

Borough of Clayton Public Meeting Room

February 22, 2021 Combined Zoning/Planning Board Meeting

joe abate

Ok, I like to call to order the Borough of Clayton and Combined Zoning and Planning Board meeting for February 22nd, 2021. I would like to stand for a moment of silence for all the people that are suffering in this world and the Flag salute. Alright, Flag Salute.

I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands One Nation, Under God, Indivisible, with Liberty and Justice for All.

joe abate

Thank you.

Sunshine Law - Public notice of this meeting, pursuant to the Public Meeting Act of 1975, is properly given in the following manner:

- A) posting written notice on the official bulletin board in the municipal building;
- B) mailing written notice to the South Jersey Times and the Franklinville Sentinel.
- C) filing written notice with the Clerk of the Borough of Clayton.

Roll call.

Debbie Schlosser

Abate.	- Here
Bianco	Absent
Branco	- Here
Culver	Absent
Fox	- Here
Miller	- Here
B. Saban	- Here
T. Saban	- Here
Thomas	- Here
Vondran	Absent

joe abate

I would like to have a motion to approve the minutes of the re-organization Meeting of the Clayton Planning Board held on January 25th, 2021.

Sue Miller

I'll make that motion.

Tony

Second.

Joe abate

Roll call.

Debbie Schlosser

Abate - Yes

Branco - Yes

Fox - Yes

Miller - Yes

B. Saban - Yes

T. Saban - Yes

Thomas - Yes

joe abate

Thank you.

Under old business, I see none

Under new business, I see none.

I'd like to have a motion to open to the public.

Sue Miller

Motion to open

Eric Thomas

Second.

joe abate

Anyone in the public have anything to say at this public meeting of Clayton planning and zoning board? Hearing none, motion to close?

Barb Saban

Motion to close.

Tony Saban

Second

Ayes Unanimous

joe abate

Correspondence - none

Discussion - Ordinance #03-2021 repealing and replacing affordable housing ordinances of the Borough of Clayton?

joe abate

I'd like to have a discussion on this ordinance. Our Solicitor can you please explain to us what this ordinance will do for the Borough of Clayton.

Susan Purvin, Esquire

Unfortunately, Mr. Alice didn't provide me with a copy of your ordinance.

Sue Miller

That's alright Erin Simone is here to talk about the ordinance. Thank you, Erin. Thanks, Joe.

Joe abate

Ok, thank you.

Erin Simone

So this ordinance, basically, was put together as an amendment to your existing affordable housing ordinance. The reason why we did that is because your existing affordable housing ordinance was a little outdated because it's still referenced a lot of the gross share formulas and growth share language that were invalidated with the third round rules quite some time ago. So, because COAH doesn't exist anymore, because the gross share doesn't exist anymore, we basically updated the ordinance, irreflective of what the existing law is with regard to affordable housing. If you would like, I can just go through In general, what this is. I'm going to start with the fact that your ordinance has two exhibits.

Erin Simone

Exhibit B essentially takes all of your references for affordable housing that was in your unified development ordinances and references back to the affordable housing ordinance. So, there's one place where people would look for your affordable housing regulations instead of having it in two different places and thus voids confusion. So that's exhibit B it amends your unified development ordinance to refer back to the affordable housing. Does anyone have any questions on that piece of it?

Erin Simone

So then with your affordable housing ordinance. Basically, like I said, it's a similar format to what you had existing, it's just mostly updated. So, Section 31A - just sets forth the definitions it just essentially, an update.

Section, 31-2 talks about your development phase. You have an Affordable Housing Trust Fund so it's updated to reflect what you can and cannot do with those fees. Section 31A-3 31A-4, and 31A-5, they're all related to your fees. They talk about how

you collect them, how you spend them, and how you use them, how they get accessed to developers. That kind of thing.

Section 31A-6 talks about how you monitor your trust fund, and all this should be consistent with, or, Affordable Housing Trust Fund, that was approved by the Court.

Article 31A- 8 talks about your affordable housing obligations.

And 31A-9 kind of gives you options for how they can be satisfied.

Just so you all know your affordable housing obligations and you're planning on satisfying them is in your Housing Element Fare Share Plan so this doesn't change that at all. It just gives you general information on how you can create affordable housing.

