

Memorandum

To: Chester Borough Land Use Board

From: David J. Banisch, PP/AICP

Date: April 8, 2020

Re: Ordinance No. 2020-05 Master Plan consistency Review as per **40A:12A-7.e.**

The purpose of this memorandum is to offer the Land Use Board with my professional planner's opinion pertaining to the Land Use Board's review authority as to whether Ordinance No. 2020-05 is, or is not, inconsistent with the Chester Borough Master Plan in accordance with a review of a proposed Redevelopment Plan in N.J.S.A. 40A:12-7.e.

This section of the statute, in part, provides that:

“e. Prior to the adoption of a redevelopment plan, or revision or amendment thereto, the planning board shall transmit to the governing body, within 45 days after referral, a report containing its recommendation concerning the redevelopment plan. This report shall include an identification of any provisions in the proposed redevelopment plan which are inconsistent with the master plan and recommendations concerning these inconsistencies and any other matters as the board deems appropriate. ...”

Ordinance No. 2020-05 – History of Redevelopment & Background

1. In March of 2014, the then constituted Chester Borough Planning Board prepared a report recommending that Mayor and Council designate Block 101, Lots 13, 14, 15 & 16 a Non-condemnation Redevelopment Area.
2. On May 6, 2014, the Mayor and Council adopted Resolution 2014-46 designating Block 101, Lots 13, 14, 15 and 16 a “Non-condemnation Redevelopment Area” consistent with the Board's recommendation two months earlier.
3. Following the designation of Block 101, Lots 13, 14, 15 & 16 a Non-condemnation Area, the Planning Board engaged in a public visioning process and prepared a draft Redevelopment Plan that was never adopted because of a change in the status of municipal affordable housing compliance that interrupted progress on Redevelopment.
4. That interruption was a March 15, 2015 NJ Supreme Court decision that required municipalities to enter a Superior Court process for affordable housing compliance. That Court process allowed intervention by objectors and the owner of Block 101, Lots 13, 14, 15 & 16 filed for intervenor status with the Court to build affordable housing on the site.

5. In resolving Chester Borough’s affordable housing compliance in Court, the Borough and the owner of Block 101, Lots 13, 14, 15 & 16 entered into a Settlement Agreement in October 2019. The Settlement Agreement requires Chester Borough to adopt a Redevelopment Plan that includes a list of development components, including affordable housing, that are identified in Ordinance No. 2020-05, entitled:

“AN ORDINANCE OF THE BOROUGH OF CHESTER, COUNTY OF MORRIS, STATE OF NEW JERSEY ADOPTING A REDEVELOPMENT PLAN TO GUIDE THE FUTURE LAND USE IN AND REDEVELOPMENT OF BLOCK 101, LOTS 13, 14, 15 & 16 IN THE BOROUGH OF CHESTER DESIGNATED A NONCONDEMNATION REDEVELOPMENT AREA BY THE BOROUGH OF CHESTER MAYOR AND COUNCIL ON MAY 6, 2014 AND PURSUANT TO THE BOROUGH OF CHESTER 2019 HOUSING PLAN ELEMENT AND FAIR SHARE PLAN AND THE JULY 9, 2019 ORDER OF THE SUPERIOR COURT APPROVING CHESTER BOROUGH’S THIRD ROUND AFFORDABLE HOUSING PLAN.”
6. § 163-74.1 Redevelopment Plan for Block 101, Lots 13, 14, 15 & 16 (Section Four of Ord. No. 2020-05), subsection 163-74.1. D. “Redevelopment Plan Permitted Uses” identifies the permitted uses for future development of the tract that match the Settlement Agreement.

