

2020 LAND USE PLAN ELEMENT AMENDMENT

Borough of Demarest

March 19, 2020

Adopted by the Planning Board: May 6, 2020



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1. INTRODUCTION

In 1983, the Borough of Demarest adopted a Master Plan. The 1983 Master Plan included a Land Use Plan Element. Additionally, the Borough’s most recent reexamination reports were adopted in 2003 and 2010.

The purpose of this document is to amend the Land Use Plan Element within the 1983 Master Plan to reflect the Borough’s Settlement Agreements with Fair Share Housing Center (hereinafter “FSHC”) and two intervenors. This Amendment to the 1983 Master Plan contemplates rezoning three areas within the Borough and creating a new ordinance that will only apply to certain types of residential development. The following chapters detail the need to modify the 1983 Master Plan the planning justifications for multi-family and townhouse residential uses of the properties, and the zoning recommendations to facilitate said uses.

2. NEED TO MODIFY THE 1983 MASTER PLAN

In response to the March 10, 2015 Supreme Court decision to strip the Council on Affordable Housing of all its powers and duties, Demarest filed a Declaratory Judgment Action on July 8, 2015. Between 2015 and 2017 the Borough negotiated with FSHC and reached a settlement in December of 2017. The FSHC Settlement Agreement was executed on January 23, 2018. The Borough initially had one intervenor in their Declaratory Judgment Action. In April of 2016, Carol and Quentin Avery (hereinafter “the Averys”), the owners of 95 County Road (Block 145, Lot 5), filed a motion to intervene in the Borough’s Declaratory Judgment Action. Intervention was granted on May 13, 2016. The Borough worked with the Averys between 2016 and 2018 to create an acceptable concept plan and reach a mutual settlement, which was included in the December 2017 Settlement Agreement with FSHC.

Additionally, Sylco Investments 6, 8, 9, and 10, LLC (hereinafter “Sylco”), the owner of Block 119, Lots 1.05, 1.06, and 1.07 and Block 120, Lots 1.03 and 1.04, was granted intervention in the Borough’s Declaratory Judgment Action on September 27, 2019. After several negotiation sessions, a Settlement Agreement between the Borough of Demarest and Sylco was approved by the Council on February 13, 2020 and the Planning Board on May 6, 2020. The Settlement Agreement permits a maximum of 24 townhomes to be constructed on the site. Additionally, the Settlement Agreement requires Sylco to contribute a \$1 million payment-in-lieu of constructing the five affordable unit obligation generated by the market rate units.

As outlined in the FSHC Settlement Agreement, Demarest has a three-part obligation as follows:

- Rehabilitation – 0 units
- Prior Round Obligation – 66 units
- Third Round Obligation – 309 units

However, the Borough sought and received a Vacant Land Adjustment (hereinafter “VLA”) as part of the Prior Round Obligation, which reduced the need to a 22-unit Realistic Development Potential (hereinafter “RDP”). The Borough also sought a VLA in the Third Round, which reduced the obligation to a 9-unit RDP.

To satisfy and/or address the Prior and Third Round Obligation, Demarest has agreed to:

- Rezone the property known as Block 145, Lot 5, located at 95 County Road, (the Avery’s site) to permit the construction of no more than eight units including two affordable units.

- Adopt a Redevelopment Plan for Block 23, Lot 13, located at 127 Hardenburgh Avenue, (hereinafter “127 Hardenburgh Avenue”), which would permit inclusionary residential development at a maximum density of 40 units per acre. A 50% affordable housing set-aside would be required.
- Adopt a Redevelopment Plan for the designated Area in Need of Rehabilitation in the Borough’s downtown. The Rehabilitation Area comprises of 23 tax lots (including 127 Hardenburgh Avenue) and totals roughly 11.23 acres. The Redevelopment Plan would permit the following residential densities on the upper floors of a mixed-use building depending on lot size:
 - 25 units per acre for lots less than 12,000 square feet,
 - 30 units per acre for lots containing 12,000 to 20,000 square feet, and
 - 35 units per acre for lots greater than 20,000 square feet

A mandatory affordable housing set-aside of 15% for rental units and 20% for for-sale units would be a requirement of the Redevelopment Plan.

