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# Bernardsville Housing Element and Fair Share Plan

Presentation to Planning Board

5/24/18

# Overview



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## ▶ Introduction

- ▶ Timeline of affordable housing in Bernardsville, and Mt. Laurel explanation; summary of Settlement agreement and compliance mechanisms

## ▶ Housing Element

- ▶ Analysis of various socio/economic demographics and indicators

## ▶ Fair Share Plan

- ▶ Detailed explanation of compliance mechanisms

## ▶ Implementation

- ▶ Explanation of new/revised ordinances, programs, other documents

## ▶ Next Steps

# **Section 1 - Introduction**

# Introduction – Affordable Housing Timeline

- ▶ Borough's First Round Certification - 1988.
- ▶ Borough's Second Round Substantive Certification - 1995.
- ▶ On May 20, 2010, Bernardsville adopted a new Housing Element and Fair Share Plan consistent with COAH's revised rules.
- ▶ COAH's revised Third Round rules were challenged and invalidated by the Appellate Division on October 8, 2010.



# Introduction – Timeline cont.

- ▶ March 10, 2015 - The NJ Supreme Court decided “Mount Laurel IV”
- ▶ In response to Mount Laurel IV, Bernardsville Borough filed a Declaratory Judgment Action on July 6, 2015
- ▶ Following the DJ, the court appointed a Special Master to supervise the Borough and Fair Share Housing Center (“FSHC”) to enter into a global Settlement Agreement

# What was the situation?



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- ▶ Original obligation was 307 units, based on Kinsey 2016 model
- ▶ Borough argued general lack of sewer in community prohibits large scale residential development
- ▶ Borough had to provide a realistic plan that maximized the realistic development potential, or risk a builder's remedy

# Builder's Remedy



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## ▶ What is it?

- ▶ A builder's remedy is a **court imposed remedy** for an individual or profit making entity in which the court **requires a municipality** to utilize zoning techniques such as mandatory set-asides or density bonuses which provide for the economic viability of a residential development which is not for low and moderate income households.

# Builder's Remedy



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- ▶ What does that mean?
  - ▶ Essentially, a developer can **sue** a municipality for the right to build housing that may otherwise not be financially feasible given the underlying zoning.

## Developer files lawsuit to build 800 housing units in Morris Plains



By [Justin Zaremba](#) | NJ Advance Media for NJ.com

[Email the author](#)

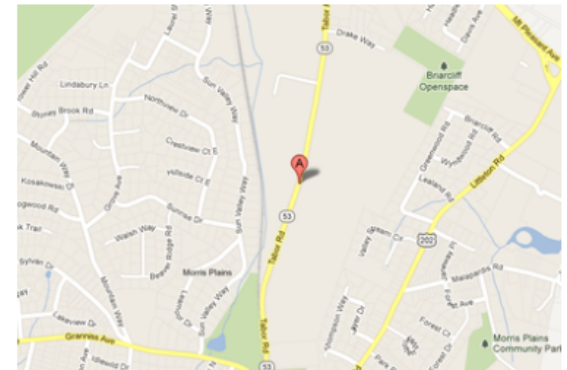
on February 13, 2013 at 3:30 PM, updated February 13, 2013 at 3:57 PM

[Print](#)

[Email](#)

**MORRIS PLAINS** — A developer has filed a builder's remedy lawsuit against the borough and planning board, seeking to build 800 housing units — including 295 units for low- and moderate-income households — on Tabor Road.

M&M at Morris Plains, a limited liability company with a business address in Piscataway, filed the suit on Jan. 29, alleging the borough and planning board have failed to adopt an ordinance addressing the borough's obligation to provide low and moderate housing under the Mount Laurel doctrine, which forms the basis for the Council on Affordable Housing.



A developer claims Morris Plains and the Morris Plains Planning Board failed to address low- and moderate-income housing within the borough and is suing to build 800 housing units on Route 53.

Google Maps



# Builder's Remedy



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## ► Why does it matter?

- When a builder's remedy is granted against a municipality, the town and its planning and zoning boards lose all control over the zoning of the subject property (density, setbacks, etc), which is left to the special master, who only reports to the court. In short, a developer **can ignore and circumvent underlying zoning** to provide additional housing units. Buildings would still need to comply with all relevant building codes, however.





