

**MINUTES
PLANNING BOARD
TOWNSHIP OF CHATHAM
MAY 18, 2020**

Mr. Travisano called the Regular Meeting of the Planning Board to order at 7:35 P.M.

Adequate notice of the meetings of the Planning Board of the Township of Chatham was given as required by the Open Public Meetings Act as follows: Notice in the form of a Resolution setting forth the schedule of meetings for the year 2020, and January, 2021 was published in the *Chatham Courier* and the *Morris County Daily Record*, a copy was filed with the Municipal Clerk and a copy was placed on the bulletin board in the main hallway of the Municipal Building.

Mr. Warner noted that members of the public who have questions and comments and who are unable to use Zoom can contact Ms. Wolfe via phone and email. Ms. Wolfe was on standby to assist anyone unable to access the Zoom meeting.

Answering present to the roll call were Mr. Travisano, Mr. Franko, Mrs. Ozdemir, Mrs. Ewald, Ms. Hagner, Mr. Hoffmann, Mr. Kelly and Mr. Nelson. Mr. Coviello joined the meeting late.

Mr. Sheth and Mr. Tarasca were absent.

Also present were Township Planner Frank Banisch, Board Attorney Steve Warner and Engineer John Ruschke.

Approval of Minutes

Mrs. Ozdemir offered an amendment to the minutes of the February 24, 2020 meeting.

Mr. Nelson moved to approve the minutes as amended. Mr. Hoffmann seconded the motion.

Resolutions

DENIAL: PB 20-001 Rolling Hill Co., Tree Top Lane, Block 35 Lot 8

Ms. Hagner noted, and Mr. Warner confirmed, that only those members who voted to deny the application should be voting on the memorialization resolution.

Mr. Kelly moved to adopt the resolution. Mr. Franko seconded the motion.

Roll Call: Mr. Travisano, Abstain; Mr. Franko, Abstain; Mrs. Ozdemir, Aye; Mrs. Ewald, Aye; Ms. Hagner, Abstain; Mr. Hoffmann, Aye; Mr. Kelly, Aye; Mr. Nelson, Abstain; Mr. Sheth, Absent; Mr. Coviello, Absent; Mr. Tarasca, Absent.

Mr. Travisano noted amendments to the order in which items on the Agenda will be addressed moving forward.

Master Plan Consistency Review – Ordinance 2020-04

Mr. Travisano read the title of Ordinance 2020-04. Mr. Warner said that a Master Plan Consistency Review is governed by the Municipal Land Use Law, stating that when the Governing Body introduces a land use ordinance the Planning Board is given time to review the ordinance to ascertain its consistency with the Master Plan. Mr. Warner also said that although this is not a public hearing, he anticipates that the Chairman will give the public an opportunity to give comments.

Mr. Banisch was sworn in to give testimony.

Mr. Banisch explained that the 24 Affordable Units already approved by the Planning Board will be located on 1.04 acres, and the remaining 2.76 acres of the site will remain available for public use. Mr. Banisch also said that the Redevelopment Plan is consistent with the zoning for the property, and it is his opinion that the ordinance is not inconsistent with the Master Plan.

Mr. Warner added that this review is under the Local Redevelopment and Housing Law rather than the Municipal Land Use Law. He also stated that the Township Committee is asking the Planning Board to consider in this review if the ordinance and the Redevelopment Plan conform with the site plan approval granted in 2019.

Mr. Peter Flannery, the attorney representing the developer, was present to answer any questions.

Ms. Hagner asked if the Planning Board would need to update the Preliminary Investigation Report as part of this review. Mr. Warner stated that once the area was designated as an area in need of redevelopment, that designation will remain regardless of the site plans that are considered.

Mr. Travisano clarified the process for public participation in this meeting.

Mr. Travisano opened the floor for public participation.

1. Tom Tether, 115 Huron Drive, opined that it is premature to subdivide the property when it is uncertain what may happen at the Dixiedale or River Road sites. Mr. Warner said that by the Township retaining a portion of the site, the Township's options may be enhanced more than if the whole area is conveyed to the Developer. Mr. Tether asked if the Township believes that additional Affordable Housing units are possible if the Township retains control of the additional portion of the parcel. Mr. Banisch said that the developer has expressed that they do not intend to build more units at the site than what has previously been approved, which was confirmed by Mr. Flannery.