There is Section 31A-10 that deals with the standards for new construction. So, the developer comes in and has affordable housing obligation, or is trying to provide affordable housing and its new construction, they would comply with those particular provisions. That section gives you standards for bedroom distribution, accessibility, maximum rents and set maximum sale prices and phasing. So, how they develop it in a court, you know, consistent with how they develop their market rate units, if it's an inclusionary development, that kind of thing.

Section 31A-11 sets forth affirmative marketing requirements for whomever is creating these affordable units, because they have to be affirmatively marketed to low income, low moderate-income households.

31A-12 talks about occupancy.

31A-13 sets forth periods for your for sale units, because they have to have portability controls for a certain period of time.

Section 31A-14 sets forth your price limits, because for them to be affordable, they have to be certain price.

Then Section 31A-15 talks about income limits for people who are eligible.

Then of course 31A-16 talks about limits on the indebtedness, so that puts additional controls on the price of units, because they don't want the mortgages to be unaffordable either.

Then 31A-17 actually transitions to your rentals, so that sets forth control periods for rent. The next couple ones are all related to your rental.

So 31A-18 sets forth your rent limits and 31A-19 gives you your tenant income limits, the eligibility requirements.

The next two sections are just more administrative. 31A-20 talks about how your affordable housing program gets administered, and then 31A-21 talks about how you enforce your affordable housing provision. Then the last section is 31A-22, which sets forth the appeals process for any issues that arise under your Affordable Housing Ordinance.

Does anybody have any questions? I know that was a lot of information.

joe abate

Yes, I have some questions. Thank you Erin for that. First of all, going back to 31A-4 the Affordable Housing Trust Fund. How are we as the Borough of Clayton as far as that trust fund? Where is that money now and how much is there?

So I can't answer those, maybe Sue can. I'm not sure. That was not part of the ordinance.

Sue Miller

It's just under \$20,000.00, roughly. When we collect everything from the house on West Chestnut- JBS. We haven't collected a lot of funds because most of the developments that we have been inclusionary. So, there wasn't an opportunity really to do that. They had inclusionary units and we really haven't, there's no fees on single family homes. Some of the other developments like Villages of Aberdeen, I don't know how those are assessed as that was before my time. So, I would say, when we get everything to us right now, it's probably going to be a little under \$20,000.

joe abate

Ok, thank you.

It says, under 31A-5 the use of funds, it says at least 30% of all residential development fees and nonresidential development fees shall be used to provide affordability assistance to low-income household, and moderate-income households in the affordable units. So, if the 30% is used for that. What happens to the other 70%?

Erin Simone

That's all set up in your affordable housing trust fund or your spending plan. You have a spending plan that the Borough approved and how the funds are to be used. If I remember correctly, and maybe Sue can correct me if I'm wrong, if the vast majority of it is for rehabilitation, your rehabilitation component, but you have options on how to spend it based on what is in your spending plan.

Sue Miller

That's right.

joe abate

Ok. Under new construction 31A- 10, are all these guidelines within State regulations? Do they change continually as state regulations change? How does that work?

Erin Simone

So there are no state regulations at the moment there because COAH hasn't promulgated any. But I will tell you this particular ordinance has been reviewed by Fair Share Housing Center, who the Borough of Clayton has a settlement agreement with. They're obviously very active in this arena, and if they felt any of them were contrary to the existing law they would have flagged them. We didn't get any of that kind of feedback. To the extent that we got any feedback from them, we made whatever adjustments were needed. They don't reference any standards to COAH, but they do reference like, things like their free sub code. I think UHAC rules, for example, the Uniform Housing Affordability Controls, that's department, Housing and urban development, promulgates. So, there are rules that are incorporated in here, and to the extent that COAH does adopt new rules, that might require changes. They may need additional amendments. But like I said, right now, COAH doesn't exist so they don't have any regulations.

joe abate

And then who regulates? If there are no regulations, how does it get regulated? To me, it seems like there is too much of an open window here for misuse.