# Settlement Objectives

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- ▶ Meet the obligation and comply with the regulations to avoid a builder's remedy
- ▶ Use all mechanisms available to limit the impact on number of new units in Borough
  - ▶ i.e. use 100% Affordable Development vs Inclusionary Zoning Option
- ▶ Maximize aged-care units to reduce burden on school system

# Settlement Agreement Overview

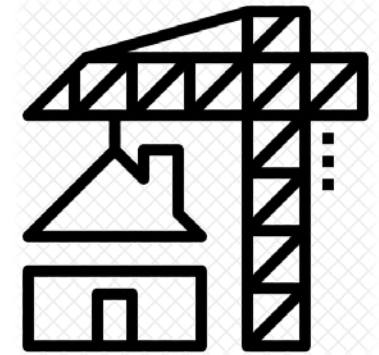
## ► Obligations and unit counts, as per 11/22/17 Agreement:



Present Need  
("Rehab obligation"): 15



Prior Round (1987-1999): 127  
(obligation met)



Prospective Need + Gap  
("Third Round"): 215  
(inc. durationally adjusted sites)

*Note – Jacobson decision was extrapolated to an obligation of 239 in March 2018!*

# Summary of Compliance Mechanisms for 3<sup>rd</sup> Round

- ▶ Scattered Site Development: 50 Units + 36 “Bonus” Units
- ▶ Supportive Housing (Group Homes): 12 Units + 12 Bonus\*
- ▶ Accessory Apartment Program: 10 Units
- ▶ Extension of Controls: 17 Units\*
- ▶ Market to Affordable Program: 3 Units\*
- ▶ Durationally adjusted sites (overlay zones): 63 Units
- ▶ Other projects (Habitat for Humanity, Conti): 8 Units + 4 Bonus\*
- ▶ *\*denotes no new construction required!*

Total: 163 Units + 52 bonus units = 215 units, of which only 60 are likely to be constructed by 2025 (8-9 units/year)

# Development since 2006



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Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	Annual Avg.
New Housing Permits Issued	16	18	2	3	4	7	2	5	10	6	14	8
COs Issued	8	6	17	5	5	3	2	6	8	9	11	7
Demolitions	7	5	5	1	8	2	5	2	4	3	4	4
Net Development (Permits less Demos)	9	13	-3	2	-4	5	-3	3	6	3	10	4

# What could have been...

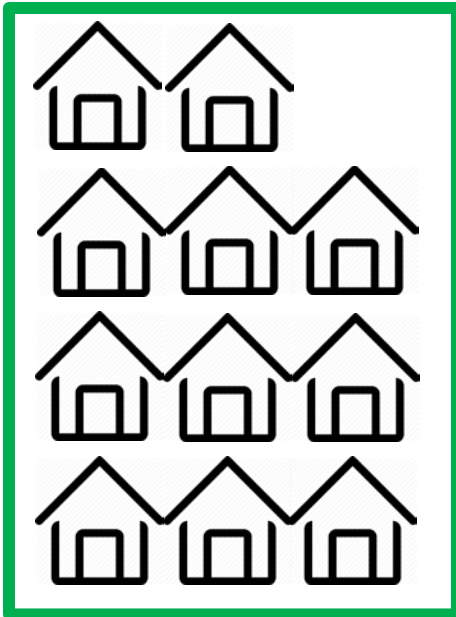


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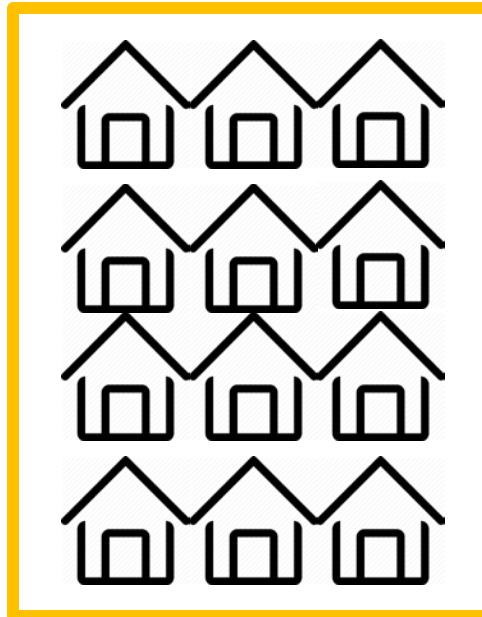
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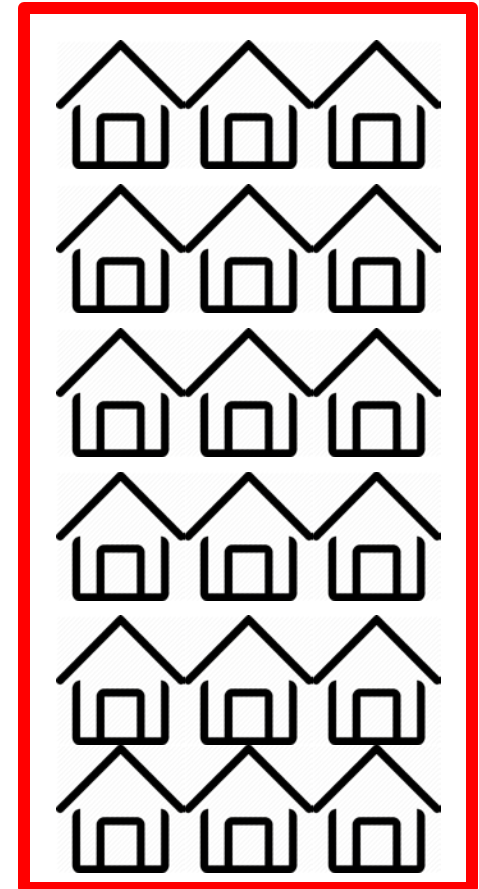
 = ~20 dwelling units