Seeing no further public comment, Mr. Travisano closed the public comment section on this matter.

Mr. Warner asked Mr. Banisch if it is his professional opinion that Ordinance 2020-04 is not inconsistent with the Master Plan. Mr. Banisch confirmed that it is his opinion that the ordinance is not inconsistent with the Master Plan.

Ms. Hagner asked if the site being zoned for Affordable Housing is why the ordinance is not inconsistent with the Master Plan. Mr. Banisch said that Ordinance 2020-04 creates the possibility of additional Affordable Housing units on land that has been zoned for that purpose.

Mr. Travisano moved to recommend to the Township Committee that Ordinance 2020-04 is not inconsistent with the Master Plan. Mr. Hoffmann seconded the motion.

Roll Call: Mr. Travisano, Aye; Mr. Franko, Aye; Mrs. Ozdemir, Aye; Mrs. Ewald, Aye; Ms. Hagner, Aye; Mr. Hoffmann, Aye; Mr. Kelly, Aye; Mr. Nelson, Aye; Mr. Sheth, Absent; Mr. Coviello, Absent; Mr. Tarasca, Absent.

Request to Rezone 344 Hillside Avenue, Block 67, Lots 17 & 17.01

Mr. Travisano asked if the Board will be asking the Township Planner to conduct a study about rezoning, or if the Board will be making a decision at this meeting based on Mr. Banisch's testimony. Mr. Warner said that this is the second request for this site from the same requester, and he anticipates that the Board will take action at this meeting to make a recommendation to the Township Committee. He also said that Mr. Banisch has prepared a report making recommendations to the Planning Board. Mr. Warner further noted that although this is not a public hearing, the Board may allow for public comment and questions.

Mr. Banisch was sworn in to give testimony.

Mr. Banisch provided background on the prior request, noting that the Board rejected the 2019 rezoning request because it was felt that there should be a less intense development of the site. He further said that the former request sought four lots, while the new request seeks five lots that would conform to the R-3 zoning standards, one of which would be designated as a Group Home. Mr. Banisch also commented on the protection of the vegetative area on the steep slopes, and that Hillside Avenue would be the only point of access. He also noted the proximity of the municipal boundary with Chatham Borough. Mr. Banisch further noted that this site would be looked upon favorably by the Court-appointed Special Master as a site for a Group Home. Mr. Banisch also commented on the Affordable Housing set aside for Dixiedale, and noted that the 24 units to be built by the developer at the Skate Park exceeds the 11 units that would be required.

Mr. Warner asked if every bedroom in a Group Home counts as an Affordable Unit, and if there are bonus credits available. Mr. Banisch said that they would, and he also commented on bonus credit for rental unit bedrooms.

Mr. Travisano asked if there is a change in the overall development area, noting that this request is for 5 lots and the rejected request was for 4 lots. Mr. Banisch said that the current request calls for a more regularized development of the area. Mr. Warner asked if the proposed lot widths are

narrower than the previous request. Mr. Banisch said that they are narrower, but they do meet the minimum requirements of the proposed zoning designation.

Ms. Hagner said that the proposal is for a more intense use, and asked why five lots would be an appropriate use. Mr. Banisch confirmed that the use is more intense, and the Board has to weigh if the proposed Group Home offsets the greater intensity of the proposed use. Ms. Hagner said she thinks the request is too intense for the site to be consistent with the Master Plan. Mr. Banisch reiterated that the Board needs to discuss the request to reach a consensus.

Mr. Flannery provided background on the request, and stated that the site is an ideal location for a Group Home. He also said that his client would not develop the Group Home, but would prepare the site for an Affordable Housing developer. Mr. Flannery also said that the new request calls for a conservation easement on the rear of the site.

Ms. Hagner noted that the Township Committee is investigating other sites for Group Homes, and asked if the site on Hillside Avenue is an appropriate site. Mr. Flannery said that while the request may appear to be for a more intense use, he said that it is low-density for an Affordable Housing site.

Mrs. Ewald asked about the frontage of the proposed development compared with the frontage of the Dixiedale site. Mr. Ruschke said that the Dixiedale site is right across the street. Mrs. Ewald noted that the Dixiedale site is 53 townhomes, which is a more intense use. Ms. Hagner pointed out that Dixiedale is a much larger site.

