

TOWNSHIP OF MANALAPAN
ORDINANCE 2020-07

AN ORDINANCE AMENDING CHAPTER 95 (DEVELOPMENT REGULATIONS), ARTICLE V, ZONING DISTRICT REGULATIONS, OF THE CODE OF THE TOWNSHIP OF MANALAPAN, COUNTY OF MONMOUTH, AND STATE OF NEW JERSEY TO ESTABLISH AN AFFORDABLE HOUSING OVERLAY ZONE UPON CERTAIN LAND WITHIN THE SED2W AND R-AG/4 ZONING DISTRICTS, PROVIDING FOR MULTI-FAMILY HOUSING WITH AN INCLUSIONARY SET-ASIDE OF AFFORDABLE HOUSING TO BE DEVELOPED SUBJECT TO CERTAIN CONDITIONS AND REQUIREMENTS

WHEREAS, the statutes of the State of New Jersey, N.J.S.A. 40:55D-89, require municipalities, through the local planning board, to reexamine municipal master plans “at least” every ten years; and

WHEREAS, the latest Master Plan Reexamination Report for the Township was adopted on July 16, 2009; and

WHEREAS, the Township Planning Board regularly studies the Township Master Plan and has adopted several amendments to the Township Master Plan since the adoption of the 2009 Master Plan Reexamination Report; and

WHEREAS, since the most recent amendment to the Township Master Plan, the Supreme Court of the State of New Jersey, in In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) provided a framework for achieving constitutional compliance with regard to creating a realistic opportunity for producing a fair share of affordable housing for the Third Round; and

WHEREAS, N.J.S.A. 40:55D-62 provides the governing body with the power to create zoning districts and related requirements to effectuate the Township Master Plan and Housing Plan Element and Fair Share Plan;

WHEREAS, the declaratory judgment Plaintiff, the Township of Manalapan (the “Township”) in the lawsuit captioned In the Matter of the Application of the Township of Manalapan, Superior Court of New Jersey, Law Division-Monmouth County Docket No. MON-L-2518-15, which is currently pending in the Superior Court of New Jersey, Monmouth County (the "Action"), and the Diocese of Trenton, an interested party in the Action (the "Diocese") (each a "Party", and collectively, the "Parties"); and

WHEREAS, the Diocese is the/fee owner of that certain parcel of real property located in the Township, consisting of approximately 57.3 acres, having frontage along westbound New Jersey Highway Route 33 and along Iron Ore Road, and designated on the Township's Tax Map as Block 72, Lots 10.01, 11.06 and 11.07 (the "Property").; and

WHEREAS, Toll Bros., Inc., the nationally recognized homebuilder ("Toll"), is the contract pur-

chaser of the Property and intends, subject to its receipt of all necessary approvals, incentives, and authorizations including but not limited to those specifically set forth herein, to develop thereon an inclusionary residential development consisting of up to 320 units, thirty percent (30%) or 96 of which shall be multi-family affordable rental units and the remaining 224 units shall be market rate "for sale" town home style units, units either as fee simple or condominium form of ownership, as generally depicted on the concept plan prepared by ESE Planning, dated December 13, 2018, appended to this Ordinance as "Exhibit A" and made a part hereof (the "Concept Plan"), together with such accessory uses, structures and amenities as are permitted by this Ordinance (the "Project"); and

WHEREAS, The Township filed the Action on January 7, 2015 seeking a declaration of its compliance with the Mount Laurel doctrine and the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq. (the "FHA") in accordance with in re N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) ("Mount Laurel IV"); and

WHEREAS, settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for lower-income households, the Township has settled with other interested parties in partial satisfaction of its yet to be determined affordable housing obligations; and

WHEREAS, the Township Committee recognizes the importance of providing an opportunity to produce its fair share obligation for the Third Round and to allow for the opportunity of housing choices within the Township and the Developer of this Project intends on using 4% Low Income Housing Tax Credits to finance this Project;

NOW THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Manalapan, County of Monmouth, State of New Jersey, that Affordable Housing -Diocese Overlay Zone (AH-Diocese) is hereby established and applied to certain lands along Block 72, Lots 10.01, 11.06, and 11.07, as follows:

SECTION I. Chapter 95, "Development Regulations," Article V, "Zoning District Regulations," of the Code of the Township of Manalapan, be and the same is hereby amended and supplemented to add thereto the following subsection:

"95-5.6K AH-Diocese Affordable Housing Overlay District

(1) Purpose.