Chester Borough 2019 Master Plan Housing Plan element and Fair Share Plan

7. On May 23, 2019 the Chester Borough Land Use Board adopted the Amended Housing Plan Element and Fair Share Plan that identifies “Mixed Commercial, Townhomes and Family Affordable Rental at the Turkey Farm and Mill Ridge Site” on page 7, including 36 rental apartments to address a portion of Chester Borough’s affordable housing obligations. #2 on Page 7 identifies that the “TF-Family Rental” project will be constructed at the Larison’s Turkey Farm site (Block 101, Lots 13, 14, 15 & 16) and that:
 - a. “The site is made available by the intervener’s in the Borough’s Settlement Agreement for affordable housing and nonresidential development of the site, which consists of approximately 24.5-acres of upland. Approximately 12 acres of the TF site is situated within the NJ Highlands Regional Master Plan (RMP) -designated “Existing Community Zone”, which is a designation that the Highlands Council attaches to land that exhibits clearing and development characteristics that are suitable for new development and redevelopment.”
 - b. “The site requires wastewater treatment collection and treatment facilities that the intervenor has pledged to develop through the Borough’s settlement agreement and indicated is developable under NJDEP water quality management plan policies, but for consistency with the Highlands RMP.”
 - c. “ ... the site is not currently designated a sewer service area, Chester Borough is a “conforming” municipality under the NJ Highlands Plan Conformance process and the Borough is pursuing a Highlands Center Designation that will include the TF site” ... for “consistency between RMP policies for development served by centralized wastewater collection and treatment facilities and NJDEP WQMP policies.”

- d. “The Borough has designated the site a Redevelopment Area in accordance with the New Jersey Local Redevelopment and Housing Law (LRHL).”
- e. “By coordinating the various policies and functions of government to facilitate redevelopment including 36 affordable rental units LMI households within the region, the TF site is approvable.”

Thus, the provisions of Ordinance No. 2020-05 are consistent with the adopted 2019 Housing Plan Element and Fair Share Plan of the Chester Borough Master Plan. Indeed, the Redevelopment Plan is based on the Borough’s affordable housing agreement that is articulated in this element of Chester Borough’s Master Plan.

Ordinance No. 2020-05 is not inconsistent with the Land Use Board’s 2019 Housing Plan Element and Fair Share Plan. There is a high level of consistency between the Chester Borough Master Plan Housing Plan Element and Fair Share Plan and Ordinance No. 2020-05.

2002 Master Plan

- 8. The 2002 Chester Borough Master Plan, Land Use Plan Element provides the following policy statement for Block 101, Lots 13, 14, 15 & 16:
 - a. Page II – 11 under the heading “Future Land Use” in the section analyzing “commercial areas” – “The Turkey Farm property is in litigation. However, hopefully a satisfactory solution will emerge.”
 - b. Following Page II-15, Appendix A, under the discussion of information offered as a basis for land use modification: **Site #1** - Larison’s Turkey Farm (70.1 acres): No comment as this property is in litigation.

Thus, the 2002 Master Plan was essentially silent on any land use policy recommendations for the Turkey Farm (then Block 1, Lots 7, 8, 10 & 10.1), Block 101, Lots 13, 14, 15 & 16.

Ordinance No. 2020-05 is not inconsistent with the 2002 Chester Borough Master Plan

- 9. The 2008 Periodic Reexamination report discussed the extent to which the major problems and objectives relating to land development in the municipality at the time of the adoption of the last reexamination report (2002 Master Plan update) have been reduced or have increased subsequent to such date as per N.J.S.A. 40:55D-89.b., and characterized the Turkey Farm site (Block 101, Lots 13, 14, 15 & 16):

Larison’s Turkey Farm litigation has been resolved in support of the Borough’s rezoning action designating lands lying on the north side of West Main Street (Route24) OP Office Professional zone. Larison’s remains the subject of continuing planning efforts between the Borough Council and the property owner. Mixed use development options, including neotraditional commercial design options have been developed, however the ultimate disposition of any redevelopment of the Turkey Farm properties and Larison’s Restaurant is dependent upon the provision of wastewater treatment

facilities that are capable of supporting development of any significant scale (i.e. combined floor areas of 75,000 sq. ft. to 125,000 sq. ft). NJDEP approval of wastewater treatment facilities and a Water Quality Management Plan amendment are subject to NJDEP's recently adopted revised regulations, which call for consistency with NJ Highlands Regional Master Plan policies. The Borough is conducting continuing investigations into the feasibility of amending the Borough's water quality management plan, including resolving seemingly inconsistent policies for land use, which have been identified in the Highlands Regional Master Plan.