Mr. Ruschke was sworn in to give testimony. Mr. Ruschke provided an aerial map of the site to show where the proposed development would be. He also said that the proposed development mirrors the contiguous zoning in Chatham Borough.

Mr. Travisano opened the floor for the public to ask questions.

1. Don DeGolyer, 293 Fairmount Avenue, said that in August 2019 the developer told him they were planning to build 3-4 homes, and the Planning Board rejected a plan for 4 lots. Mr. DeGolyer said that adding a 5th lot appears contrary to the Planning Board's prior denial of 4 lots. Mr. DeGolyer further asked about the potential impact on specimen trees, if the proposal conforms to the Township's steep slope regulations, and the potential impact on water runoff. Mr. DeGolyer asked if there could be a deed restriction for the following items: to disallow removal of specimen trees; to have a 20-foot setback so that specimen trees would not need to be removed and no building would need to occur in steep slopes; and that none of the developer's land on Fairmount Avenue be built upon.

Mr. Ruschke noted that Mr. Flannery said a conservation easement would be added, which would protect the area closest to Fairmount Avenue. He also said that the developer would need to fully comply with the Township's stormwater management ordinances. Mr. Ruschke also said that there would be some encroachment on steep

slopes, and the Board would review the proposed encroachment once the application is submitted.

2. Tom Tether, 115 Huron Drive, asked what the Township will get from the 5th lot, and said that it sounds that the Township will receive a vacant lot with no guarantee that Affordable Housing will be built. Engineer Ruschke said that the developer will be providing a buildable lot. Mr. Travisano asked if the intensity of the development should outweigh what the Township might get in return for approving the rezoning. Mr. Tether said that the Township will not be getting Affordable Housing in return for the rezoning, but rather a vacant lot. He stated that the Township would need to find a developer to build Affordable Housing at the site, or finance construction with Township funds. Mr. Banisch described the work that Luciano Bruni is doing with the Township regarding construction of Group Homes, and noted that there are grant opportunities being sought. Mr. Warner said that there is an inquiry how much the Township will need to pay for the development of the Group Home, and if the financing would not include Township funds. Mr. Tether asked if allowing the development of four homes is worth what the Township will get in return. Mr. Hoffmann said that as of March there is 100% financing for 4-bedroom Group Homes through two State programs. He said that the developer would make the lot ready for a non-profit organization to construct a Group Home. Mr. Warner asked if the grant funding is guaranteed to be available. Mr. Ruschke said that the Township would save a lot of money by not having to seek out and purchase a different lot. Mr. Travisano asked what nominal fee the Township would pay for the conveyance of the property. Mr. Flannery said that the nominal fee would be \$1. He also said that his client has been in touch with Mr. Bruni, and the lot will be designed in accordance with Mr. Bruni's specifications.
3. Patrick Murray, 107 Huron Drive, asked if the developer would receive any tax benefit to the developer if the rezoning is granted. Mr. Flannery said that it is his understanding that there would not be any tax benefit or tax credit. Mr. Murray said that the Township Committee is considering bond ordinances to purchase property for Group Homes. He also said that the Planning Board rejected four lots at the subject site, and asked if the Planning Board would approve five lots if a Group Home were not part of the equation.

Seeing no further public comment, Mr. Travisano closed the public comment session.

Mr. Coviello asked if there is a size limitation on the houses that could be built. Mr. Ruschke said that the bulk standards would be similar to the R-3 Zone, and would also be similar to the neighboring zone in the Borough.

Mr. Kelly asked what obligation the Planning Board has in considering the request. He also asked if the Planning Board has the latitude to compare the current request with the rejected request from 2019, and cited several factual differences in the request. Mr. Kelly asked if there are factual elements of the request that violate the Master Plan and would require the request be rejected. Mr. Warner said that the Township Committee has requested that the Planning Board consider and weigh the relevant and material factors from a planning and zoning perspective, and he deferred to Mr. Banisch to comment on what factors are relevant and material. Mr. Banisch

said that the Planning Board does not have a burden to compare one request to another, and each evaluation should be based on the specific request.

Mr. Warner commented that the intensity of development is a material factor, and the Planning Board can consider the Affordable Housing element.