The intent of the AH-Diocese Affordable Housing Overlay District is to establish a suitable location within the township for the development of low- and moderate-income housing uses in the form of an inclusionary development. This zoning district will provide realistic opportunities for the construction of low- and moderate-income housing to implement the township housing element and Third Round (1999-2025) fair share plan, which Fair Share Plan has been approved by the Superior Court following the resolution of the Township's declaratory judgment action (In the Matter of the Application of Manalapan Township, Monmouth County, Docket No. L-2518-

15) which action follows the directive of the Supreme Court's decision in the matter of In re Adoption of N.J.A.C. 5:96 & N.J.A.C. 5:97, 221 N.J. 1 (2015).

The residential gross density shall be guided by the area requirements and bulk standards contained herein, subject to the inclusion of a specified percentage of affordable homes. All development shall further comply with the rules and regulations of the township affordable housing office and the regulations, as applicable, of the COAH (N.J.A.C. 5:91 and 5:92 et seq.) and the Uniform Housing Affordability Controls (UHAC) (N.J.A.C. 5:80-26.1, et seq.).

(2) Applicability.

- a. The Affordable Housing-Diocese Overlay Zone shall be applied to Block 72 (Lots 10.01, 11.06 and 11.07), which are shown on the Official Tax Map of the Township of Manalapan. The Official Zoning Map of the Township of Manalapan is hereby amended in accordance with the foregoing and is incorporated by reference. For the purpose of permitting the development of a multi-family inclusionary development, the provisions and requirements of the Affordable Housing Overlay Zone shall supersede the provisions and restrictions of the underlying SED2W and R-AG/4 Zone Districts. In the event of a conflict between the provisions of this section and other sections of the Township development regulations with respect to the development of market-rate townhouses and affordable housing, the provisions of this Affordable Housing-Diocese Overlay Zone shall govern.
- b. The Property will be developed by the Diocese or its successor-in-interest substantially in accordance with the Concept Plan subject to such revisions as are the result of preparation of a fully engineered site plan and as are consistent with this Ordinance.
- c. The inclusionary residential development of the Property shall consist of up to 6 dwelling units per gross acre, inclusive of a thirty percent (30%) set aside for affordable housing units, as such term is defined in the Uniform Housing Affordability Controls ("UHAC") implementing the FHA, N.J.A.C. 5:80-26.1 et seq. By way of example only and not as a representation, if site plan approval is granted for 320 dwelling units ($320 / 57.3 = 5.58$ units per gross acre), 96 of such units shall be affordable housing units and 224 of which shall be market rate units.

(3) Uses Permitted.

Principal permitted uses for the inclusionary residential development of the Property shall include the following:

- (a) Townhouse style dwelling units; and
- (b) Multi-family attached buildings

(4) Accessory uses and structures permitted.

Permitted accessory uses and structures shall include the following:

- (a) Structures designed for recreation or community use as part of the multi-family dwelling development, including but not limited to pool(s), tennis, bocce ball, and pickleball courts;
- (b) Private garages and carports;
- (c) Tot lots;
- (d) Walking paths;
- (e) Off-street parking facilities including surface parking lots;
- (f) Community club house with fitness room, community room, club room, and furnished model for the market rate units;
- (g) Community club house with fitness room, community room, club room and furnished model for the affordable units;
- (h) A management and leasing office for the market rate units;
- (i) A management and leasing office for the affordable units;
- (j) Maintenance office/garage buildings not to exceed one (1) story in height and 1,500 square feet in floor area. The facade design shall match the residential structures;
- (k) Solid waste facilities;
- (l) Monument signs located at entrance(s) to be constructed of stone or brick, not to exceed 200 square feet in area and eight (8) feet in height;
- (m) Utility structures and facilities needed to provide the direct service of gas, electricity, telephone, water, sewerage and cable television;
- (n) A temporary sales model homes within the respective housing types, including related directional signage to identify such homes as models;
- (o) One temporary construction and one temporary marketing/sales trailer for the market rate units;
- (p) One temporary construction and one temporary marketing/sales trailer for the affordable units;
- (q) Patios and decks directly adjacent to the rear of any homes, which shall also be permitted to be located within building setbacks of interior lots only;
- (r) Privacy fences separating the townhomes, which shall not exceed ten (10) feet in length and shall not enclose a patio;

- (s) Such other accessory uses customarily incidental to the uses permitted.

(5) Design standards.

The design of the buildings shall be residential and not institutional and shall conform to the following:

- (a) Architectural elevations and floor plans shall be provided for each type of building;
- (b) Rooflines shall be pitched. If flat roofs are provided, they shall incorporate design techniques to shield any roof-mounted equipment; and
- (c) The multi-family affordable units and the market rate town home units shall be designed in a complimentary architectural style;

(6) Circulation elements.