Bernardsville  
215 Units



Jacobson Decision  
239 Units



Original Obligation  
307 Units

# What could have been Pt.2

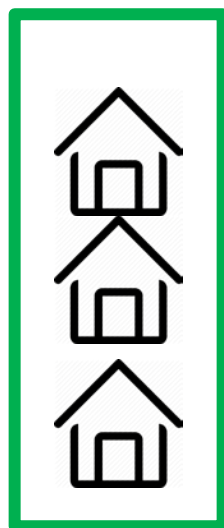


**CGPH**

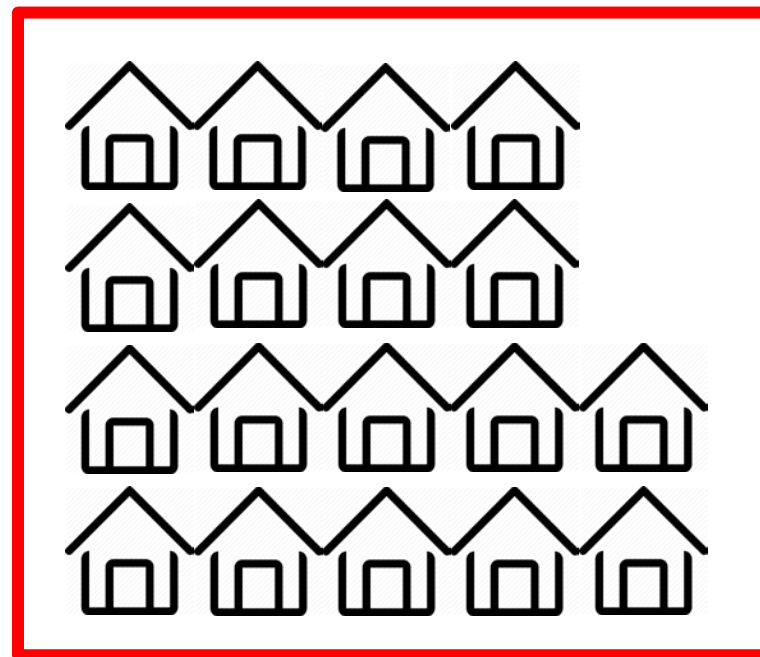
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 = 20 dwelling units



Included in Settlement Agreement:  
60 newly constructed units



Not in Settlement Agreement:  
Set Aside Units – 300-400 units  
*(need 300-400 units to yield 60 affordable units  
based on 15-20% set-aside)*

# **Section 2 –Housing Element**



# Housing Element – Required Components

- ▶ An **inventory of the municipality's housing stock** by age, condition, purchase or rental value, occupancy characteristics and type, including the number of units affordable to low and moderate-income households and substandard housing capable of being rehabilitated;
- ▶ A **projection of the municipality's housing stock**, including the probable future construction of low and moderate-income housing, for the next ten years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands;
- ▶ An **analysis of the municipality's demographic characteristics**, including but not necessarily limited to, household size, income level, and age;
- ▶ An **analysis of the existing jobs and employment characteristics** of the municipality, and a projection of the probable future jobs and employment characteristics of the municipality;

# Relevance



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- ▶ Identify current patterns and trends as they relate to housing and demographic changes
- ▶ Develop more responsive housing policies
- ▶ Demonstrate compliance with COAH regulations

