

**RESOLUTION TC 19-071
TOWNSHIP COMMITTEE - TOWNSHIP OF HARDING
MORRIS COUNTY, NEW JERSEY
JANUARY 28, 2019**

RESOLUTION SETTING FORTH REASONS OF TOWNSHIP COMMITTEE FOR REJECTING PLANNING BOARD'S FINDING THAT SECTION 225-166 B OF ORDINANCE #06-2019 IS INCONSISTENT WITH THE TOWNSHIP MASTER PLAN

WHEREAS, on January 14, 2019, the Township Committee introduced Ordinance #06-2019 entitled "AN ORDINANCE OF THE TOWNSHIP OF HARDING RESCINDING AND REPLACING CHAPTER 225, ARTICLE XXXVI OF THE CODE OF THE TOWNSHIP OF HARDING, ENTITLED "AFFORDABLE ACCESSORY RESIDENCE PROGRAM"; and

WHEREAS, in accordance with N.J.S.A. 40:55D-26 (a), the Township Committee referred Ordinance No. #06-2019 to the Township Planning Board for its review for consistency with the Township Master Plan; and

WHEREAS, the Township Planning Board Attorney Gary Hall, Esq., issued a Memorandum dated January 25, 2019 to the Township Committee whereby he advised that the Planning Board reviewed and discussed Ordinance No. #06-2019 (along with Ordinances 003-2019, 004-2019 and 005-2019) at its January 21, 2019 meeting, the Board deemed proposed new §225-166(B) included within Ordinance #06-2019 to be inconsistent with the Master Plan "based on a literal reading that it would allow accessory residences without compliance with otherwise applicable accessory structure zoning regulations"; and

WHEREAS, Ordinance No. 06-2019 was otherwise deemed to be consistent with the Master Plan; and

WHEREAS, N.J.S.A. 40:55D-26 (a) requires that a governing body, when considering the adoption of a development regulation, revision or amendment thereto, to review the Planning Board report and further permits the governing body to "disapprove or change any recommendation" by a vote of a majority of its full authorized membership and to record in its minutes the reasons for not following such recommendations; and

WHEREAS, N.J.S.A. 40:55D-62 further provides that a governing body may adopt or amend a zoning ordinance relating to the nature and extent of the uses of land and of building and structures thereon, "... after the planning board has adopted the land use plan element and the housing plan element of the master plan, and all the provisions of such zoning ordinance ... shall either be substantially consistent with the land use plan and the housing element of the master plan or designed to effectuate such plan elements"; and

WHEREAS, the Harding Township Committee considered the Mr. Hall's January 25, 2019 Memorandum at its regularly scheduled meeting on January 28, 2019; and

WHEREAS, after considering the contents of Mr. Hall's memo as it relates to the supposed Master Plan inconsistency as it relates to proposed new §225-166(B) included within Ordinance #06-2019, the Township Committee takes exception to the Planning Board's determination that §225-166(B) of Ordinance #06-2019 is inconsistent with the Township Master Plan and otherwise disapproves of the Planning Board's conclusion set forth in Mr. Hall's January 25, 2019 memorandum as it relates to this section of the ordinance; and

WHEREAS, N.J.S.A. 40:55D-62 (a) further provides in pertinent part that a governing body may adopt a zoning ordinance or amendment or revision thereto which in whole or part is inconsistent with or not designed to effectuate the land use plan element and the housing element upon an affirmative vote of a majority of the full authorized membership of the governing body, with the reasons of the governing body for so acting set forth in a resolution and recorded in its minutes when adopting such a zoning ordinance; and

WHEREAS, the Township Committee has determined to adopt Ordinance #06-2019, notwithstanding the Planning Board's "deeming" §225-166(B) of Ordinance #06-2019 to be inconsistent with the Master Plan "based on a literal reading that it would allow accessory residences without compliance with otherwise applicable accessory structure zoning regulations" and memorialize its reasons for doing so and its disapproval of the Planning Board's report by adoption of this resolution.