Mr. Kelly said that the Township's Amended Settlement Agreement with the Fair Share Housing Center states that up to 15 units of the Township's remaining Affordable Housing Obligation can be met with Group Home beds.

Mr. Travisano said that the Township Committee has requested that the Planning Board consider the request regardless of the denial of last year's request, and said that the Group Home is a supplemental mitigating factor. Mr. Kelly stressed that there is a social, financial and legal benefit to the Township for the proposed Group Home lot to be made available. He also said that the reduced setback allows for a reduction in the environmental impact.

Mr. Travisano asked if there is an option to locate the Affordable Housing component in another area of the Township or to utilize a different mechanism. Mr. Kelly said that the Township has identified two sites that are being pursued for purchase for use as Group Homes, and a third site for purchase has not been found. He said that properties may become available in the future. Mr. Hoffmann said that there is a Township-owned site that would require variances and would be costly to develop as a Group Home.

Ms. Hagner expressed her concern about the proposed more intensive use of the site, and said she is not sure that the legal benefit to the Township outweighs the environmental impact.

Mr. Travisano asked Mr. Flannery if his client would consider a proposal with three market-rate lots and one lot for a Group Home.

The Board took a recess at 9:13 PM.

The meeting resumed at 9:18 PM.

Mr. Flannery said that his client requests that the Board act on the request as is.

Mr. Warner asked if Mr. Flannery agrees that any decision by the Board is a recommendation to the Township Committee regarding the request to rezone the property, and it would be for the Township Committee to decide if they wish to introduce a rezoning ordinance. Mr. Warner also asked if Mr. Flannery agrees that any such ordinance would be subject to a Master Plan Consistency Review. Mr. Flannery expressed his agreement with the points made by Mr. Warner.

Mr. Nelson recalled that the earlier request did not conform to any existing zoning classification, and the current request is compatible with the R-3 zone. Mr. Banisch said that the proposed front yard setback is the only proposed deviation from the R-3 zone. Mr. Flannery said that the site is currently zoned R-1A, and he does not believe that two homes could be built there with the current zoning.

Mr. Coviello expressed a preference for an option where the site would have three single-family homes with one Group Home rather than the current request.

Ms. Hagner moved to deem the request inconsistent with the Master Plan and recommend that the site not be rezoned. The motion was not seconded.

Mr. Franko moved to recommend that the request to rezone the site be granted. Mr. Hoffmann seconded the motion.

Roll Call: Mr. Travisano, Nay; Mr. Franko, Aye; Mrs. Ozdemir, Nay; Mrs. Ewald, Aye; Ms. Hagner, Nay; Mr. Hoffmann, Aye; Mr. Kelly, Aye; Mr. Nelson, Aye; Mr. Sheth, Absent; Mr. Coviello, Nay; Mr. Tarasca, Absent.

Executive Session

Mr. Travisano announced that an Executive Session is necessary prior to the final agenda item. Mr. Warner explained that the Executive Session is needed because confidential legal advice needs to be rendered. He read into the record the resolution for entering Executive Session.

RESOLUTION

Open Public Meetings Act - Executive Session

WHEREAS: N.J.S.A. 10:4-12, the Open Public Meetings Act, permits the exclusion of the public from a meeting in certain circumstances; and

WHEREAS, it is necessary for the Planning Board of the Township of Chatham to discuss in a session not open to the public certain matters relating to the item or items authorized by N.J.S.A. 10:4-12b and designated below.

NOW, THEREFORE BE IT RESOLVED by the Planning Board of the Township of Chatham, County of Morris, State of New Jersey, as follows:

1. The public shall be excluded from the discussion of the hereinafter specified subject matters.

2. The general nature of the subject matters to be discussed is as follows: *Matters Relating to Litigation, Negotiations and the Attorney-Client Privilege*. Specifically, whether a Board Member has a conflict of interest as to the potential River Road Redevelopment project and matters relating thereto.

3. It is anticipated that the deliberations conducted in closed session may be disclosed to the public upon the determination of the Planning Board that the public interest will no longer be served by such confidentiality.

4. This Resolution shall take effect immediately.

Mr. Travisano moved to adopt the above resolution to enter Executive Session at 9:37 PM. Mr. Hoffmann seconded the motion.

