

**MINUTES  
PLANNING BOARD  
TOWNSHIP OF CHATHAM  
NOVEMBER 4, 2019**

Mr. Franko called the regular meeting of the Planning Board to order at 7:30 P.M.

**Adequate notice** of this meeting 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 2019, and January, 2020 was published in the Chatham Courier and the Morris County Daily Record, notice was filed with the Municipal Clerk and notice was posted on the bulletin board in the main hallway of the Municipal Building.

Answering present to the roll call were Mr. Franko, Mrs. Swartz, Ms. Hagner, Mr. Hoffmann, Mr. Kelly, Mr. Nelson and Mrs. Ozdemir.

Mr. Travisano, Mr. Sheth, Mr. Coviello and Mr. Tarasca were absent.

Also present were Board Engineer John Ruschke, Board Attorney Steve Warner and Joanna Slagle on behalf of Township Planner Frank Banisch.

Mr. Nelson moved to excuse those who were absent. Ms. Hagner seconded the motion, which carried unanimously.

**Approval of Minutes**

Ms. Hagner noted some amendments to the minutes of the October 21, 2019 minutes.

Ms. Hagner moved to approve the October 21, 2019 minutes as amended. Mr. Nelson seconded the motion, which carried unanimously.

**Discussion**

**Hillside Avenue Zoning Change Request**

Mr. Warner said that a request has been made for the rezoning of a property. He said that under the Municipal Land Use Law, there is not a specific procedure for rezoning requests, but it is generally recognized that the Planning Board is the appropriate place for an initial consideration of a rezoning request. Mr. Warner noted that a Master Plan consistency would be conducted if a rezoning ordinance is introduced. He said that this is not a public hearing, and witnesses do not need to be sworn in. If any recommendations are made by the Planning Board, they will be forwarded to the Township Committee.

Peter Flannery, an attorney representing Sterling/Sun at Chatham LLC, the contract purchaser of 344 Hillside Avenue, described the property's present use. He noted that it is across the street from the Dixiedale property. Mr. Flannery said that his client sent a letter dated May 28, 2019 to

the Township Committee requesting possible rezoning of the property. He said that it is currently zoned R-1A, and the request is for the property to be rezoned to allow for up to 4 single-family dwelling lots. Mr. Flannery noted that there are R-3 zoned lots on Fairmount Avenue that border the subject property with similar sized properties across the municipal boundary in Chatham Borough, and the Dixiedale property is zoned for multi-family housing. Mr. Flannery said that the request for rezoning would allow for a transition area between the R-3 zone and the Dixiedale zone. He said that his client has requested the property be rezoned as R-3, and that Township Planner Frank Banisch has recommended that the property be rezoned as a modified R-5 district. Mr. Flannery said that there are steep slopes on the property, and it is heavily wooded. The proposal would be to leave the steep slope area and the dense tree cover alone, and to build single-family dwellings primarily in the improved area. A schematic showing the location of the steep slopes, the tree cover and the estimated footprint of four proposed dwellings was presented.

Patricia Ruskan, a civil engineer representing Sun/Sterling at Chatham, presented an aerial view of the property delineating the potential rezoning. The exhibit also shows the topography of the site, and Mrs. Ruskan said that the steep slopes are color coded with darker shades of green for steeper slopes. Mrs. Ruskan also pointed out where the existing dwelling is located, and said that potential building envelopes are shown on the exhibit. The proposed setback for new homes is 50 feet. Mrs. Ruskan said that the R-5 zone requires a 75-foot setback, but having a 50-foot setback would allow the homes to be closer to where the existing dwelling is located and further from the wooded area. Mr. Flannery asked about the view from Hillside Avenue, and Mrs. Ruskan confirmed that a tree-lined ridge would be visible behind the proposed new homes.

Mrs. Slagle presented the review prepared by Mr. Banisch. Mrs. Slagle said that the R-3 zone was not deemed an appropriate zoning strategy for the subject lot due to the smaller available lot size and the steep slope. Mrs. Slagle also noted that the ridge line extends further down River Road. She said that if the Board wants to consider recommending that the property be rezoned, the R-5 is the zone designation that would be the best fit for the site. Mrs. Slagle described the characteristics of the property that are similar to the current R-5 zone, and said that the Board should consider if other properties would also be rezoned at this time.