# Housing Element – Key Findings



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- ▶ Population has continued to grow between 2010-2015
- ▶ Borough is aging – percentage of people over 65 account for nearly 15% of population and growing
- ▶ High rates of “housing burden” (people paying over 30% of income – 52.7% of people w a mortgage and 57.6% of renters (County 37.5% & 45.6% respectively)



# Key findings cont.

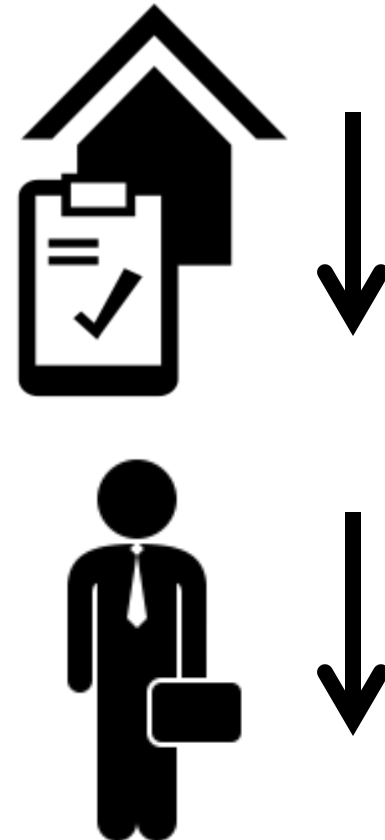


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- ▶ New housing permits were under 10/year between 2007-2016
- ▶ Persons employed within the Borough has not yet returned to pre-2007 levels
- ▶ Significantly fewer multi-family (3+ units) buildings than County (4.2% vs 20.2%)



# General Takeaways



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- ▶ Bernardsville is a relatively affluent, suburban/rural community that was impacted by the Great Recession, like many other communities. Advancing age of the local population and limited multi-family housing options may exacerbate existing levels of housing burden among existing Bernardsville residents.

## **Section 3 – Fair Share Plan**

# Components

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- ▶ Capacity for Fair Share
- ▶ Rehab Obligation
- ▶ Additional Compliance Mechanisms

# Capacity for Fair Share

- ▶ As part of the development of a Fair Share Plan, the Borough must consider its capacity to deliver its “fair share” number of units. Relevant to the Borough are the following aspects:
  - ▶ Water & Wastewater Capacity
    - ▶ All sites have suitable water/wastewater access except Quarry Site
  - ▶ Potential Affordable Housing Developers
    - ▶ Developers were engaged as part of the RFQ/RFP process
  - ▶ Anticipated Development Patterns
    - ▶ Sewer capacity, slow population growth, existing zoning constrains multi-family development



# Rehab Obligation



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- ▶ 15 Units agreed upon at settlement
- ▶ One (1) unit was completed as part of the Somerset County Rehab Program (14 remaining)
- ▶ Bernardsville will implement a new rehab program designed to improve homes



