

# Memorandum

To: Chatham Township Mayor and Township Committee  
From: Chatham Township Planning Board  
Date: June 15, 2020  
Re: *Master Plan Consistency Review of Ordinance 2020-11*

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## *Ordinance Referral*

The Township Committee has referred for Planning Board review Ordinance No. 2020-11, titled:

"An Ordinance of the Township of Chatham, County of Morris, State of New Jersey, to Amend Subsection § 30-75.1 'Zone Districts' to include a New 'R-3 Affordable Housing Residence District (R-3 AH)' of Section 30-75 Titled 'Zone Districts and Enforcement' of the Revised General Ordinances of the Township of Chatham; to Amend Subsection § 30-75.2 Titled 'Map and Schedule' of Section 30-75 Titled 'Zone Districts and Enforcement' of Chapter XXX, Titled 'Land Development' of the Revised General Ordinances of the Township of Chatham to Amend the Map by Designating Block 67, Lots 17 and 17.01, Fronting on Hillside Avenue, Within the R-3 AH Zone; to Amend the Schedule by Adding a New 'R-3 Affordable Housing Residence District'; and to Add New Subsection § 30-79.1 Titled 'R-3 Affordable Housing Residence District (R-3 AH)' of Section 30-79 Titled 'Affordable Housing' of Chapter XXX, Titled 'Land Development' of the Revised General Ordinances of the Township of Chatham"

## *Statutory Authority*

Ordinance 2020-11 has been referred to the Planning Board in accordance with the Board's Referral Powers under N.J.S.A. 40:55D-26 of the Municipal Land Use Law (MLUL). This section reads in pertinent part:

### **"40:55D-26 Referral powers.**

a. Prior to the adoption of a development regulation, revision, or amendment thereto, the planning board shall make and transmit to the governing body, within 35 days after referral, a report including identification of any provisions of the proposed development regulation, revision or amendment which are inconsistent with the master plan and recommendations concerning these inconsistencies and any other matters as the board deems appropriate. The governing body, when considering the adoption of a development regulation, revision or amendment thereto, shall review the report of the planning board and may disapprove or change any recommendations by a vote of a majority of its full authorized membership and

shall record in its minutes the reasons for not following such recommendations  
.....”

### ***Background***

The R-3 AH Zone will enable the subdivision of five (5) lots, each with a minimum area of 20,000 square feet. As required, the development would include four (4) market rate single-family homes and one (1) lot to be developed with special needs housing in the form of a group home. Chatham Township Development Fee ordinance (Section 29-2.3) requires the remaining four (4) market rate units to contribute a development fee (1.5% of assessed value) to the affordable housing trust fund. Construction of special needs housing here will contribute to the Township’s affordable housing inventory and assist Chatham Township in addressing its Round 3 affordable housing obligation.

### ***Intent of the Master Plan***

At present the parcels are situated within the R-1A Zone, with a minimum lot area requirement of 100,000 square feet (with lot averaging). This zone includes the Township’s most sensitive steep slope areas, along with extensive areas of highly erodible soils.

Chatham Township’s 2011 Land Use Plan describes the R-1A District as follows:

#### R-1A: Residence District

The R-1A District is located in the southern portion of the Township on the northern side of River Road from Central Avenue to Southern Boulevard. The permitted uses in the R-1A district are single-family dwellings and municipal parks and playgrounds. The minimum lot size for the district is 100,000 square feet with lot averaging provisions allowed. This zone includes the Township’s most sensitive steep slope areas along with extensive areas of highly erodible soils. The Township should also consider overlay zoning that would provide tract area adjustments to account for natural resource restrictions, including floodplains, erodible soils, steep slopes and wetlands.

The intensity of proposed development (20,000 square feet per unit) far exceeds the intended low intensity of single-family development (100,000 square feet per unit) and is, hence, inconsistent with the Land Use Plan. Nonetheless, the proposed rezoning will advance important goals of the 2011 Land Use Plan, including:

1. Protect and restore our environment, specifically sensitive areas such as steep slopes, wetlands, streams, buffers, and flood plains as well as mature native vegetation, groundwater and air quality.
6. Promote a balance of housing types for all segments of the population.

Regarding steep slope protection, Ordinance 2020-11 requires imposition of a conservation easement over a roughly .75 acre area of the steepest slopes in the new R-3 AH Zone, advancing the steep slope protection objectives of the Master Plan. The footnote applicable to the R-3 AH Zone reads:

\*\* - all slope areas of 20% or greater remaining after completion of the grading required for construction shall be included in conservation easements

Township zoning and subdivision regulations do not otherwise mandate conservation easements over steep slopes in other zones. The current standards related to conservation easements are found in Section 30-64.1 “Lots”, and include:

d. 5. Where there is a question as to the suitability of a lot or lots for their intended use due to factors such as rock formations, flood conditions or similar circumstances, the Planning Board may, after adequate investigation, withhold approval of such lots. *The Planning Board may also require that provision be made for conservation easements in environmentally sensitive areas.(emphasis added)*

h. Protection of Critical Areas. All subdivisions shall be designed so that..., (W)henever wetlands are present on land which is the subject of an application for development, which wetlands could be impacted by the proposed development, the *Planning Board may require that all such wetlands and transition areas surrounding such wetlands be protected by a conservation easement given by the developer to the Township. .(emphasis added)*

While Section 30-64.1d.5 permits the Planning Board to require conservation easements in environmentally sensitive areas, they are not mandated to do so. Additionally, the option for the Board to impose a conservation easement in Section 30-64.1h relates only to wetlands and buffer areas.

Regarding the balance of housing types for all segments of the population, the group home will be constructed in an appropriate neighborhood setting and provide a diversity of housing opportunities for low- and moderate-income individuals. The rezoning also advances the objectives of the 2008 Fair Share Plan, which was “... designed to ensure the provision of the required affordable housing in the Township with a minimal impact on neighborhood character and community services”.

### ***Evaluation of Consistency with Chatham Township Master Plan***

The Board has compared the proposed ordinance to the 2011 Land Use Plan Element and finds that the establishment of R-3 AH Zone in place of the single family R-1A Zone is inconsistent with the Land Use Plan Element of the Master Plan. The permitted R-3 AH density far exceeds the intended low intensity of single-family development in the R-1A Zone.

The lands encompassed by the new R-3 AH Zone include substantial areas of steep slope. Ordinance 2020-11 mandates protection of most of the steep slopes, including the steepest slopes, a feature not included in the R-1A Zone. Additionally, the group home site resulting from the proposed ordinance advances the Land Use Plan goal for “a balance of housing types for all segments of the population” and the Housing Plan goal to meet the constitutional mandate to provide for the Township’s fair share of the regional need for affordable housing.

As a result, the Planning Board finds that, while the proposed ordinance is inconsistent with the Land Use Plan, the ordinance advances the steep slope protection and affordable housing objectives of the master plan.