- Rezone Sylco (Block 119, Lots 1.05, 1.06, and 1.07 and Block 120, Lots 1.03 and 1.04) to permit a total of 24 townhomes. Pursuant to the Settlement Agreement, Sylco will contribute five affordable units via a payment-in lieu of \$1 million.
- Adopt an Ordinance requiring an affordable housing set-aside for all new residential developments of five or more units, at a density at or above six units per acre, that occur as a result of a use or density variance, rezoning, or new redevelopment plan. The set-aside for affordable housing will be a minimum of 20% for for-sale developments and 15% for rental developments.

Therefore, the Settlement Agreement with FSHC and the Settlement Agreement with Sylco have created the need to modify the 1983 Master Plan.

3. PLANNING JUSTIFICATIONS FOR RESIDENTIAL USES

As noted above, a Settlement Agreement with FSHC was executed to establish the Borough’s voluntary compliance with its affordable housing obligations. The following sections provide the reasoning for multi-family residential and townhome development.

95 COUNTY ROAD

The FSHC Settlement Agreement requires the development of 95 County Road as an inclusionary development with a maximum of eight units, including two affordable housing units. The site is a long rectangular parcel currently developed with a residential dwelling. The site is oversized compared to the surrounding single-family residential lots. The redevelopment of the parcel would allow for the better utilization of the property and ensure adequate emergency access, light, air, and open space are provided.

The eight permitted units equate to a residential density of 3.77 units per acre. The Borough has one existing inclusionary residential development, the Alpine Country Club, located on Bellaire Drive. The 8.55 acre parcel is developed with 38 townhouse units, including four affordable units, which translates to a residential density of 4.44 units per acre. This is approximately 0.67 units per acre greater than the proposed density of 95 County Road. Furthermore, the affordable housing rules require municipalities that zone for inclusionary housing to provide a financial incentive (a density increase), which then allows the market-rate units to shoulder the cost to build/carry the affordable units. This financial incentive is consistent with case law that requires a compensatory benefit for inclusionary developers.

DOWNTOWN REHABILITATION AREA

The FSHC Settlement Agreement requires the Borough to adopt a Redevelopment Plan for the Borough's "downtown" area to permit multi-family housing development on the upper floors of non-residential uses. The document also requires Demarest to allow multi-family uses at a higher density within the Rehabilitation Area when they have a 50% affordable set-aside. The Mayor and Council designated the Borough's "downtown" area as an Area in Need of Rehabilitation on July 24, 2017. The Rehabilitation Area is located along Hardenburgh Avenue and Park Street. It should be noted that the 127 Hardenburgh site is located within the Downtown Rehabilitation Area. The Settlement Agreement with FSHC requires the following densities:

- 25 units per acre for lots less than 12,000 square feet,
- 30 units per acre for lots containing 12,000 to 20,000 square feet, and
- 35 units per acre for lots greater than 20,000 square feet

The Rehabilitation Area contains a variety of land uses including single-family dwellings, two-family dwellings, commercial buildings, vacant lots, and the municipal building. Additionally, two properties contain mixed uses with commercial on the ground floor and residential units above. Building upon the existing commercial and mixed-use properties in the Rehabilitation Area, the Borough believes a Redevelopment Plan permitting mixed-use buildings with inclusionary development would not impact the light, air, or open space of the surrounding properties.

The required densities are higher than other areas of the Borough, however the majority of lots within the Rehabilitation Area are quite small. For example, a 15,000 square foot lot would only be permitted ten units. Furthermore, the affordable housing rules require municipalities that zone for inclusionary housing to provide a financial incentive (a density increase), which then allows the market-rate units to shoulder the cost to building/carry the affordable units. This financial incentive is consistent with case law that requires a compensatory benefit for inclusionary developers.

SYLCO

The Settlement Agreement with Sylco permits the development of 24 townhouse units on the site. The site is located in the eastern corner of the Borough adjacent to single-family dwellings to the north, east, and west and the Alpine Country Club Golf Course to the south. The properties are constrained by a variety of environmental features including a 300-foot Category 1 water buffer area, wetlands with a 50-foot buffer, and slopes greater than 15%. In fact, Sylco has deed restrictions/conservation easements with NJDEP, which indicate only 4.2 acres of the overall site is developable.

The 24 townhouse units permitted by the Sylco Settlement Agreement correlates to a proposed residential density of 1.33 units per acre for the overall site. The nearby inclusionary development, Alpine Country Club, has a density of approximately 4.44 units per acre. The proposed density of the Sylco site is significantly less than the existing inclusionary development. Additionally, the limited buildable area on the site focuses development to the southern property line, adjacent to the Alpine Country Club Golf Course, secluded from adjacent single-family dwellings. Therefore, the proposed site will have no negative impact on the adjacent residential properties' light, air, or open space.