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BE IT RESOLVED, by the Township Committee of the Township of Harding that it does hereby disapprove of the January 25, 2019 "report" of the Township Planning Board regarding its review of Ordinance #06-2019 in regards to the Planning Board deeming" §225-166(B) of Ordinance #06-2019 to be inconsistent with the Master Plan "based on a literal reading that it would allow accessory residences without compliance with otherwise applicable accessory structure zoning regulations" for the reasons set forth below:

- (1) The Township Committee does not find that §225-166(B) of Ordinance #06-2019 is inconsistent with the Township's Master Plan.
- (2) On July 7, 2015, the Township of Harding filed a declaratory action with the Superior Court of New Jersey pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), entitled In the Matter of the Application of the Township of Harding, County of Morris, Docket No. MRS-L-1672-15, seeking, among other things, a judicial declaration that its Housing Element and Fair Share Plan, to be amended as necessary, satisfies its obligation to create the realistic opportunity to meet its "fair share" of the regional need for low- and moderate-income housing pursuant to the "Mount Laurel doctrine.
- (3) In connection with this lawsuit, the Township simultaneously secured a protective order providing Harding and its Planning Board immunity from all exclusionary zoning lawsuits while the Township pursued approval of its Amended Housing Element and Fair Share Plan. The Township also engaged in negotiations with the Fair Share Housing Center (hereinafter "FSHC") and S/K Mt. Kemble Associates, L.L.C. (hereinafter "Mt. Kemble Associates").
- (4) As a result of those negotiations, the Township entered into an agreement with FSHC and a separate agreement with Mt. Kemble Associates, which was incorporated in the agreement with FSHC and a Fairness Hearing was held on November 2, 2018, at which the settlement agreements were approved and the approval was later memorialized by an Order entered by the County on November 14, 2018.
- (5) In accordance with the terms of the settlement agreements and the Court's November 14, 2018 Order, the Township's planner prepared an Amended Housing Element and Fair Share Plan and upon notice duly provided pursuant to N.J.S.A. 40:44D-13, the Planning Board held a public hearing on the Amended Housing Element and Fair Share Plan on December 17, 2018 and adopted the Amended Housing Element and Fair Share Plan on the same day; and
- (6) Ordinance #06-2019, including §225-166(B), is substantially consistent with the Township's land use element and housing plan element of the master plan and is specifically designed to effectuate such plan elements as it is specifically intended to allow the Township to meet its affordable housing obligations that are set forth in the Township's Amended Housing Element/Fair Share Plan that was adopted by the Township Planning Board at a public hearing conducted on December 17, 2018.
- (7) The Planning Board failed to specify or identify which section and/or findings of

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BOARD'S FINDING THAT SECTION 225-166 B OF ORDINANCE #06-2019 IS INCONSISTENT WITH THE
TOWNSHIP MASTER PLAN**

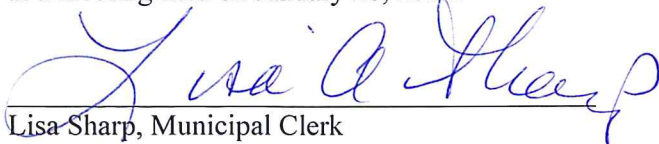
the Township's Master Plan is at odds with §225-166(B) of Ordinance #06-2019.

- (8) § 225-166(B) permits "an existing unoccupied space previously used as separate living quarters... may be converted to an affordable accessory residence." This same provision was specifically endorsed and recommended in the adopted 2008 Township Housing Element & Fair Share Plan. Specifically, the Plan states "10 units will be permitted consistent with the COAH limitation for this type of program. An important objective of the program is to foster the establishment of affordable accessory residences throughout the community. To help promote this objective, the ordinance should permit the conversion of an existing vacant accessory residence to an affordable accessory residence regardless of the zoning district in which it is located. In addition, new affordable accessory residences should be permitted in both the R-1 and RR zones, which together represent most of the privately-owned land in the township. These are the zones in which Harding has allowed traditional accessory residences for many decades." This Plan received substantive certification from COAH in 2009 and in connection therewith, the Township Committee adopted Ordinance #05-09 on June 10, 2009 that included the same language set forth hereinabove.
- (9) It should be noted that when the Township Planning Board reviewed the referral Ordinance in order to implement the accessory apartment ordinance as recommended in the 2008 Housing Plan, the Planning Board deemed the ordinance consistent with the goals and objectives of the Master Plan, as reflected in the Planning Board minutes from the May 18, 2009 meeting.

BE IT FURTHER RESOLVED, that the Township Committee has determined to adopt Ordinance #06-2019, notwithstanding the determination made by the Planning Board in regards to §225-166(B) that is included within Ordinance #06-2019.

DATED: January 28, 2019

I, Lisa A. Sharp, Municipal Clerk of the Township of Harding, County of Morris, State of New Jersey, do hereby certify the foregoing resolution to be a true and correct copy of a resolution adopted by the Township Committee at a meeting held on January 28, 2019.


Lisa Sharp, Municipal Clerk

Vote on Resolution:

	MOTION	FOR APPROVAL	AGAINST APPROVAL	ABSTAIN
Ms. DiTosto		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mr. Modi		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mr. Platt	1 st	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mr. Jones	2 nd	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mr. Yates		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>