In the 2008 Master Plan Periodic Reexamination Report discussion of Subsection N.J.S.A. 40:55D-89.d. entitled "The specific changes recommended for the master plan or development regulations, if any, including underlying objectives, policies and standards, or whether a new plan or regulations should be prepared", Block 101, Lots 13, 14, 15 & 16 was addressed as follows:

OP-Zone – West Main Street, specifically the Larison's corner properties. These properties are zoned office professional, and the zoning should be reexamined and updated to reflect the Borough's redevelopment vision for this area that is substantially consistent with the Borough's existing development patterns and historic character found within the East Main Street Historic District area. This rezoning would include amending the Land Use Plan with a vision statement for this area, an updated statement of goals and objectives for the area and whether a new zone should be designated, identification of permitted uses for the zone including an appropriate mix of uses (i.e. ranges of square footage that should be permitted), whether mixed use should be a component of the design, and identification of specific historic design standards that are consistent with the Borough's historic district on East Main Street.

The 2008 Periodic Reexamination Report recommended updating the future use of Block 101, Lots 13, 14, 15 & 16 with a new zone and recommended a redevelopment vision consistent with existing commercial development patterns and the historic character of East Main Street. The 2008 Periodic Reexamination Report also recommended identifying an appropriate mix of uses, ranges of square footage for permitted uses, whether mixed use should be included in design and identification of historic design standards. Ordinance No. 2020-05 (Redevelopment Plan) identifies a range of uses, specific square footage for permitted uses in the Redevelopment Area and requires development design consistent with the Borough's Historic District design guidelines and requirements in Zoning.

It is my opinion that Ordinance No. 2020-05 is not inconsistent with the 2008 Periodic Reexamination Report.

2014 Highlands Periodic Reexamination Report, Land Use Ordinance and Master Plan Element

10. In 2014, the Planning Board conducted a Periodic Reexamination of the Borough's Master Plan and development regulations that was almost singularly focused on Chester Borough's Highlands Regional Master Plan (RMP) conformance and the adoption of the required components of RMP Plan

Conformance. The 2014 recommended adoption of the Highlands Land Use Plan Element (Master Plan Amendments) and adoption of Highlands Land Use ordinances to conform to the Highlands Regional Master Plan.

Chester Borough's Highlands Element calls for development and redevelopment within the Existing Community Zone designations throughout Chester Borough, including Block 101, Lots 13, 14, 15 & 16. Ordinance No. 2020-05 permits Redevelopment of portions of the site designated Existing Community Zone. The components of Redevelopment designated for the Existing Community Zone portion of Block 101, Lots 13, 14, 15 & 16, including 36-units of affordable housing, a medical office building of 20,000 – 25,000 sq. ft., a 5,000 sq. ft. office building, a 6,500 sq. ft. restaurant, a 15,000 sq. ft. retail pharmacy and a wastewater package treatment plant, consistent with the Highlands Master Plan and Land Use ordinances. An organic farm is permitted within a portion of Block 101, Lots 13, 14, 15 & 16 that is designated Conservation Zone (CZ) on the Highlands Land Use Capability Map, which is not inconsistent with land uses permitted in the CZ.

It is my opinion that Ordinance No. 2020-05 is not inconsistent with Chester Borough's 2014 Periodic Reexamination Report recommendations, the Highlands Land Use Element and Highlands Land Use ordinance.

Conclusion

In accordance with the provisions of N.J.S.A. 40A:12A-7.e., that calls for a Land Use Board recommendation concerning the Redevelopment Plan and to identify any provisions that may be inconsistent with the Master Plan and for any recommendations concerning inconsistencies that may be identified, I have reviewed the Borough's Master Plan, Periodic Reexamination Reports and the most recently adopted Highlands RMP amendments to the Borough's Master Plan and development regulations. ***As set forth in my review above, it is my professional planner's opinion that the Board may find that Ordinance no 2020-05 (Redevelopment Plan for Block 101, Lots 13, 14, 15 & 16) is not inconsistent with the Borough's Master Plan.***

“e. Prior to the adoption of a redevelopment plan, or revision or amendment thereto, the planning board shall transmit to the governing body, within 45 days after referral, a report containing its recommendation concerning the redevelopment plan. This report shall include an identification of any provisions in the proposed redevelopment plan which are inconsistent with the master plan and recommendations concerning these inconsistencies and any other matters as the board deems appropriate. ...”

I trust that the Board will find this information useful in consideration of this matter.

- c. Kerry Brown, Land Use Board
Steven K. Warner, Esq.
Steven Bolio, PE