Furthermore, the affordable housing rules require municipalities that zone for inclusionary housing to provide a financial incentive (a density increase), which then allows the market-rate units to shoulder the cost to building/carry

the affordable units. This financial incentive is consistent with case law that requires a compensatory benefit for inclusionary developers.

BOROUGH-WIDE SET-ASIDE

The FSHC Settlement Agreement also requires the Borough to adopt a Borough-wide affordable housing set-aside ordinance. This ordinance would require any multi-family residential development applications that propose five or more residential units at a density of six or more units per acre that occur through a use or density variance, rezoning, or a new redevelopment plan to provide a 20% affordable housing set aside for for-sale developments and a 15% affordable housing set-aside for rental developments. This ordinance is a standard settlement agreement requirement and seeks to capture future development/redevelopment when and if it occurs. It should be noted that the ordinance does not require the Board to approve these types of applications. If approved, an Applicant would be receiving the benefit of a density or use that isn't permitted or zoning that doesn't exist, which creates the compensatory benefit for the developer to construct the affordable units.

4. ZONING RECOMMENDATIONS

As a result of the FSHC, Averys, and Sylco Settlement Agreements, new zoning ordinances and a redevelopment plan must be drafted and adopted. The following sections provide zoning recommendations for each mechanism.

95 COUNTY ROAD

A new zoning district is recommended for the 95 County Road site to permit a multi-family development of no more than eight units. At least two of the eight units shall be affordable. The Mayor and Council adopted Ordinance 1066-19 on August 26, 2019, which created the Residential Multi-Family District to allow for the construction of an eight-unit multi-family development, including two affordable units.

REHABILITATION AREA

As previously stated, the Borough's "downtown" was designated as an Area in Need of Rehabilitation on July 24, 2017. Pursuant to the FSHC Settlement Agreement, the Mayor and Council drafted and adopted the Downtown Redevelopment Plan on November 25, 2019 via Ordinance 1071-19, which implements the requirements of the Settlement Agreements. The Mayor and Council are in the process of amending the Redevelopment Plan with regard to building height. The Redevelopment Plan permits a variety of uses, including, but not limited to commercial, instructional, child care, adult day care, municipal offices, single-family detached homes, and multi-family dwellings. The Redevelopment Plan also includes specific bulk requirements for the development of the 127 Hardenburgh site with a stand-alone multi-family development.

SYLCO

A new zoning district is recommended for Sylco (Block 119, Lots 1.05, 1.06, and 1.07 and Block 120, Lots 1.03 and 1.04), which would permit a 24-unit townhouse development. The zone should require the developer, Sylco, to provide five affordable housing units via a \$1 million payment-in-lieu. The new zone should include standards for bulk requirements, architectural design, lighting, landscaping, signage, parking, and trash. A detailed list of accessory uses should also be included. It should be noted that new definitions may need to be added to the Zoning ordinance.

BOROUGH-WIDE SET-ASIDE

Finally, the Borough must adopt an affordable housing Borough-wide set-aside ordinance pursuant to the FSHC Settlement Agreement. The Ordinance shall require all approved applications requiring a use or density variance or a rezoning or redevelopment plan that includes the construction of multi-family residential development of five or more units, at a density of six or more units per acre to provide 20% of the units as affordable in for-sale developments and 15% of the units as affordable in rental developments. The Borough-wide set-aside was adopted on August 26, 2019 via Ordinance 1065-19, which includes the requirements stated above.

5. CONCLUSION

The FSHC Settlement Agreement, Avery Agreement, and Sylco Agreement have generated the need to create two new zone districts, adopt a Redevelopment Plan, and adopt a Borough-wide set-aside ordinance. The Borough has completed three of the four tasks required by the Settlement Agreements. The 95 County Road site was rezoned Residential Multi-Family District, the Downtown Redevelopment Plan permitting multi-family units above ground floor uses and a stand-alone multi-family residential development for the 127 Hardenburgh site was adopted, and a Borough-wide Set-aside Ordinance was adopted. The Borough has one remaining task, which is to rezone Sylco site to permit a maximum of 24 townhouse dwellings. This Amendment updates and refreshes the 37-year old Master Plan to recognize the required changes to the Zoning Ordinance pursuant to the Borough's settlement agreements while establishing a foundation for the proposed rezoning.