Roll Call: Mr. Travisano, Aye; Mr. Franko, Aye; Mrs. Ozdemir, Aye; Mrs. Ewald, Aye; Ms. Hagner, Aye; Mr. Hoffmann, Aye; Mr. Kelly, Aye; Mr. Nelson, Aye; Mr. Sheth, Absent; Mr. Coviello, Aye; Mr. Tarasca, Absent.

Mr. Kelly moved to return to Public Session at 10:18 PM. Mr. Coviello seconded the motion, which carried unanimously.

Mr. Warner said that the Planning Board is considering making a motion to call for the recusal of Ms. Hagner on the discussion on authorizing the Planner to undertake a preliminary investigation for the redevelopment of Block 62, Lots 70 & 71 and to recuse her from all subsequent matters relating to such potential redevelopment, recognizing her right to continue to participate as a member of the public.

Mr. Travisano made the motion to recuse Ms. Hagner from the discussion on Authorizing Planner to Undertake a Preliminary Investigation for the Redevelopment of Block 62, Lots 70 & 71 and all subsequent matters relating to such potential redevelopment. Mr. Franko seconded the motion.

Roll Call: Mr. Travisano, Aye; Mr. Franko, Aye; Mrs. Ozdemir, Aye; Mrs. Ewald, Aye; Ms. Hagner, Nay; Mr. Hoffmann, Aye; Mr. Kelly, Aye; Mr. Nelson, Nay; Mr. Sheth, Absent; Mr. Coviello, Aye; Mr. Tarasca, Absent.

Authorizing Planner to Undertake a Preliminary Investigation for the Redevelopment of Block 62, Lots 70 & 71

Mr. Warner explained that the Township Committee has adopted a resolution directing the Planning Board to conduct the necessary preliminary investigation, including the holding of a public hearing, to determine whether Block 62, Lots 70 & 71 is an area in need of non-condemnation redevelopment under the criteria set forth in *N.J.S.A. 40A:12A-1 et seq.* The Township Committee has authorized the Planning Board to utilize the services of Frank Banisch, P.P., of Banisch Associates, Inc., to perform the preliminary investigation.

Mr. Travisano opened the floor for public comment.

1. Jackie Ferrito, 449 River Road, discussed Mr. Kelly's role in the negotiation of the Settlement Agreement with the Fair Share Housing Center. She asked if Mr. Kelly and Mr. Hoffmann have a conflict of interest in participating in this discussion. Mr. Travisano said this is a public comment session regarding the Preliminary Investigation for the Redevelopment of Block 62, Lots 70 & 71 and any discussion should focus on that matter.
2. Tom Tether, 115 Huron Drive, expressed his upset over Ms. Hagner's recusal on the Preliminary Investigation for the Redevelopment of Block 62, Lots 70 & 71, and he noted that Mr. Kelly did not have a conflict of interest on Affordable Housing matters before the Township Committee. Mr. Tether also asked about the criteria for the determination if Block 62, Lots 70 & 71 is an area in need of redevelopment. Mr. Warner said that the

Local Redevelopment and Housing Law lists the criteria that Mr. Banisch will review to make that determination. Mr. Tether said that he has the criteria in front of him, and he does not believe that the site will meet the criteria. Mr. Warner said that Mr. Banisch has not conducted his study yet, and the report will be available before there is discussion on any opinions whether the site qualifies as an area in need of redevelopment. Mr. Tether reminded the Planning Board that the Township has a Master Plan, and asked the Board to read the Master Plan as they go through this process.