- (a) A boulevard street entry shall be provided at the community entrance.
- (b) A vehicular roadway system that shall have a minimum 44-foot-wide private right of way with a 24-foot wide cartway.
- (c) Surface parking lots throughout the community designed in accordance with Residential Site Improvement Standards (N.J.A.C. 5:21-1.1 et seq.);
- (d) Pedestrian circulation systems shall be designed to extend through the neighborhood. Sidewalks shall be provided on at least one side of all streets.
- (e) Bike lanes shall not be required in the Affordable Housing -Diocese Overlay District.

(7) Miscellaneous requirements.

(a) All dwelling units within a structure shall be connected to approved and functioning public water and sanitary sewer systems. Notwithstanding the foregoing requirement, in the event that the public sanitary sewer system for the Project will not be complete or operational prior to the date of the issuance of a certificate of occupancy for all or any portion of the Project, the Diocese or its successor-in-interest, may establish a "pump and haul" operation for all or such portion of the Project until such time as the public sanitary sewer system for the Project is complete and operational.

(b) In addition to the above, the development of the Property shall be governed by the zoning and bulk standards set forth on "**Exhibit B**" appended hereto and made a part hereof. The Property shall be exempt from Sections 222-24 through 222-28 (Tree Replacement Requirements) of the Manalapan Township Land Development Regulations as cost generative features pursuant to N.J.A.C. 5:93-10.1. The Parties acknowledge and agree that the Township's waiver of otherwise ap-

plicable development regulations serves as financial assistance to an affordable housing development that is reimbursable to the Township from the Township's Affordable Housing Spending Plan provided that neither the Diocese, nor its successor in interest, is required to make any monetary contribution to the Township and that such reimbursement does not impose any financial burden on the Project or the Property. The Township's Spending Plan to be adopted may provide for an expenditure of funds to reimburse the Township for the amounts waived pursuant to this Section, subject to the review and approval of the trial court as part of its review of the Spending Plan in the Action provided that neither the Diocese, nor its successor in interest, is required to make any monetary contribution to the Township and that such reimbursement does not impose any financial burden on the Project or the Property.. The Property shall be exempt from any sections of the Manalapan Township Land Development Regulations that would prohibit, limit, or otherwise restrict the Diocese or its successor in interest from subdividing the Property so that the affordable rental units and the for-sale units are located on separate lots as shown on the Concept Plan.

(c) The affordable housing rental units shall be rental units and not age-restricted; however, they will be integrated within the development as generally depicted on the Concept Plan. The occupants of the affordable housing rental units and the occupants of the market rate for sale units will only have access to their own community amenities. If the Diocese or its successor-in-interest determines to offer the market rate units as for sale units, then the affordable housing rental units shall be family rental units and are permitted to be constructed in multi-family buildings that are separate from the market rate buildings and contain all affordable housing units therein as depicted in the Concept Plan.

(d) The Township shall cause its Planning Board to review development applications submitted by the Diocese or its successor-in-interest. Any reasonable variances, waivers and/or exceptions necessary to achieve approval of an inclusionary residential development on the Property of up to 6 dwelling units per gross acre, inclusive of a thirty percent (30%) set aside for affordable housing units, shall be reviewed and considered in good faith by the Township's Planning Board.

(e) Pursuant to N.J.S.A. 52:27D-329.1, thirteen percent (13%) of the affordable housing units shall be reserved as very low-income housing units, as such term is defined in N.J.S.A. 52:27D-304 and the UHAC, with half of such units being available to families. Thirty-seven percent (37%) of the affordable housing units shall be available as low-income housing units and fifty percent of the affordable housing units shall be available as moderate-income housing units, as such terms are defined in N.J.S.A. 52:27D-304 and the UHAC.

(f) The Diocese or its successor-in-interest shall develop the Property in accordance with the following phasing schedule: one hundred (100%) percent of the affordable units shall be completed (a newly constructed unit is considered complete when the certificate of occupancy is issued) upon the completion of fifty (50%) percent of the market rate for sale units. By way of example, if site plan approval should be granted for 320 dwelling units, 96 affordable units shall be completed upon the completion of 112 market rate for sale units.

(g) The Diocese or its successor in interest shall take all necessary steps to maintain affordability controls for the affordable units in accordance with the UHAC regulations, N.J.A.C. 5:80-26.5 and -26.11, for at least a thirty (30) year period from the date that a certificate of occupancy issued for each of the affordable units. If this Project is financed with Low Income Housing Tax Credits,

then the HMFA required deed restriction shall be provided. Upon the expiration of the thirty (30) year period the Township shall, in conformance with N.J.A.C. 5:80-26.11, adopt a resolution releasing all affordability restrictions and controls on the affordable rental units so long as the Township's ordinance authorizes such action for affordable housing units identified in the Housing Element of the Master Plan or purchase all of the affordable units at a purchase price based upon the full market value of the units without affordability restrictions or controls.