*Sample Rehabs in Edison  
Above: Before – Below: After*



# Compliance Mechanisms

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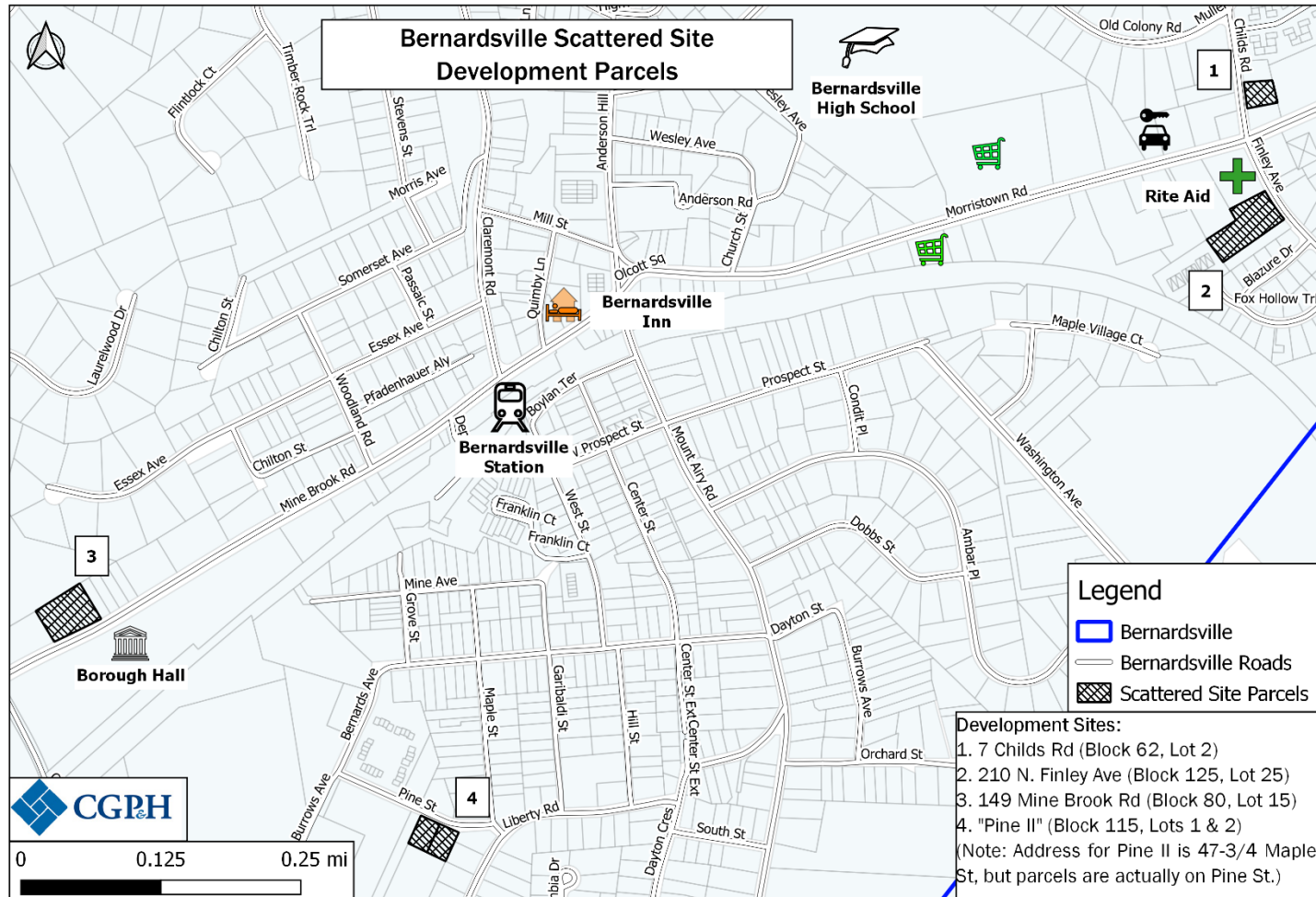
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1. Scattered Site Development: 50 Units
2. Supportive Housing (Group Homes): 12 Units
3. Accessory Apartment Program: 10 Units
4. Extension of Controls: 17 Units
5. Market to Affordable Program: 3 Units
6. Durationally adjusted sites (overlay zones): 63 Units
7. Other projects (Habitat for Humanity, Conti): 8 Units

# 1. Scattered Site Development

- ▶ Included four (4) locations:
  - ▶ 7 Childs Rd
  - ▶ 210 N. Finley
  - ▶ 47-3 & 47-4 Maple (Pine II)
  - ▶ 149 Mine Brook
- ▶ Two properties not owned by Borough (7 Childs, 210 N. Finley)
- ▶ Properties were combined into a single “scattered site” request for proposals to improve development feasibility

# Map of Scattered Site Locations



# 1. Scattered Site Cont.



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- ▶ 5 affordable housing developers submitted:
  - ▶ Conifer
  - ▶ Eastern Pacific
  - ▶ RPM
  - ▶ Michaels Group
  - ▶ CIS
- ▶ CGP&H has shortlisted three developers – will be presenting to Council 5/29



**RPM**

DEVELOPMENT GROUP





## 2. Supportive Housing (Group Homes)

- ▶ Borough has committed to supporting three (3) group homes with four (4) bedrooms each – a total of 12 units
- ▶ Interest has been expressed by three (3) different service providers/developers:
  - ▶ Our House NJ
  - ▶ Advancing Opportunities (formerly Cerebral Palsy NJ)
  - ▶ Rappaport Development



*Sample Group Home –  
Our House NJ in Basking Ridge*

### 3. Accessory Apartment Program

- ▶ Accessory Apartments or Accessory Dwelling Units (ADUs) are already legal in Bernardsville where they meet the criteria
- ▶ Modifications proposed to local ordinance to legalize ADUs:
  - ▶ Within an existing structure (i.e. garden level)
- ▶ Borough will subsidize development of ADUs in exchange for ten years of affordability controls



*Sample ADU Home, Arlington, TX*

# BERNARDSVILLE BOROUGH

## Somerset County, NJ

### MUNICIPAL ZONING INFORMATION



#### NOTES

1. This is not an official zoning map.  
This map represents the best available information the County has on current Municipal Zoning in GIS format. It is subject to change as Zoning amendments and updates take place in the future. Please refer to municipal zoning ordinances for detailed information for each of Zoning Districts.