Mr. Franko asked how the rezoning would fit with the general environment in the area, citing that there are homes nearby. Mrs. Slagle said that the neighboring R-3 zone has traditional lots that do not have the same constraints found in the R-1A or R-5 zones, and she noted that the Master Plan addresses those constraints. She also said that the new development at Dixiedale will affect the character of the neighborhood, and the Dixiedale property does not have the same environmental constraints addressed in the Master Plan. Mrs. Slagle further addressed the type of lots found in the R-5 zone. She also addressed the R-1A zone, noting that it is where the major sloping areas of the ridge are found. She said that a lot of the lots in the R-1A zone do not have developable pockets, and the zone exists to prevent overdevelopment of steep slope areas.

Mr. Franko asked for clarification on Mrs. Slagle's comments on setbacks. Mrs. Slagle said that in the R-5 the setbacks are closer to the road to avoid digging in to the steep slopes and to allow for a backyard.

Mr. Hoffmann noted that the site is close to the municipal boundary with Chatham Borough. He said that the Borough is considering substantial development, and he asked if that has been taken into account in relation to this request. Mrs. Slagle said she is not familiar with the Borough's pending development, and noted that the Township does not have jurisdiction on the Borough's development. Mrs. Swartz said that the Borough has zoned a certain area for affordable housing. Mr. Kelly asked if the applicant has any information on the Borough's plans. Mr. Flannery indicated that they did not have any information on the Borough's development plans, and he said that the existing dwellings in the vicinity are 40,000 – 50,000 square foot single family homes. Mr. Kelly noted that the Chatham Borough zoning map has an overlay zone on Hillside Avenue for multi-family housing. Mr. Kelly asked if the proposed rezoning will be compatible with what may be developed in the Borough. Jeffrey Garfinkel, a principal of Sterling/Sun at Chatham LLC, said that the lot in question in the Borough is already zoned for affordable housing and his company does not have any plans for it. Mr. Kelly asked if the zoning allows for single-family homes. Mr. Flannery said that it could potentially serve as a transition from the open space areas and R-3 zone to the Dixiedale development.

Ms. Hagner asked if four lots in an R-5 zone make sense, as there would not be much usable backyard space with the proposed lot sizes. She also noted that the R-5 zone on River Road is not contiguous to the subject location. Mr. Franko noted that it is a unique area, and it does not tie in with any other areas than the lots immediately uphill. Mr. Ruschke said that the site is very constrained, and it may make more sense for there to be fewer lots. He also said that having only two lots would be more consistent with those ordinances which seek to minimize disturbance to steep slopes.

Mr. Franko asked how much steep slope variance would be requested if the property is rezoned for four lots. Mrs. Ruskan said that analysis has not yet been performed. She also said that the exhibit presented serves more to show where the wooded and steep sloped area are located.

Ms. Hagner said that the subject area is a difficult area, and she is not sure if the proposal is consistent with the Master Plan. Mr. Flannery said that the only way to have more usable backyard would be to have the homes closer to Hillside Avenue. Mrs. Ruskan commented on lot width and availability of side-yards.

Mr. Garfinkel said that if the zoning were to allow for a 25-foot front yard setback, the rear yard issues would be alleviated.

Mr. Warner asked what the lot sizes and front yard setbacks are for the adjacent lots on Fairmount Avenue. Mrs. Ruskan said that one lot has a 10-foot setback, one has a 12-foot setback and the third has a 21-foot setback. The minimum lot size is 20,000 square feet.

Mr. Kelly commented on the size of the building envelopes of the houses on Fairmount Avenue compared with the proposed houses on Hillside Avenue, and asked why they are not roughly the same size. Mrs. Ruskan said that the exhibit is not a final depiction, and said that they could be a lot bigger. She said that the footprints show where a house might fit on the setback, and the final design would determine the actual footprint. Mr. Kelly shared Ms. Hagner's concern that the building would extend into the slope and not leave enough of a backyard. He suggested that

there be fewer new homes with more of a sideyard. Mr. Garfinkel stated that the steep slope issue can be alleviated by having the homes closer to the front of the property, and the number of lots would not affect the issues in the rear of the lots. Mr. Garfinkel said that not a lot of space is created by having three lots instead of four.

