any combination thereof.
- (f) Phasing Requirements. Construction of Affordable Apartments shall comply with N.J.A.C. 5:93-5.6(d) with the certificates of occupancy for market-rate dwelling units being phased with the certificates of occupancy for

the affordable apartments in accordance with that regulation.

- (g) Administrative Agent. Administration of Affordable Apartments shall be by a qualified and experienced third party administrative agent, which may be the administrative agent for the Borough of North Caldwell.
- (h) Location Requirements. Within the SIRO Senior Inclusionary Residential Overlay Zone, Affordable units shall be located in two or more buildings. Such a building need not contain any market-rate units.
- (i) Other Affordable Housing Unit Requirements. Developers shall also comply with all of the other requirements of the Borough's Affordable Housing Ordinance, including, but not limited to, (1) affirmative marketing requirements, (2) candidate qualification and screening requirements, and (3) adaptability requirements.

(3) Circulation.

- (a) Roadways shall comply with Residential Site Improvement Standards.
- (b) Sidewalks. Notwithstanding the Residential Site Improvement Standards, sidewalks shall be required on one side of Internal Roadways.
- (c) All roadways for the Tract shall be located only within the Tract.
- (d) The Fairfield Tract road network shall not connect directly to the interior road network of the North Caldwell Tract. The Fairfield Tract road network may connect to Old Mill Road.
- (e) Primary tract access shall be provided on both West Greenbrook Road and Central Avenue.
- (f) Upon site plan approval, the developer's agreement shall include the application of N.J.S.A. 39 to permit Borough to enforce motor vehicle and traffic regulations within the Tract.

- (4) 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 as permitted by law so as to refrain from imposing cost-generative requirements upon the application and/or development as such requirements are not allowed as per the Fair Housing Act (N.J.S.A. 52:27D-314) and COAH Prior Round Regulations (N.J.A.C. 5.93-10.1 to 10.5).

(5) Retaining Walls and Fencing.

- (a) Orientation toward Central Avenue or West Greenbrook Road. Any retaining wall, retaining wall tier, or fence oriented toward Central Avenue or West Greenbrook Road, and within 75 feet of Central Avenue or West Greenbrook Road shall be no more than eight feet in height, provided that there shall be a minimum distance between any retaining wall tiers of no less than 10 feet and all such walls or fences shall be screened with evergreen trees of a minimum height of six feet.

- (b) Internal orientation. Any retaining wall, retaining wall tier, or fence oriented away from Central Avenue or West Greenbrook Road and away from any existing single-family residential lot, and more than 75 feet from Central Avenue or West Greenbrook Road shall be no more than 10 feet in height, provided that there shall be a minimum distance between any tiered walls of no less than eight feet.
- (6) Landscaping. Landscaping shall be provided to promote a desirable visual environment, accentuate building design, define entranceways, provide screening for parking areas, garbage enclosures, buffer zones, and various equipment.
- (a) A comprehensive landscape plan shall be prepared by a licensed landscape architect subject to Planning Board review and approval. Existing mature trees shall be preserved where practical. Within the buffers established by 107-26.1I(2) and J(2), existing vegetation adjacent existing single-family residential uses and public roadways in North Caldwell, but outside of the Tract, shall be preserved where practical.
 - (b) The landscape plan shall provide for a variety of trees, shrubs, annual and/or perennial beds, groundcover, grasses and/or other plant material as determined by the Planning Board to be appropriate.
 - (c) Foundation plantings shall be installed along building walls, and where appropriate, porches and decks.
 - (d) Surface parking and loading areas shall be appropriately screened with landscape plantings.
 - (e) New parking areas containing 25 spaces or more shall have landscaped islands at least 6 feet in width to break up the expanse of pavement.
 - (f) Shade trees should be installed with a minimum caliper of 2.5 to 3 inches.
 - (g) Areas not improved with buildings, structures and other man-made improvements shall be landscaped, grassed, and/or provide functional recreation/open space.
- (7) Shade Trees. Shade trees shall be planted at a distance of not more than fifty (50) feet from each other along all Internal Roadways.
- (8) Lighting.
- (a) On-site lighting shall protect and enhance the character and quality of the surrounding neighborhood.
 - (b) LED (light-emitting diode) light of the soft white category shall be incorporated into site, service and parking lot lighting, not to exceed 3,500k.
 - (c) All exterior lights shall be designed so as to reduce glare, lower energy usage and direct lights only to where they are needed and away from existing residential homes.
- (9) Signage. Within the SIRO Senior Inclusionary Residential Overlay Zone, the following shall apply:

- (a) Ground signs. One site identification (1) ground sign shall be permitted at each entrance to the tract from a public roadway outside of the tract and one (1) ground sign shall be permitted for each distinct permitted use at their respective entrances within the tract.
 - [1] The face of each such ground sign shall not exceed 45 square feet in area, exclusive of any monument or structure to which the sign is affixed. The maximum height of a ground sign from the ground, including base support, shall be six feet. The sign may be internally or externally illuminated, provided the sign shall not incorporate digital messaging, scrolling, animation, or flashing elements. The sign materials and design should complement the architecture of the associated principal Buildings.
 - [2] Each such ground sign shall be set back a minimum distance of 10 feet from any Internal Roadway or public street so as to preserve sight triangles.
 - (b) Wall signs. Wall signs for purposes of address and unit number identification shall be permitted. No other wall signs shall be permitted.
 - (c) Directional signs not to exceed four (4) square feet shall be permitted where it is determined that such signage promotes the safe circulation of vehicles onsite.
 - (d) Temporary banners, pennants, and bunting. Banners, streamers, pennants and/or bunting used for sales or marketing purposes shall be permitted, provided they do not exceed four feet in height and do not impair traffic or create potential driver distraction. Such temporary signs shall only be permitted at each entrance to the Tract from a public roadway outside of the Tract, and may otherwise be permitted within the Tract at minimum setbacks of 50 feet from adjacent public roadways and properties outside the Tract and 25 feet from other temporary signs. Temporary signs shall be permitted for an initial period of one year at the commencement of unit leasing/sales, after which requests for extensions may be submitted to the borough for review and approval.
 - (e) The area of sign shall be computed as the total square footage encompassing the lettering, illustration, logo or display, including any background, wall support, frame, base or other supporting element. If there is no circumscribed background, the sign area shall be computed as the product of the extreme limits of the lettering, illustration or display. This shall not be construed to include the base or supporting members of any sign which are used solely for such purpose. For signs with two display faces, the maximum area requirement shall be permitted on each side. Signs with more than two display faces are prohibited.
- (10) Inapplicable Provisions. The following sections of the North Caldwell Zoning and Land Use Ordinance shall not apply to developments in the SIRO Senior Inclusionary Residential Overlay Zone.
- (a) Section 107-13 (regarding location of buildings) shall not apply in the SIRO Senior

Inclusionary Residential Overlay Zone because it is not intended for the multifamily residential development contemplated in the SIRO Senior Inclusionary Residential Overlay Zone.

- (b) In lieu of Section 107-14 regarding tree removal, Sections 107-26.1.D(1), discussing the application requirement to include a delineation of certain New Jersey Department of Environmental Protection regulated features and certain wooded areas, and O(6), discussing landscaping and tree preservation, of this Ordinance applies. Additionally, wooded areas of the Tract that are designated as wetland buffers or riparian buffers are otherwise required to be preserved pursuant to the New Jersey Department of Environmental Protection statutes and regulations.
- (c) In lieu of Section 107-15 regarding topsoil removal, Section 107-26.1.D(8) of this Ordinance discussing applications for soil movement and drainage and erosion control permits applies.
- (d) In lieu of § 107-16 regarding retention of natural features, § 107-26.10(5)(b) and the New Jersey Department of Environmental Protection rules and regulations shall govern the retention and preservation of natural features, including brooks, rocks, drainage channels, and views.
- (e) All roads to be constructed within the Tract shall remain private, meaning that they will not be dedicated to the municipality at any point in time. As such, the requirement in § 107-17 is not applicable to development in the SIRO Senior Inclusionary Residential Overlay Zone.
- (f) In lieu of § 107-20 regarding residential parking requirements, § 107-26.1I(3) and J(1) of this section, which provide the required number of parking spaces, and Residential Site Improvements Standards shall apply. Section 107-20 shall apply to nonresidential uses of, and commercial parking on, the tract. Notwithstanding the foregoing, nonresidential uses on the tract shall not be required to increase the number of parking spaces as exist at the time of the adoption of this section, unless application is made and approved to i) increase the square footage of the clubhouse, including any banquet facility and restaurant, beyond the square footage existing as of December 11, 2018, or ii) to grant a use variance pursuant to N.J.S.A. 40:55D-70d.
- (g) Given the topography of the tract and the IRO Inclusionary Residential Zoning requirement for the inclusion of affordable housing and provided a detailed soil erosion and sediment control plan is submitted with an application for development pursuant to § 107-26.1D(8) of this section, the New Jersey Department of Environmental Protection statutes and regulations regarding flood hazard areas shall apply in lieu of § 107-30. The aforementioned soil erosion and sediment control plan shall incorporate temporary sediment basins and other temporary drainage structures, which shall be constructed in accordance with a construction sequencing plan approved by the Borough. Such structures shall remain in place until permanent drainage structures are completed.