2. Somerset County uses the following map projection & coordinate system when presenting GIS data:  
• Horizontal: North American Datum 1983 (NAD83)  
• Vertical: North American Vertical Datum 1987 (NAVD87)  
• Coordinate System: New Jersey State Plane Feet

#### DATA SOURCES

##### SOMERSET COUNTY ENTERPRISE DATA

- Zoning Datasets
- Municipal Boundaries
- Parcel Boundaries
- Highways, County & Local Roads
- Railroads

##### MUNICIPAL DATA

- Adopted Ordinances, Amendments & Associated Information
- Provided by Municipality

#### BERNARDSVILLE BASE ZONES

ZONE CODE	ZONE DESCRIPTION
B-1	Business District
C-1	Commercial District
HD	Highway Development
I	Industrial District
I-2	Light Industrial District
OB	Office Building District
R-1	Residence District
R-1-10	Residence District
R-1A	Residence District
R-2	Residence District
R-3	Residence District
R-4	Residence District
R-5	Residence District
R-8	Attached Residence District
R-10A	Multi-Family/Affordable
R-10B	Multi-Family/Affordable

#### Legend

##### BASE ZONES INFORMATION

B-1	R-10A
C-1	R-10B
HD	R-1A
I	R-2
I-2	R-3
OB	R-4
R-1	R-5
R-1-10	R-8

Base Zone Boundaries

R-3 Base Zones Labels

MUNICIPAL BOUNDARIES

##### PARCEL INFORMATION

Parcel Boundaries

Parcel Block Number

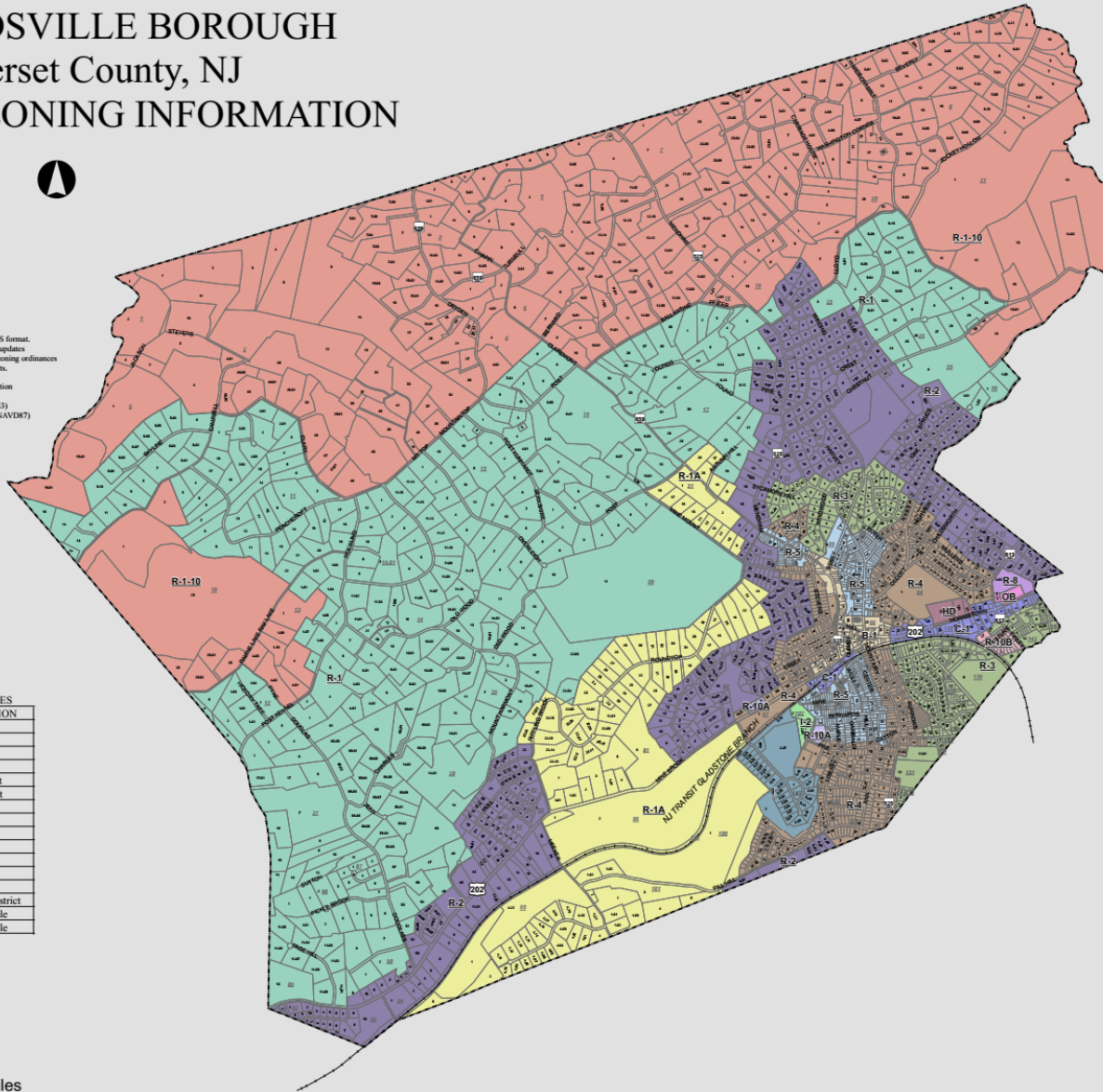
Parcel Lot Number

##### ROAD MARKERS

US Highways