Ms. Hagner said that if four houses are built, the developer would likely want them to be smaller so that there is sufficient space around them. She also said that screening will be needed to maintain the rural character of Hillside Avenue. Mrs. Swartz asked about the hypothetical size of the homes. Mr. Garfinkel said they will be 3,000 square feet. Mrs. Swartz warned that they may look like free-standing townhomes, and there may not be a large enough yard for the families to enjoy.

Mr. Flannery asked Mrs. Ruskan about the houses in the existing R-5 zone, and what their backyards are like. Mrs. Ruskan said that they do not have much of a backyard. Ms. Hagner said that many of them probably do not meet the R-5 requirements, as many of them are likely old farmhouses that sit close to the road and have steep backyards. Mrs. Swartz said that the current R-5 lots are not conducive to family activities. The R-1A zone was also discussed.

Mr. Franko asked Mrs. Ruskan to comment on the potential of three lots. Mrs. Ruskan showed on the exhibit where lot lines could potentially be drawn.

Mrs. Slagle said that the Board will not want to create a new zone where things will be complicated further. She also said that she is not sure how the lots could be configured to allow for a backyard. Ms. Hagner asked how the request can be addressed without creating a new zone. She said that doing nothing allows the developer to apply for variances, and rezoning the site as R-5 would allow for the four lots. Ms. Hagner asked if the Board is the authority to nitpick modifications to the R-5 zone for the site. Mr. Warner said that the Board should be careful not to customize a zone for the subject parcels to the point where it could constitute spot zoning of the site.

Mr. Franko opened the floor for public comment and questions.

1. Dot Stillinger, 216 Noe Avenue, submitted an environmental review of the proposal. She noted that the Environmental Commission has not yet reviewed the report, and it will be resubmitted once ratified by the Commission. Mrs. Stillinger said that a prior engineer for the applicant indicated that the site may be a habitat for some protected species, and the Environmental Commission will want an environmental assessment on the slopes. Mrs. Stillinger also said that a conservation easement may also be requested for the sloped area. She also noted that the model conservation easement allows for management of invasive species.
2. Don DeGolyer, 293 Fairmount Avenue, questioned how many Board members have walked the site, and said that the slope is very steep. Mr. DeGolyer said that the chances of having a backyard would be non-existent, and he noted that there are 40 to 50 specimen trees on the site. Mr. DeGolyer also said that the site received its current zoning designation for a reason, and the current easement was dedicated for a fire road.

Mr. DeGolyer asked the Planning Board to consider the slope, the specimen trees and the easement when considering the request. He also said that in the future there will likely be an application for a backyard. Mr. DeGolyer also spoke about potential development of the property next to his residence, and asked that such development not be allowed. He also inquired about the role of the Township Committee in the process.

Mr. Warner noted that two members of the Planning Board are also members of the Township Committee, and he described the process by which land use ordinances are acted upon by the Township Committee with input from the Planning Board.

Mr. DeGolyer reiterated that the subject property was zoned a certain way for a reason, and doing an analysis of the slope would be helpful. Ms. Hagner said that the developer does not appear to be proposing development of the steep slopes. Mr. DeGolyer asked the Board to visit the site, and asked them to reflect if they would want their children and grandchildren to play there. He also said that future owners of the property will likely want to disturb the slope to make it a sellable lot. Mr. Nelson said that there is no guarantee that such a request will be made. Ms. Hagner said that some people may not care about having a backyard, but the development of the site will be intense, and the property lends itself to less density.

Mrs. Swartz asked about a cluster option, and if that would be possible. She said that cluster development would suggest working on a smaller piece of property. Mrs. Ruskan commented on the averaging of lot size, and there would not be get much with a cluster. Mrs. Swartz noted that based on the map, the usable area of the lot is quite small.

Mr. Franko asked if the Planning Board wants to recommend rezoning the subject area to an R-5 zone with four lots and a 50-foot front yard setback. Mr. Warner said that the memorandum from Mr. Banisch listed an option rather than making a recommendation.

Ms. Hagner noted that the developer is asking for an R-3 zoning designation, the Township Planner has recommended a potential R-5 designation with a modification, and the Board can also recommend that changes not be made. Ms. Hagner also asked if changes would be made to the whole R-5 zone or just the area subject to potential rezoning, and warned against spot zoning.

1. Joe Basralian, Open Space Committee Chairman, suggested that the Board also visit the preserved Hillside Avenue open space adjacent to the subject property to see a washout area. He opined that while some people might not care about having a backyard, most will not want to deal with the drainage issues present in the washout area.