(h) All affordable units shall be affirmatively marketed in conformance with the UHAC, N.J.A.C. 5:80-26.15, or any successor regulation. The Township shall add to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(£)(5), FSHC, the New Jersey State Conference of the NAACP, the Latino Action Network, the Trenton, Greater Red Bank, Asbury Park/Neptune, Bayshore, Greater Freehold, and Greater Long Branch branches of the NAACP, and the Supportive Housing Association, and shall, as part of its regional affirmative marketing strategies during its implementation of this Ordinance, provide notice to those organizations of all available affordable housing units. The Township also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph.

(i) All affordable units shall be subject to the bedroom distribution required by the UHAC, N.J.A.C. 5:80-26.3, or any successor regulation. All new construction affordable housing units shall be adaptable in conformance with N.J.S.A. 52:27D-311a-311b, P.L. 2005, c. 350 and all other applicable laws.

(j) The Township shall permit the Diocese or its successor-in-interest to jointly use existing or future Township owned easements or land for the placement and/or extension off-tract infrastructure, including but not limited to utilities facilities, necessitated by and/or required to serve the Project.

(k) The Diocese, or its successor-in-interest, shall not be subject to the Section 120-12(CCO), Section 222-24 through 222-28 (Tree Replacement Requirements), Section 95-8.3 (Allowable Steep Slope Requirements), Section 95-8.9 (Open Space Design Requirements), and Section 95-6.10 (Multi family Development Requirements) of the Manalapan Township Land Development Regulations, or any limitations or restrictions in Manalapan Township Land Development Regulations, that would prohibit a subdivision of the Property into lots that will accommodate the affordable rental units as shown on the Concept Plan.. The Diocese, or its successor-in interest, reserves the right to request relief from other Township ordinances, including but not limited to any Township ordinances that are unnecessarily cost generative, in order to achieve and subsidize the thirty percent (30%) set aside for affordable housing units intended to be developed on the Property pursuant to this Ordinance.

(l) The following sign regulations shall apply, and shall supersede the sign standards set forth under §95-5.6 D(9). Instead, signage for multi-family inclusionary development shall adhere to the requirements set forth in §95.8.7H(1)(f) with the following exceptions:

(i) The main entry sign may be illuminated.

(ii) The main entry sign shall not exceed 36 square feet in area nor six feet in height and shall be permitted at the intersection of existing roads and proposed roads.

(iii) Freestanding signs internal to the community identifying residential sub-areas shall be permitted. Said signs shall not exceed 18 s.f. in area.

(m) All roadways within the mixed use multi-family inclusionary development shall remain private and are the sole responsibility of the Homeowners Association.

(n) More than one multi-family attached building shall be permitted on a lot.

(o) The following provisions set forth in Chapter 95 shall not apply to development in the AH-O Affordable Housing Overlay District: §95-6.10, §95- 7.40, §95-8.3, §95-8.5(d)(2)(a), §95-8.6, and §95-8.9

SECTION II. Any Ordinance or portions thereof, which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION III. If any portion of this Ordinance or the application of such provision to any person or circumstance is declared invalid, such invalidity shall not affect or impair the other provisions or applications of this Ordinance which can be given effect, and to this end, the provisions of this Ordinance are declared to be severable.

SECTION IV. This Ordinance shall take effect immediately upon final passage and publication according to law and its filing with the Monmouth County Planning Board.

NOTICE OF PUBLIC HEARING

The Ordinance published herewith was Introduced and approved at a meeting of the Township Committee of the Township of Manalapan held on April 15, 2020 and will be further considered for final passage after a Public Hearing thereon before the Township Committee of the Township of Manalapan during a meeting to be held on Wednesday, May 13, 2020 at the Municipal Complex, 120 Route 522 and Taylors Mills Road, Manalapan, New Jersey at 7:30 p.m. or as soon thereafter as the matter may be reached, or at any meeting to which that meeting may be adjourned, at which time any and all persons who may be interested therein will be given an opportunity to be heard.

The proposed Ordinance in its entirety is on file in the Municipal Clerk's Office and copies may be obtained without charge between the hours of 8:30 a.m. and 4:30 p.m. Monday through Fri-

day. A complete copy may also be obtained from the Manalapan Township web-site www.mtnj.org by clicking on the Ordinance title listed on the Agenda posted for the Township Committee meeting of May 13, 2020.

SHARI ROSE, RMC
Deputy Municipal Clerk