Said plans shall comply with the statutes, rules, regulations, and requirements of the New Jersey Environmental Protection and the Hudson-Essex-Passaic Soil Conservation District.

- (h) In lieu of § 107-31 regarding signage, § 107-26.10(9) of this section discussing the signage requirements within the SIRO Senior Inclusionary Residential Overlay Zone applies. In lieu of § 107-32 regarding fences and retaining walls, § 107-26.10(5) of this section discussing the retaining wall and fencing requirements in the IRO Inclusionary Residential Overlay Zone applies.
- (i) In lieu of § 107-46, regarding street design, and in lieu of § 107-48 regarding lot design, § 107-26.1H, regarding subdivision of the tracts, I, regarding the bulk requirements for an assisted living facility, J, regarding the bulk requirements for residential living uses, K, regarding the bulk requirements for market-rate age-restricted stacked flats and townhouses and L, regarding the bulk requirements for market-rate non-age-restricted townhouses, apply.
- (j) For the avoidance of doubt, a pergola with a closable roof shall not constitute a "Building" in the SIRO Zone.

Section 4. The Planning Board hearing an application for development within the SIRO Senior Inclusionary Residential Overlay Zone shall be authorized to grant such variances, waivers, and exceptions as they deem appropriate pursuant to law.

Section 5. If any section or provision of this Ordinance shall be held invalid in any Court of competent jurisdiction, the same shall not affect the other sections or provisions of this Ordinance, except so far as the section or provision so declared invalid shall be inseparable from the remainder or any portion thereof.

Section 6. In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Borough of North Caldwell, the provisions hereof shall be determined to govern. All other parts, portions and provisions of the Revised General Ordinances of the Borough of North Caldwell are hereby ratified and confirmed, except where inconsistent with the terms hereof. If there are any inconsistencies between this Ordinance and the Settlement Agreement, the Settlement Agreement will control.

Section 7. 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 other persons entitled thereto pursuant to N.J.S.A. 40:55D-15, and N.J.S.A. 40:55D-63 (if required).

Section 8. After introduction, the Borough Clerk is hereby directed to submit a copy of the within Ordinance to the Planning Board of the Borough of North Caldwell 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 9. Upon adoption by the Borough Council, this Ordinance shall be presented to the Mayor for his approval and signature, which approval shall be granted or denied within ten (10) 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 his

approval or objection to same within ten (10) days after it has been presented to him, then this Ordinance shall be deemed approved.

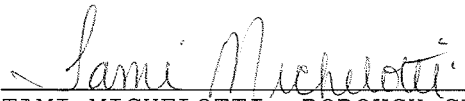
Section 10. This Ordinance shall take effect immediately upon (1) adoption; (2) approval by the Mayor pursuant to N.J.S.A. 40:69A-149.7; (3) publication in accordance with the laws of the State of New Jersey; and (4) filing of the final form of adopted ordinance by the Clerk with (a) the Essex County Planning Board pursuant to N.J.S.A. 40:55D-16, and (b) the Borough Tax Assessor as required by N.J.S.A. 40:49-2.1.

INTRODUCED: November 13, 2023
APPROVED: December 19, 2023
ADOPTED: December 19, 2023

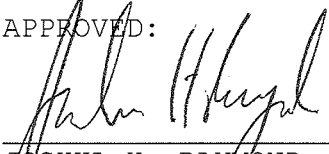
Moved By: Councilman Weinstein
Seconded By: Councilman Atlas

COUNCIL MEMBER	YES	NO	ABSTAIN	ABSENT	COUNCIL MEMBER	YES	NO	ABSTAIN	ABSENT
ATLAS	X				REES		X		
FLORIA-CALLORI	X				TILTON		X		
KESSLER	X				WEINSTEIN	X			

ATTEST:


TAMI MICHELOTTI, BOROUGH CLERK

APPROVED:


JOSHUA H. RAYMOND, MAYOR