County Roads

RAILROADS



0 0.25 0.5 1 Miles

Prepared by Somerset County Planning Board  
March 2016

ADUs are permitted only in the R-1-10 Zone (red) located in northern areas of Borough



## 4. Extension of Controls



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- ▶ Borough gets credit for existing deed-restricted properties extending their affordability controls another 30 years
- ▶ Seventeen (17) properties are identified as being eligible to have their controls extended (Rolling Hills at Bernardsville development)
- ▶ CGP&H staff will oversee the completion of this project

## 5. Market to Affordable



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- ▶ Program to help write-down the cost of a market rate home to become affordable to people of mod-low incomes
- ▶ Does NOT create new units – each home in the program counts as 1 unit credit



*Sample M2A Home – Edison NJ*

# 6. Durationally Adjusted Sites

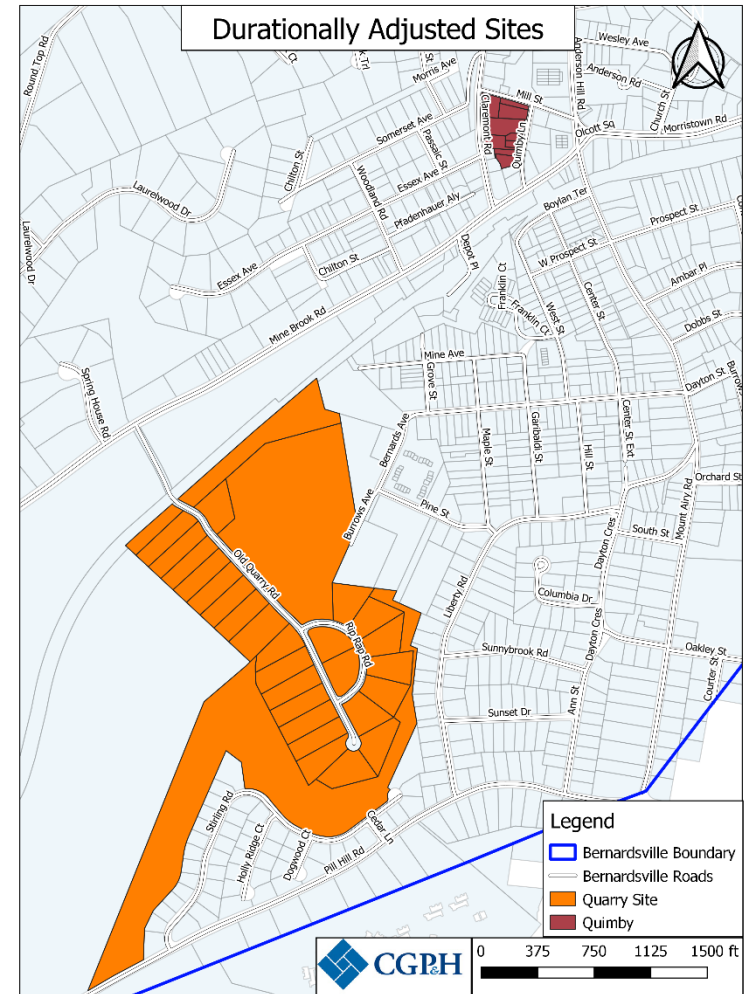


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- ▶ Defined as land lacking opportunity to be immediately developed
- ▶ Borough has identified two groupings of land to be overlay zoned for affordable housing:
  - ▶ Quarry Site
  - ▶ Quimby Lane
- ▶ Sites will be zoned to allow for a combination of 85% market rate and 15% affordable rental dwellings



