



**BOROUGH OF FLORHAM PARK
ORDINANCE # 15-21**

**AN ORDINANCE OF THE MAYOR AND BOROUGH COUNCIL OF THE
BOROUGH OF FLORHAM PARK IN THE COUNTY OF MORRIS, STATE
OF NEW JERSEY TO VACATE A PORTION OF BURNSIDE AVENUE AND
TO ACCEPT A PORTION OF BURNSIDE AVENUE**

WHEREAS, a substantial length of Burnside Avenue is a “paper street” in the Borough of Florham Park, being identified on a filed map, but never having been paved or otherwise maintained by the Borough of Florham Park; and

WHEREAS, another portion of Burnside Avenue is not a paper street, as it has been paved and maintained, but may not have actually been accepted by the Borough of Florham Park, subsequent to dedication by filed map; and

WHEREAS, the filed map in question is entitled “Churchill Gardens situated at Florham Park, Morris Co., N.J.” and recorded in the Office of the Morris County Clerk on December 14, 1925 as Map No. 1112; and

WHEREAS, the Borough desires to vacate the portion of Burnside Avenue that has never been used as a public street and will not be used as such in the future, as well as to accept the portion of Burnside Avenue that has been used as a public street for a considerable period of time; and

WHEREAS, for purposes of convenience and clarity, the portion to be vacated shall be referred to herein as Section A, and the portion to be accepted shall be referred to herein as Section B; and

WHEREAS, the Borough of Florham has never formally accepted Burnside Avenue Section A or B by way of a resolution or ordinance and has not undertaken paving or maintenance, which would constitute acceptance by conduct; and

WHEREAS, N.J.S.A. 40:67-19 provides that a street that has been dedicated but not accepted may be vacated by a municipality upon a finding that “ the public interest will be better served by releasing those lands or any part thereof from such dedication” ; and

WHEREAS, there is no present or future intention to develop Burnside Avenue Section A, particularly as there are only three (3) private property owners whose property adjoins Burnside Avenue Section A, and those three (3) private property owners have access to the public street system via Leslie Avenue or Felch Road and do not require access to Burnside Avenue Section A, and at least one (1) owner has requested that the street be vacated; and

WHEREAS, the Borough does find that Burnside Avenue Section A is not necessary for development in any respect and the public interest will be better served by vacating that portion of Burnside Avenue; and

WHEREAS, the property owners along Burnside Avenue Section B rely upon that portion of the street for vehicular access to and from their properties and acceptance of Burnside Avenue Section B will not alter any street use but will simply recognize that portion of Burnside Avenue as a public street as indicated on the Borough Tax Map.

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Florham Park, County of Morris, State of New Jersey, as follows:

SECTION 1 - The following portion of Burnside Avenue, referred herein as Section A in the Borough of Florham Park is hereby deemed to be vacated and any and all public rights which the Borough may have had are hereby abandoned, vacated and extinguished.

It is the intention of this Ordinance to vacate only that portion of Burnside Avenue that runs nearly parallel to Brooklake Road as depicted on the current Borough of Florham Park Tax Map from Leslie Avenue eastward to the southeast corner of Block 2009, Lot 1.

SECTION 2 - The following portion of Burnside Avenue referred to herein as Section B in the Borough of Florham Park is hereby deemed to be accepted with all public rights to which the Borough may be entitled.

It is the intention of this Ordinance to accept that portion of Burnside Avenue which provides street access to those particular lots on the improved Burnside Avenue as depicted on the current Borough of Florham Park Tax Map, which fronts on and is adjacent to Block 2010, Lots 6, 7, and 8.

SECTION 3 - By operation of law, the portion of Burnside Avenue being vacated is deemed to revert to the property owners on either side of Burnside Avenue to the centerline of the paper street. As the right-of-way width was fifty feet (50'), the area of twenty-five feet (25') up to the centerline of the street now reverts to each respective owner.

SECTION 4 - After passage and final adoption of this Ordinance, the Borough Clerk shall send a copy of this Ordinance to the Commissioner of the New Jersey Department of Transportation for approval, pursuant to N.J.S.A. 39:4-8, and the February 21, 1979, Opinion of the New Jersey Attorney General, John J. Degnan, AAA No. M78-3698, "Municipal Street Vacations."

SECTION 5 - The Borough Clerk shall, within sixty (60) days of the effective date of this Ordinance, file a copy of this Ordinance certified to be a true copy thereof, together with proof of publication in the office of the Clerk of the County of Morris in the Book of Vacations, in accordance with the provisions of N.J.S.A. 40:67-21.

SECTION 6 - The Tax Assessor shall make appropriate notifications in the official records of the property owners affected by this Ordinance and the Borough of Florham Park Tax Map shall be revised to reflect this Ordinance.

SECTION 7 - Expressly reserved and excepted from the portion of this Ordinance related to the vacation of Burnside Avenue are all rights and privileges heretofore possessed by public utilities as defined in N.J.S.A. 48:2-13, and any cable television company as defined in the "Cable Television Act," N.J.S.A. 48:5A-1, *et seq.*, to maintain or repair their existing facilities adjacent to, over and under the street to be vacated. A perpetual easement, if the same is required, is reserved for the benefit of public utility companies for the purpose of ingress and egress over and upon the same in order to maintain, repair or replace existing utility facilities, if any, including water lines, gas lines and telephone, electric and cable television wires and poles which may be located beneath or above the surface of the foregoing premises.

SECTION 8 - At least seven (7) days prior to the time fixed for the consideration of this Ordinance for final passage, a copy of this Ordinance, together with a notice of its introduction and the time and place when and where the Ordinance will be further considered for final passage, shall be given by the Borough Clerk to the owners of all real property, as shown on the current tax map duplicates, whose property adjoins Burnside Avenue. At least ten (10) days prior to the time fixed for the consideration of this Ordinance for final passage, a copy of this Ordinance,

together with a notice of its introduction and the time and place when and where the Ordinance will be further considered for final passage, shall be published at least once in a newspaper published and circulated in the Borough. This is the notice required by N.J.S.A. 40:67-19 and N.J.S.A. 40:49-6.

SECTION 9 – All ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistencies.

SECTION 10 - If any article, section, subsection, paragraph, phrase or sentence of this ordinance is for any reason declared to be invalid, such declaration shall not affect the remainder of the ordinance.

SECTION 11 - This ordinance shall take effect upon final publication as provided for by law.

I HEREBY CERTIFY this to be a true and correct Ordinance of the Mayor and Borough Council of the Borough of Florham Park introduced on September 24, 2015 and will be further considered for adoption after Public Hearing held on October 22, 2015 at 7:00 p.m. in the Municipal Building located at 111 Ridgedale Avenue.

INTRODUCED: September 24, 2015

ADOPTED: October 22, 2015

Mark Taylor, Mayor

ATTEST:

Sheila Williams, R.M.C. Borough Clerk

Certified to be a true and correct copy of an Ordinance adopted by the Governing Body on October 22, 2015

Sheila A. Williams, R.M.C.