Erin Simone

So the regulations I guess goes back to your administration. So, we have set up as your administrator of your affordable housing program they are the person who oversees your affordable housing program. So, these are now the regulations that you enforce. Fair Share Housing Center does keep an eye on some of this, and of course, your developers and other people who feel that there's some abuse, they can bring claims. Basically, the Borough is going to be administering these regulations. You guys are going to oversee the program through your administrator, through your affordable housing liaison.

joe abate

And who gives the final say that everything is OK?

Erin Simone

Probably, a court to be honest with you at this point. That's who's overseeing the affordable housing because COAH doesn't exist anymore. Normally you would have taken it up to COAH. COAH would have been overseeing. Right now, it is the court system, and you have been approved. You currently have a judgement of repose which means for a period of 10 years, until about 2025, you are considered compliant with your affordable housing obligations. Then you would have to re-apply in 2025 for new certification for the next 10 years. And at that point, the courts would take a look at everything and make sure you're still in compliance.

joe abate

All right, so currently, the Borough of Clayton is in compliance with the COAH numbers and we don't have a deficit or a surplus?

Erin Simone

I actually believe you have some surplus. I know you definitely have a surplus with your age restricted units because one of your projects was purely age restricted, and you're capped at 25% of your affordable housing being age restricted. You have a surplus of those type of units for your next round because you can only have a certain number in each round, so you do have a little bit of a carryover. So next round, you probably need to focus on family rentals as opposed to age restricted.

joe abate

So we are in compliance with family rentals.

Erin Simone

For this round, yes.

joe abate

That's until 2025?

Erin Simone

Correct.

joe abate

So if a developer where to come in to the Borough of Clayton to put in family rental units, we would not have to put in affordable units in that new construction.

Erin Simone

Right, so because they got rid of the growth share unit, I don't know if you guys remember. Back when they had the growth share, each time you had a new development, that developer had a certain percentage of affordables that was generated from that development that they did. That system doesn't exist anymore.

Now, they went back to what was under the first and second round rules which is basically you have a number of units that you have to create. How you create them is up to you. So, if you zone a certain area and say this is where we want residential. This is where we want affordable. Then that has the potential to generate the number of units you need, then that would satisfy it. So currently your Housing Element Fare Share Plan has identified all the projects that would create enough units to satisfy your current obligation. So, no, you would not have to require any developer in the near future to have affordable housing units in it. If you wanted to allow affordable housing units to bank for future rounds, you certainly could do that. But you wouldn't have to require anybody to do that anymore.

joe abate

Ok, thank you. Also, under the schedule for affordable housing, the way I'm looking at it it says 25% of the market rate units are two or they can be built first before any affordable housing units be built.

Erin Simone

Ok, so how the schedule works is you can build your affordable housing units as fast or as slow as you want. What this does is put a restriction on how you develop your market rate, so you don't develop your market rate fully and then not do your affordable housing. So, what it does is, it gives the developer an opportunity to construct up to 25% of their market rate before they have to construct any. That doesn't mean they have to construct 25% first. It just means that they're allowed to. So then, once they get to 25%, anything over 25%, they have to have at least 10% of their affordable units constructed before they can construct more than 25% of their market rate. Then, they can go up to 50%, once they hit 50%, then they have to have 50% of their affordable units built before they can go over 50% of the market rate. Then it continues on. Seventy Five percent of their affordable units have to be constructed before they can go over 75% of their market rate. Then they have to have 100% of their affordable units constructed before they can get to 90% of their market.

joe abate

So if we so choose as the borough to have a developer come in and build let's say apartments, we could have that complex being 100% market rate?

Erin Simone

So that goes back to your question on whether you have to have affordable units. You don't have to have affordable units anymore because you already have them fully satisfied for this round. That doesn't mean after 2025 that might change unless you have other areas that you have units. But now there's an apartment complex that wants to get it fully satisfied, your affordable housing obligations. That can be 100% market rate, it does not have to be affordable housing.

joe abate

So, up until 20 25 plate has complied with its affordable housing.

Erin Simone

Right. Although, I would say you might want to consider prior to 2025 how you might see satisfying it going forward because your immunity ends at 2025. So, you want to have a plan in place or at least be thinking about how your plan is before 2025, when your immunity runs out.

joe abate

Wouldn't the legislature give us some guidelines by then.

