MINUTES
PLANNING BOARD
TOWNSHIP OF CHATHAM
JULY 20, 2020

Mr. Travisano called the Regular Meeting of the Planning Board to order at 7:31 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.

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

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

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

Approval of Minutes

Mrs. Ewald said that she sent edits to the minutes earlier this evening. Mr. LaConte said that the edits have not yet been made, and the approval of the minutes can be deferred to the next meeting.

Mr. Travisano noted his appreciation for the work Mr. LaConte does to prepare the minutes.

Ms. Hagner said that Mr. Sheth has had problems with not receiving some emails. Mr. LaConte said that the Board Manager is consistently using the same email address for him.

Hearing

PB: 19-102.11-5 & 5.01 (November 12, 2019) The Summit Monthly Meeting Society of Friends, 158 Southern Blvd., Block 102.11 Lot 5 Minor Subdivision with Variance Relief

Ms. Wolfe noted that proper notice of this hearing was given, and the Board has jurisdiction to hold the hearing.

Attorney Matthew Posada was present at the meeting to represent the applicant. Mr. Posada described the minor subdivision sought in the application. He also noted that in 1969, the Zoning Board of Adjustment approved a use variance and minor subdivision for the site, however the subdivision was not recorded with the Morris County Clerk's Office at the time. Mr. Posada said that the applicant is seeking to perfect the stale subdivision of the property, and

also to settle some site issues. For example they want to eliminate a non-conforming rear yard setback so that the site will conform with the R-3 standards. Additionally the wetlands will be addressed.

The applicants witnesses and the Board professionals were sworn in to give testimony.

Richard Smith, a surveyor representing the applicant, provided his qualifications and was accepted as an expert.

Mr. Smith indicated that he visited the subject property, and confirmed that the property is located in the R-3 Zone District. Mr. Smith further indicated that he reviewed the Township's zoning regulations and Master Plan in connection with this application. He also said that he prepared the minor subdivision plan. The survey plan was shared electronically via Zoom. Mr. Smith said that he began with the approved map from 1968, and said that wetlands were not a consideration in the late 1960's. Mr. Smith said that the current proposed plan has a lot line adjustment, and the square footage of the proposed lots is unchanged. Mr. Smith indicated that some of the wetlands has been shifted to the Church property, and a corresponding portion of usable land has been added to the single-family home lot. He also said that a variance on the single-family lot is relieved with the proposed adjustment to the rear lot. Mr. Smith also addressed the NJDEP's review of the site, and indicated that a wetlands flag was adjusted. He said that he is in communication with the NJDEP regarding an open water stream on the property. The additional pre-existing non-conforming variances are unaffected.

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

1. Jason Anjoorian, 19 Spring Street, said it is unclear what exactly is being requested. Mr. Anjoorian said that Lot 5.01 abuts his property, and asked if that area remains unaffected by this application. Mr. Smith said that the area abutting Mr. Anjoorian's property is unaffected, and the change is in the front of the property by the wetlands.

Seeing no further questions from the public, Mr. Travisano closed the floor.

David Karlebach, a licensed professional planner representing the applicant, provided his qualifications and was accepted as an expert. Mr. Karlebach addressed the pre-existing non-conforming conditions on the subject property. He also described the area surrounding the site, and said that the purpose of the minor lot line adjustment is to fix irregularities and the lots will remain otherwise unchanged. Mr. Karlebach said that the lot line adjustment brings the lots into greater conformity, and the only relief sought is to continue the existing variances. Mr. Karlebach noted that the R-3 Zone allows for single-family homes, and houses of worship are allowed as a conditional use. Both of the lots meet the lot requirements. The deficient rear-yard setback is also being eliminated, and variances for a shed are eliminated. Mr. Karlebach addressed the pre-existing non-conforming conditions. Regarding the legal basis for the relief, Mr. Karlebach said that the existing variances are covered under the C-2 variance criteria, and there does not need to be any proof of hardship. He said that the realignment of the lot line allows for a usable backyard for lot 5, which is the chief planning benefit of the application. Mr. Karlebach said that passersby will not notice any change in the site from the granting of this application.