3. Pat Murray, 107 Huron Drive, said that he does not believe that a public meeting held on Zoom is a fair public hearing. Mr. Murray asked if Mr. Banisch is a Township employee. Mr. Banisch said that he is not a Township employee. Mr. Murray asked if it would make sense to hire a different consultant who is not familiar with the Township to conduct the Preliminary Investigation Report. Mr. Travisano said that the term “conflict of interest” is being used too liberally in Mr. Murray’s attempt to apply it to Mr. Banisch. Mr. Warner said that he is not aware of Mr. Banisch having any disqualifying conflicts of interest on this matter, and noted that Mr. Banisch is subject to a professional code of ethics. Mr. Warner also said that anyone having any facts to present on the question are welcome to do so, and any Board Member or Board Professional who might have a conflict of interest should inform him of the factual circumstances so that he may advise the Board on the issue and decisions can be made. Mr. Banisch said that he is not aware of any conflicts of interest on this matter, and that he will abide by the Certified Planners Code of Ethics. Mr. Banisch further noted that he has not yet formed an opinion regarding the question on redevelopment, and has not yet visited the site. Mr. Murray asked if the Board would welcome a second opinion regarding the Planner’s decision. Mr. Travisano said that there is not a need for a second opinion. Mr. Murray alleged that two members of the Planning Board are biased and he wants the public to have a fair shake. Mr. Travisano said that the members of the Planning Board are fair, ethical individuals, and that he is insulted at the implication that any of the Planning Board members and Professionals would not act ethically.
4. Vince Ferrito, 449 River Road, objected to the recusal of Ms. Hagner. He asked the Board members to be open-minded and objective regarding the River Road site. Mr. Ferrito said that River Road is an environmentally sensitive corridor. He also asked why the subject site would need to be redeveloped, and said that the Township agreed with the Fair Share Housing Center to use the site for Affordable Housing. Mr. Ferrito also asked why the Board would move forward with the process. He further asked the Board to ignore politics and make a rational decision regarding the site. Mr. Ferrito said he is not opposed to Affordable Housing, and stated that there are other sites that are more appropriate.

Mr. Travisano said that the Planning Board has not made any decisions behind the scenes, and any decisions will be made objectively. Mr. Travisano also noted that he also lives on River Road.

5. Sharon Tether, 115 Huron Drive, asked why Ms. Hagner was required to be recused from this discussion. Mr. Warner said that the cause for the recusal was attorney-client

privileged material and it's confidentiality is protected by the rules governing Executive Sessions and the Board is unable to answer Mrs. Tether's question. Mrs. Tether asked when the public gets to know the reason for the recusal and why one resident who lives on River Road has to be recused while another resident from River Road does not need to be recused. Mr. Warner said that it would be a mistake to believe that Ms. Hagner's address was the only factor for the Board's determination as to her recusal, however the Planning Board cannot disclose the reasons for the recusal.

Ms. Wolfe indicated that there were not any calls or emails received with additional questions.

Seeing no further public comment, Mr. Travisano closed the public comment session.

Mr. Travisano moved to authorize Mr. Banisch to undertake a preliminary investigation to determine whether Block 62, Lots 70 & 71 is an area in need of non-condemnation redevelopment. Mrs. Ewald seconded the motion.

Roll Call: Mr. Travisano, Aye; Mr. Franko, Aye; Mrs. Ozdemir, Aye; Mrs. Ewald, Aye; Ms. Hagner, Recused; Mr. Hoffmann, Aye; Mr. Kelly, Aye; Mr. Nelson, Aye; Mr. Sheth, Absent; Mr. Coviello, Aye; Mr. Tarasca, Absent.

Hearing of Citizens

Mr. Travisano opened a Hearing of Citizens.

1. Jackie Ferrito, 449 River Road, said that she believes that there is an appearance that Mr. Kelly and Mr. Hoffmann have a conflict of interest on the Preliminary Investigation Report for the River Road site, and asked if there will be an investigation to see if such a conflict exists. Mr. Warner said that for Class I, Class II and Class III members of the Planning Board, there is an understanding that public positions may be taken prior to a Planning Board Hearing. He said that Class IV members are "resident members," and the Class I, Class II and Class III members have a different standard for objectivity. Mr. Warner said that the law recognizes that a Mayor or Governing Body member can take a public position on a matter in that context and still hear matters before the Planning Board pertaining to the topic. Mr. Warner said that if issues of conflict arise in the future, they will be addressed appropriately. Mrs. Ferrito said that she feels there may be a conflict of interest when the Planning Board member is called upon to enforce a binding settlement agreement having participated in the negotiations pertaining to said agreement. Mr. Warner said that throughout the State of New Jersey there are many mayors and municipal administrators in the same position as Mayor Kelly and Mr. Hoffmann and he is not aware of any finding by a Court that any such individuals are precluded from voting as Planning Board members on matters relating to Affordable Housing solely for that reason.

Seeing no further public comment, Mr. Travisano closed the Hearing of Citizens.

Mr. Franko moved to adjourn at 11:00 PM. Mr. Nelson seconded the motion, which carried unanimously.

Gregory J. LaConte
Planning Board Recording Secretary