Erin Simone

One would hope, but there's no guarantee for that. So that's something you'd want to be working with your planners on in developing what your number would be and how you go ahead and satisfy that obligation. I think you're going to have the same issue had in 20 15 coming up with your affordable housing, obligation number, and then how you're going to satisfy it.

joe abate

Alright, well that's all I have, Erin. If anyone else has any questions, please ask them.

Tony

So this is Tony Saban from Council. So once this is done this evening, and just so we're clear, this is going to come back to Council.

Erin Simone

Yes, so it will come back to Council, for consideration of adoption at your next meeting.

Tony

Alright. Thank you.

joe abate

Anyone else have any questions? Stan do you have anything you want to add to this discussion?

STAN BITGOOD

At the moment, no. Going forward I'm curious can the Borough, if they decide to, impose a fixed percentage for the next round anticipating or has that been the adjudicated and we can't do it.

Erin Simone

So the reason why they say that's not, so the Court has said that, does not produce a realistic opportunity for creation of affordable housing. What it does is, it encourages development that they want to see different mechanisms that actually create the realistic opportunity for affordable housing. So, for example, zoning to allow affordable housing, or inclusionary developments, that kind of thing. So yeah, forcing every developer to come in and have a fixed amount is probably not going to come out.

STAN BITGOOD

So we have some planning work to do. Thank you.

Steve Branco

Erin, it's Steve. How does somebody apply for this?

Erin Simone

What do you mean apply for this?

Steve Branco

The affordable housing. Is there an application? Does the developer have to do something or the individual?

Erin Simone

So it would be consistent with your zoning. So, for example, let's say you have an area that's zoned for affordable housing. If a developer meets all the criteria, they would just submit a land use application the same way you would for regular market rate. The only issue that you get into is if somebody has a development in an area that the development doesn't meet the zoning. They may want to force the municipality to rezone to allow their project. That's where some of this comes in. Typically, though, if a developer is interested in working, you know, providing affordable housing and their project isn't allowed. They probably would approach someone to see if they could work something out. Then you'd have your same options. You consider rezoning, that kind of thing if you wanted to allow those projects. There is also a variety of different options. You can do set affordable? You can do different ways, but it's not really an application process. It's essentially a developer has a development and they want to include affordable housing in there.

joe abate

Anyone else have any questions for Erin? Alright, hearing no other questions. Thank you, Erin, for your expertise, again, as usual.

Tony

You have a motion and second already.

joe abate

Ok, so we're going to have a vote on Resolution 49-21 or should we do ordinance 3-2021 first?

Susan Purvin, Esquire

The Ordinance.

Tony Saban

Ordinance.

joe abate

We'll do the ordinance. A motion to approve ordinance 3-2021.

Tony

Second.

joe abate

Roll call.

Debbie Schlosser

Abate	Yes
Branco	Yes
Fox	Yes
Miller	Yes
Barb Saban	Yes
Tony Saban	Yes
Thomas	Yes

joe abate

Ok, all right. So now that goes to the Borough Council for consideration.

Tony Saban

Correct.

joe abate

I like to have a motion to grant resolution #49-2021 referring to the ordinance repealing and replacing affordable housing in the Borough of Clayton to Clayton Planning Board for review.

Tony

So moved.

Steve Branco

Second.

joe abate

Roll call.

Debbie Schlosser

Abate Yes

Branco Yes

Fox Yes

Miller Yes

Barb Saban Yes

Tony Saban Yes

Thomas Yes

joe abate

Alright, thank you. Does anyone else have anything to say?

Tony

I do for a second. Deb, can you tell me who are the members that are on the sub-committee?

Debbie Schlosser

Joe Abate and Darlene.

Tony

Ok. Thank you.

joe abate

That's good. It's always good to ask. Ok, thank you very much. Can I have a motion to adjourn.

Barb Saban

Motion to adjourn.

Melissa Fox

Second.

joe abate

Ayes Unanimous

joe abate

Next meeting is March 22, 2021 at 7 p.m.

Sue Miller

Goodnight everybody. Thank you, Erin.

A handwritten signature in cursive script, appearing to read "Debbie Schlosser".

Debbie Schlosser
Secretary

End