Mr. Posada asked about design waivers for minimum lot depth and minimum usable lot area. Mr. Karlebach said that design waivers are not held to the same standard as variances, and there needs to be reasonable proof that the standards cannot be met. He said that lot depth is not being changed in this application, and usable lot area will be the area immediately beyond the house. Mr. Karlebach said that the application allows for reasonable usable lot area.

Ms. Wolfe asked about the lot depth numbers on the plan. Mr. Smith clarified the measurements.

Mr. Karlebach addressed the comments in the memorandum from Mr. Banisch, and all concerns have been addressed through testimony. Mr. Banisch agreed that the concerns have been addressed.

Mr. Ruschke said that the concerns addressed in his memorandum can be conditions of approval.

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

1. Ron Killian, 142 Southern Boulevard, asked if the objective of this application is to be able to sell the lot with the house on Southern Boulevard. Mr. Karlebach said that while a sale is contemplated, it is not set in stone. Mr. Killian asked if there are any specific plans for the property at this time. Mr. Karlebach said he would not be involved with any plans beyond the minor subdivision.

Seeing no further questions, Mr. Travisano closed the floor to the public.

Mr. Posada thanked the Board for considering the application, and said that the applicant is seeking to correct an error that took place over 50 years ago. Mr. Posada said that the applicant looks forward to having clear title to the property. He also reiterated that the application will realign the minor subdivision lot lines to make the property more consistent with the Master Plan and zoning regulations. Mr. Posada also noted that some non-conformities will be brought into conformity.

Mr. Kelly asked if the property owner would need to come back before the Planning Board again before new construction could take place on the lot. Mr. Ruschke said that an additional Planning Board or Zoning Board application would not be necessary if additional variances were not being sought. Mr. Ruschke asked if there would be any legal reason for the Planning Board to retain jurisdiction for construction approval. Ms. Wolfe said that she did not see any benefit to the Board retaining that jurisdiction. Mr. Kelly said that he was unsure if the wetlands would prevent development without additional Board approval. Mr. Ruschke reiterated that the property owner would be able to move forward with the permit application process unless variances were needed.

Ms. Hagner moved to approve the application subject to the conditions set forth in a memorandum from Mr. Ruschke dated March 9, 2020. Mr. Nelson 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.

A recess was taken at 8:20 PM. The meeting was resumed at 8:25 PM.

Ms. Hagner was recused from participating as a Board member for the next two agenda items.

Discussion

Authorizing Planning Board Planner to Undertake a Preliminary Investigation to Designate Southern Boulevard Site an Area in Need of Condemnation Redevelopment

Mr. Travisano said that the Township Committee has referred to the Planning Board to undertake a Preliminary Investigation to determine if 522 Southern Boulevard is an area in need of condemnation redevelopment. Mr. Warner said that a draft resolution has been prepared to authorize Mr. Banisch to prepare a report making appropriate recommendations for the Board to adopt tonight if that is the Board's decision. Mr. Travisano noted that this is an initial step, and the public will have an opportunity to review the report and give comment at the public hearing.

Mr. Travisano moved to adopt the resolution authorizing Mr. Banisch to conduct a Preliminary Investigation to determine if 522 Southern Boulevard qualifies as an area in need of condemnation redevelopment. Mr. Nelson 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, Absent; Mr. Tarasca, Absent.

Public Hearing - Adoption of the Housing Element and Fair Share Plan

Mr. Warner provided the context for this public hearing. He said that a public hearing on a prior draft was previously held. Mr. Warner stated that proper notice for this public hearing was provided.

Mr. Banisch and Mr. Ruschke were sworn in to give testimony.

