



Planning & Real Estate Consultants

MEMORANDUM

To: Township of West Orange Planning Board

From: Paul Grygiel, AICP, PP

Date: October 5, 2020

Re: **Overview of Ordinance Implementing Settlement Agreement with Fair Share Housing Center and its Relationship to the Master Plan**

The Township Council is scheduled to introduce an ordinance implementing its settlement agreement with Fair Share Housing Center at its October 6, 2020 meeting. Assuming this ordinance is introduced, the Township Council intends to refer it to the Planning Board pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-26a, which reads in part:

“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 in 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 Township of West Orange has been involved in legal actions pertaining to affordable housing compliance since 2015, when a New Jersey Supreme Court decision changed the landscape related to this topic. After years of negotiations, settlement agreements with West Essex Highlands Inc. and Fair Share Housing Center (FSHC) were approved by the Township Council on April 14, 2020 and by the Superior Court of New Jersey, Law Division – Essex County at a Fairness Hearing on July 10, 2020. These agreements require the adoption of amendments to the Township’s Master Plan and Zoning Ordinance.

The proposed ordinance would update the Township’s existing affordable housing regulations in Section 25-18 of the Land Use Regulations Ordinance to comply with current requirements, as set forth by State law and recent court decisions. One new subsection of these regulations would require a mandatory affordable housing set aside for all new multifamily residential developments of five units or more. The set aside for rental and for sale developments shall be 20 percent. This requirement shall not apply to residential expansions, additions, renovations, replacement, or any other type of residential development that does not result in a net increase in the number of dwellings of five or more.

It would also create the following new overlay zone districts:

- An IHO-1 Inclusionary Housing Overlay zone for the West Orange Plaza shopping center (Block 152.01, Lots 1445 and 1445.05) and Mayfair Farms (Block 152.01, Lot 1445.01). This zone would permit commercial/retail on the first floor and up to three stories of residential above at a density of up to 16 units per acre, with 20 percent of the units set aside for low- and moderate-income households, as well as the uses permitted in the underlying zoning district.
- An IHO-2 Inclusionary Housing Overlay zone for 200 Pleasant Valley Way (Block 151, Lot 33). This zone would permit multifamily residential at a density of up to 24 units per acre, rounded up to a maximum of 142 dwelling units, with 20 percent of the units set aside for low- and moderate-income households, as well as the uses permitted in the underlying zoning district.

The West Orange Master Plan Land Use Plan Element currently designates each of these areas proposed to be rezoned for the existing zoning of the property or properties in the proposed overlay zones (e.g. P-C and B-2 commercial zoning for the AHO-1 and single-family residential for the AHO-2). The proposed zoning of these areas is therefore inconsistent with their Master Plan land use designations. However, the proposed IHO-1 and IHO-2 zones will be consistent with the Master Plan Housing Element and Fair Share Plan when it is updated to include this properties as providing affordable housing compliance mechanisms. It is also consistent with certain Master Plan goals, objectives and recommendations, including providing housing opportunities for low- and moderate-income households.

If the Board has any questions or comments on the above, I would be happy to address them at the October 7th Planning Board meeting.