## 7. Other Projects



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### ▶ Conti Site:

- ▶ Demolition in progress – will demolish existing building at St. Bernards and build 20 units.
- ▶ Developer will purchase existing dwelling and convert it into a group home, PIL for remaining unit (8 total credits)

### ▶ Habitat for Humanity:

- ▶ Four (4) units have already been developed at Block 80 Lot 61.



# **Section 4 – Implementation**

# Components

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- ▶ Ordinances
- ▶ Resolutions
- ▶ Manuals
- ▶ Spending Plan

# Affordable Housing Ordinance

- ▶ Includes revised Development Fee Ordinance
- ▶ Maintains existing zone classifications for affordable housing (R-10) and built form requirements (setbacks, lot coverage, etc)
- ▶ Generally similar but includes updated language to be consistent with best practices across the state



# Accessory Apartment Ordinance



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- ▶ Maintains existing requirements for an Accessory Dwelling (applicable zones, lot size, etc)
- ▶ Adds new language permitting ADUs that are:
  - ▶ Within an existing structure (i.e. garden level)
- ▶ CGP&H will manage subsidy program with assistance from Borough for zoning compliance – but CGP&H only involved if owner wants to be in program



# Resolutions



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- ▶ Intent to Bond
- ▶ Adoption of Spending Plan
- ▶ Adoption of Affirmative Marketing Plan
- ▶ Resolutions appointing Administrative Agent and Municipal Housing Liaison



**Borough of Bernardsville**  
166 Mine Brook Road  
Bernardsville, NJ 07924  
Somerset County

Administration (908) 766-3000 Fax (908) 766-2401  
Engineering (908) 766-3850 Fax (908) 766-2788

**RESOLUTION #15-153  
APPOINTING FRANK MOTTOLA TO SERVE AS THE  
BOROUGH'S MUNICIPAL HOUSING LIAISON TO COAH**

**WHEREAS**, with the retirement of Michael Mondok, there is an opening for a Municipal Housing Liaison to COAH; and

**WHEREAS**, pursuant to N.J.A.C. 5:94-7, 5:80-26.1, et seq., and Ordinance #06-1432, codified as Section 13-6 of the Borough Code, there is a need to appoint a Municipal Housing Liaison for the administration of Bernardsville's affordable housing program to enforce the requirements cited herein.

**NOW, THEREFORE, BE IT RESOLVED** by the governing body of the Borough of Bernardsville in the County of Somerset, New Jersey as follows:

1. Frank Mottola is hereby appointed as the Municipal Housing Liaison for the administration of the Borough of Bernardsville's affordable housing program in accordance with the applicable provisions of the Borough Code.
2. The Borough Clerk is hereby directed to submit to COAH a certified copy of this resolution and evidence of the required COAH training for municipal housing liaisons, upon completion of said training by Frank Mottola.

# Manuals



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- ▶ Rehabilitation Program
- ▶ Administrative Agent
- ▶ Accessory Apartment
- ▶ Market to Affordable

**Home Improvement  
(Rehabilitation) Program**

Policies and Procedures Manual

***Borough of Bernardsville***

*New Jersey*

*Created December 1, 2017*



Prepared by:

**CGP&H**

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# Spending Plan



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- ▶ Spending plan outlines how money will be allocated to the various mechanisms.
- ▶ Borough has been presented draft spending plan, to be approved at subsequent Council meeting
- ▶ Borough will continue to collect development fees and allocate spending as development occurs in the Borough.

# **Section 5 – Next Steps**

# Next Steps – Council

- ▶ 1. Adopt the HEFSP
  - ▶ Concurrently – select developer for Scattered Site Project
- ▶ 2. Submit adopted HEFSP and compliance documentation to Court Master prior to Compliance Hearing
- ▶ 3. Compliance Hearing on 7/2/18
- ▶ 4. Upon Court approval of all compliance documents, initiate all municipally sponsored projects in an orderly manner.