Mr. Banisch stated that the Housing Element is a documentation of a series of data about the circumstances of the Township, and the Fair Share Plan is the part of the plan that addresses how the Township will meet the Constitutional Obligation. Mr. Banisch described the types of demographic data and housing characteristics in the Housing Element. He also said that data informs what the Fair Share Plan should include. Mr. Banisch said that the first part of the Township's Obligation is the present need or rehabilitation obligation, which comes to 6 units that will be met by participating in the Morris County Rehabilitation Program. The prior round obligation is 83 units from when COAH was still in existence, and the Township has met this obligation through 4 Group Home bedrooms and renewal of controls on the 75 Vernon Grove units. The Third Round Obligation has been agreed to in a Settlement Agreement between the Township and the Fair Share Housing Center. The total obligation is 387 units, and the Realistic Development Potential is 200 units following the application of the Vacant Land Adjustment. Mr. Banisch explained how a Vacant Land Adjustment works. Mr. Banisch said that the Township's Third Round Obligation will be met by the building of 24 affordable unit apartments at the Skate Park site, as well as the development of 74 units on a 100% municipally sponsored affordable development. He also stated that 12 of the 74 units will be met by the construction of three 4-bedroom Group Homes. 62 affordable units are planned to be built on Block 128 Lot 2.

Mr. Banisch also stated that the site suitability of the sites in the plan were reviewed, and the sites can be developed for Affordable Housing. Mr. Banisch described the criteria considered in the site suitability analysis. He also addressed the site suitability of each of the proposed sites.

Regarding the overall site suitability, Mr. Banisch said that the Township proposes that 59-62 units can be built at 522 Southern Boulevard. He said that the total Third Round Obligation exceeds the Realistic Development Potential, and the unmet need is 159 units. Mr. Banisch said that the unmet need will need to be addressed in a manner that is satisfactory to the Fair Share Housing Center. He stated that the Township has created overlay zones to address the unmet need. Fairmount Commons is one such overlay zone, and Mr. Banisch explained that the property owner could convert the use of the property from office space to a residential use which would include affordable units. Mr. Banisch described the criteria that must be met for overlay zones. He also discussed the mandatory set aside ordinance, which provides that when the Township approves a development of 6 or more units, at least 20% will be designated as affordable units. Mr. Banisch said that the Township has also already adopted a development fee ordinance which will result in the Township receiving contributions toward development of Affordable Housing.

Mr. Warner asked if it is Mr. Banisch's opinion that the draft Housing Element and Fair Share Plan was prepared in accordance with the Fair Housing Act. Mr. Banisch said that the plan was so prepared. Mr. Warner asked if the draft Housing Element and Fair Share Plan utilizes a Court approved housing obligation as agreed upon by the Township and the Fair Share Housing Corporation memorialized in the June 1, 2020 Court Order in the Affordable Housing Declaratory Judgment action and consistent with the terms of the most recent amended Settlement Agreement. Mr. Banisch confirmed that it does utilize an approved obligation as described by Mr. Warner. Mr. Warner asked if it is Mr. Banisch's professional opinion as a licensed Professional Planner that the draft Housing Element and Fair Share Plan covers the Township's obligation for the period commencing 1987 and extending to June 30, 2025. Mr. Banisch said that it does. Mr. Warner asked if the proposed compliance mechanisms provide a realistic opportunity for the provision of the Township's fair share of Affordable Housing. Mr. Banisch said that the portion of the obligation consistent with the Realistic Development Potential and Vacant Land Adjustment will be met, the mechanisms are robust and the Township has made a significant effort to meet the obligation. Mr. Warner asked if the draft Housing Element and Fair Share Plan is consistent with the goals and objectives of the Master Plan and will guide the use of land in a way that protects public health and safety promotes the general welfare. Mr. Banisch responded affirmatively and said that the Township has had ambitions of promoting a balance of housing types including housing for all age groups and population segments. Mr. Warner asked if the draft Housing Element and Fair Share Plan is designed to achieve access to affordable housing to meet the current and prospective needs of the Township. Mr. Banisch confirmed that it is his professional opinion that it will.