Mr. Kelly noted that the property owner bought the land with the ability to build one house. He said that the question at hand is to allow up to 2, 3 or 4 new homes. Mr. Kelly further said that for the sake of future owners, there should be livable space in between any future houses, and four houses would be too crowded. Mrs. Ozdemir agreed that having four houses would be too limiting on the side yards and would promote encroachment on the steep slopes. Mr. Nelson said that three would be better than four, and Mrs. Swartz also said that three houses would be preferable to four. Mr. Ruschke noted that there are already two lots, and a lot line adjustment

could be requested by the property owner. Mrs. Slagle said that a more global zoning evaluation would be needed to avoid spot zoning. Mr. Kelly noted that rezoning is not the only available option. Mr. Warner said that it would appear that some variances would still be needed, and even if so, a lot line adjustment would come before the Planning Board rather than the Zoning Board because it would be considered a minor subdivision with bulk variance relief.

The general consensus of the Planning Board was that four lots would be too many. Mr. Franko said that a further report from the Township Planner on available options may be necessary. Ms. Hagner said that R-3 zoning does not make sense for the lot, albeit more desirable for the developer. Mrs. Slagle said that with the R-5 zone, the 75-foot setback would require more disturbance of the steep slope. She also said that the site does not fit in the R-3 zone per the Master Plan. Ms. Hagner noted that there is not a current zoning designation that fits this site, and a new zone may need to be created to change the zoning.

Ms. Hagner moved to recommend that the zoning not be changed. Mr. Kelly seconded the motion.

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

### Open Space Element

Joe Basralian, chairman of the Open Space Advisory Committee, was present to discuss updates to the Open Space Element of the Master Plan. He said that having an open space element less than 10 years old is a requirement for municipalities to apply for Green Acres grants. Mr. Basralian noted that the Township's Open Space Element was last updated in 2010. Mr. Basralian said that the County also looks favorably upon updated open space elements when considering open space grant applications. The Open Space Advisory Committee has reviewed the Open Space Element and has recommendations to proposed. Mr. Basralian noted that the suggested revised element is substantially the same as the existing element, with updates to the acreage of open space owned by the Township. In some cases, the calculations for acreage had to be redone to ensure accuracy. Mr. Basralian also commented on connectivity and a desire to link open space as much as possible, noting that this factor is taken into account when evaluating potential properties.

Mr. Kelly said that he is the Township Committee's liaison to the Open Space Advisory Committee, and he complimented their efforts to update the Open Space Element.

Mr. Basralian noted some typographical errors in the current Open Space Element that are being corrected in the new version, particularly in the calculation of the acreage.

Mr. Franko asked if the next step is for the Planning Board to adopt the revised draft. Mr. Warner said that there will need to be a properly noticed public hearing before the draft can be adopted. Mr. Ruschke noted that once property is designated as open space, there are restrictions placed on the land. He suggested that the draft be reviewed by the Township Attorney for

accuracy. Mr. Warner said that more input may be needed from the Township Planner. Mrs. Slagle said that public and private open space will need to be reviewed for accuracy. She also said that once a property is placed on the Recreation and Open Space Inventory, it is very difficult to have it removed.

Mr. Franko asked if the Planning Board has until the end of 2020 to adopt an updated draft. Mrs. Slagle said that the DEP will probably allow until December 31<sup>st</sup> for the revised draft to be adopted. Mr. Warner asked when in 2010 the current draft was adopted. Mrs. Slagle said that she does not think the DEP cares about what month it was adopted, and cares only about the year in which it was adopted.

Ms. Hagner noted that the Circulation Plan is also ready for public hearing, and perhaps there could be a public hearing on both elements on the same night. Mrs. Swartz said that there is so much work that goes into the preparation of an element, that it would be unfair to those who worked on them to not have them come through to conclusion.

Mr. Franko recommended that a status report from Mr. Banisch and the Township Attorney be presented at the second Planning Board meeting in January. Mr. Basralian thanked the Planning Board for moving forward with the updates. Mr. Warner said that appropriate notices will be sent out when the hearing is ready to be scheduled. A status report on the Circulation Plan is also requested for the second meeting in January.

Mr. Nelson moved to adjourn at 9:16 P.M. Ms. Hagner seconded the motion which carried unanimously.

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Gregory J. LaConte  
Planning Board Recording Secretary