Mr. Travisano opened the Public Hearing on the Housing Element and Fair Share Plan.

1. Rinna Lin, 19 Lake Road, was sworn in to give testimony. Mrs. Lin said that she lives in the neighborhood behind Charlie Brown's, and the neighbors want to find out if there are wetlands that will be affected on three adjacent properties on Daniel Street after Affordable Housing is developed at 522 Southern Boulevard. She also asked that a study be performed on the environmental impact on Sunset Lake. Mrs. Lin also said that the neighborhood would like the same consideration that was shown to other sections of the

Township. She also asked if the Township already purchased 522 Southern Boulevard, and noted lighting issues in the neighborhood from Shunpike Field. Mrs. Lin recommended that the Township hire Amy Greene Environmental Services to conduct a wetlands delineation.

Mr. Travisano said that the Planning Board understands the concerns raised by Mrs. Lin, and he stated that the concerns will be addressed when the development application comes before the Planning Board. He also said that the concerns are very valid.

2. Adam Faiella, an attorney representing the owners of 522 Southern Boulevard, asked if it was Mr. Banisch's testimony that the Housing Element and Fair Share Plan is consistent with the Township's Settlement Agreement with the Fair Share Housing Center. Mr. Banisch said that the latest update to the Settlement Agreement provides for the changes in the draft Housing Element and Fair Share Plan, and he believes the Settlement Agreement amendments have been adopted. Mr. Warner clarified that during the testimony he was referring to a March 12, 2020 draft of the Settlement Agreement, and he is unsure if the Court has approved the amendments yet. Mr. Faiella said that it is his understanding that 522 Southern Boulevard is not currently included in the Settlement Agreement, and that it is anticipated that 522 Southern Boulevard will be included in a future amended Settlement Agreement. Mr. Faiella asked how the draft Housing Element and Fair Share Plan can be consistent with the Settlement Agreement when it relies on an anticipated future amendment. Mr. Warner said that it is his understanding that the Settlement Agreement has been made in principle but has not yet been approved by the Court, and he deferred to the Township Attorney for further clarification. Mr. Faiella asked if it would make more sense to wait to see if the Court approves the amended Settlement Agreement. Mr. Warner said that while some people may be of Mr. Faiella's opinion, Mr. Warner contended that the adoption of the Housing Element and Fair Share Plan at this time was an entirely appropriate and valid action by the Planning Board.

3. Nicole Hagner, 396 River Road, was sworn in to give testimony. Ms. Hagner said that she does not think that the Planning Board should vote on a draft Housing Element and Fair Share Plan unless it includes references to all appropriate documents. She also said that the amendment to the Settlement Agreement should occur before the Housing Element and Fair Share Plan is adopted. Ms. Hagner asked if the Master Plan plays an important role in guiding how development is done in a community. Mr. Banisch said that the Master Plan does serve as a guide as described. Ms. Hagner asked if the Master Plan not only sets principles, documents analysis and gives recommendations, but also provides a vision for what the community should become. Mr. Banisch said that it does. Ms. Hagner opined that the Settlement Agreement is being cut and pasted into the Housing Element and Fair Share Plan, and said that the Planning Board's analysis should go further. She also said that she hopes that the Planning Board would provide a vision for the future of the community and take a deeper look at what the Court is asking the Township should do.

4. Risa Arin, 27 Lake Road, was sworn in to give testimony. Mrs. Arin asked when an environmental impact study for 522 Southern Boulevard will be performed, and said she thinks that such a study should be conducted before a location is considered for development.

Mr. Travisano said that an environmental impact study would be part of the application process for the development of the property. Mr. Ruschke said that the Township can review the DEP's GIS Database, and also review information submitted for development of adjacent properties as part of a preliminary analysis of environmental constraints and impacts. He also said that impervious coverage is viewable on aerial maps. Mr. Ruschke further noted that the time for an environmental impact study would be when a redevelopment plan is being prepared. Mr. Ruschke further addressed the DEP permit process.

Mrs. Arin asked about the density of the proposed development, and said she heard a rumor that the Township is going above and beyond the Affordable Housing Obligation. Mr. Banisch said that the Township will still have an unmet need, and the Township will meet the number of units required after the Vacant Land Adjustment had been considered and agreed upon.

5. Chris Ravera, 579 Shunpike Road, asked if more questions can be asked about the 522 Southern Boulevard site at a later time, and said that the residents of the Sunset Lake neighborhood have concerns. Mrs. Ravera also said that the neighbors do not object to Affordable Housing at the site, but are concerned about the density of development.

   Mr. Travisano said that this hearing is the first step in a lengthy process, and residents will have multiple opportunities to scrutinize the development application, ask questions and raise objections.

6. Gennady Uzkiy, 39 Lake Road, asked if the Township is coordinating with the Borough of Madison regarding development of Affordable Housing, and said that he heard Madison is looking to develop Affordable Housing on Shunpike Road. Mr. Uzkiy also asked why the Township is looking to spend taxpayer money on the acquisition of the property without having conducted a traffic study or an environmental study.

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

Mr. Warner indicated that a draft resolution has been prepared to authorize the adoption of the Housing Element and Fair Share Plan tonight, if that is the decision of the Planning Board.

Mr. Travisano moved to adopt the resolution approving the Housing Element and Fair Share Plan. Mr. Kelly 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, Absent; Mr. Tarasca, Absent.

Master Plan Consistency Review – Ordinance 2020-13

Ms. Hagner rejoined the discussion as a Planning Board member.

Mr. Warner stated that Ordinance 2020-13 amends the recently adopted Ordinance 2020-11, and because it is a land use ordinance the Planning Board has an opportunity under the Municipal Land Use Law to conduct a Master Plan Consistency Review.

Mr. Banisch was sworn in to give testimony.

Mr. Banisch stated that the Planning Board previously considered the request to rezone the subject area to allow for five lots. He also stated that Ordinance 2020-11 was deemed inconsistent with the Land Use Plan due to the zoning density. Mr. Banisch said that Ordinance 2020-13 serves to clarify Ordinance 2020-11 regarding the site preparation for a Group Home, and he said that the site will be prepared for a ranch-style home. He also said that the site will be cleared and leveled to be ready for a foundation to be brought to the site. Mr. Banisch stated that Ordinance 2020-13 should be considered inconsistent with the Master Plan due to the proposed density, however it can also be found to advance the objectives of the Master Plan with regard to development of Affordable Housing and protection of steep slopes. Mr. Warner clarified that the Hillside Avenue 5-lot tract is the subject of the ordinance.

Mr. Travisano inquired, and Mr. Banisch confirmed, that the ordinance clarifies that the Group Home lot will be cleared and leveled to allow construction prior to dedication of the lot to the Township.

Mr. Travisano opened the floor to the public to ask questions regarding the Master Plan Consistency Review.
Seeing no public comment, Mr. Travisano closed the public comment session.

Mr. Warner noted that a draft resolution has been prepared to determine that Ordinance 2020-13 is inconsistent with the Master Plan, and nevertheless recommending that the ordinance be adopted by the Township Committee for the reasons stated by Mr. Banisch, which resolution could be adopted tonight if that is the decision of the Planning Board.

Mr. Hoffmann moved to adopt the Resolution to deem Ordinance 2020-13 inconsistent with the Master Plan but to nevertheless recommend that the Ordinance be adopted as it advances the goals and objectives of the Master Plan. Mr. Nelson seconded the motion.

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

Mr. LaConte noted that the Public Hearing on Ordinance 2020-13 will be held at the Township Committee meeting scheduled for August 13, 2020.

Mr. Nelson moved to adjourn at 9:37 PM. Mr. Hoffmann seconded the motion, which carried unanimously.

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Gregory J. LaConte
Planning Board Recording Secretary