

~~Rev. Conrad Carter~~, Cranbury
Toll Bros v.

1/6

1984

- letter from Toll Brothers Counsel to Township Committee re:
the ~~township~~ illegalities ~~in~~ the Township's land use regulations
- Toll Brothers proposed Amendments to Ordinance

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January 6, 1984

The Cranbury Township Committee
 23A North Main Street
 Cranbury, NJ 08512

Dear Township Committee Members:

Please be advised that we represent Toll Brothers, Inc. with respect to their landholdings in Cranbury Township. We have been retained by Toll Brothers, Inc. because we are land use specialists with a fairly broad background in representing municipalities, planning boards and developers in land use matters and in a legal specialty called "exclusionary zoning litigation."

We have represented such developers as Olympia & York in their present suit against Old Bridge, Allan-Deane (now The Hills Development Company) in its protracted litigation against Bedminster and Bernards Township; Toll Brothers, Inc. in one of the first Mt. Laurel II cases which was filed against Eastampton Township; and various other large developers in exclusionary zoning challenges. These litigation efforts have, to date, resulted in court ordered rezonings or settlements for many thousand multifamily units.

We were retained by Toll Brothers, Inc. to put together a team to analyze Cranbury Township's Master Plan, its existing land use pattern and its zoning in order to ascertain whether or not the Township's existing zoning is exclusionary. Based on this analysis, we have formally advised our client that, in our opinion, Cranbury Township's present Land Use Ordinances are exclusionary and will not withstand litigation. The team of experts and the companies employed to analyze the existing zoning have advised us of the following, among other noted illegalities in the Township's land use regulations:

1. The majority of Cranbury is within the growth area as defined by the State Development Guide Plan and the Mt. Laurel II decision and this municipality is therefore required by law to provide for its fair share of the regional housing need for lower income housing;

2. The Cranbury Township Land Development Ordinance fails to provide any realistic opportunity for the production of the Township's fair share of low and moderate income housing because only single family development on minimum lot sizes of between one to six acres is permitted as of right in the entire Township and because multifamily projects are only theoretically permitted as conditional uses in 8% of the Township subject to ambiguous conditions, the purchase of costly development credits, at very low gross and net densities and subject to cost-generative and illegal site design standards.

3. The Land Development Ordinance of Cranbury is replete with cost-generating provisions which are not related to public health and safety standards, and which have the effect of excluding housing for low and moderate income persons.

4. As a result of the above, Cranbury Township is not providing for its fair share of low and moderate income housing as required by the new Mt. Laurel II decision.

5. Our client's property is close to or within the Growth Area set forth in the State Development Guide plan, and can be developed for a mix of residential uses, including high density multifamily uses, as well as providing a variety of other housing opportunities which would benefit the general welfare of the region as well as the Township.

6. Due to the size of our client's holdings, the proximity of sewer and water, existing road patterns and construction economies of scale, the Toll Brothers, Inc. property can be developed at densities well above those allowed in the current zoning ordinance in an environmentally responsible manner. This development would substantially contribute to the public welfare by relieving Cranbury Township's critical need for low and moderate income housing and for a variety and choice of affordable housing.

Toll Brothers, Inc. is submitting with this letter, a development proposal for the rezoning of its property, to permit planned residential development at a gross density of nine units per acre, providing that 20% or 188 units are affordable to lower income persons. Also submitted is a proposed Land Development Ordinance Amendment, which zones the Toll Brothers, Inc. property for planned residential developments and would permit in addition to townhouses, manufactured housing and the usual ancillary commercial uses associated therewith for the sale of such housing.

My client has authorized me to formally advise you that in the event the Master Plan of Cranbury Township is not amended by the Planning Board to provide for the PRD Zone we have described and the proposed ordinance amendments are not introduced by the Township Committee on or before February 6, 1984, we will commence without further notice, litigation against Cranbury Township. This litigation will seek among other relief:

1. To have all Cranbury Township land development ordinances declared invalid on Mt. Laurel II or exclusionary zoning

principles;

2. We will ask the Court to place the Township into a land use receivership to be administered by a Court-appointed Master in accordance with the principles set forth by the Supreme Court in the Mt. Laurel II decision;

3. We will request, in this litigation, a builder's remedy permitting us to develop our property at a gross density of nine units per acre; and

4. We will propose to the Court that at least 20% of the 940 units we propose to build on the property be housing affordable to families in the lower income range, including manufactured housing.

We sincerely hope that the Township Committee will not choose to test our client's resolve and will cooperate with the Planning Board in amending the Master Plan and will adopt the ordinance amendments that we have requested. This action would be only a modest step towards a balanced community and towards compliance with a constitutional principle first enunciated over eight years ago by the New Jersey Supreme Court. We will be glad to meet with the Township's attorneys and planners until February 6, 1984 to go over our analysis of the demographic and land use data referred to herein.

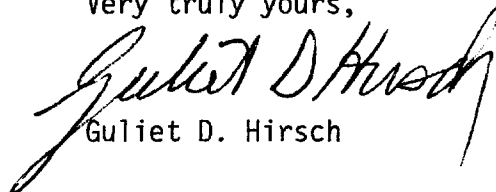
Finally, we hope that the tone of this statement will not obscure the fact that Toll Brothers, Inc. is offering two real benefits to the Township:

First, a proposal to provide a specific planned residential development, which, in our opinion, will go a long way towards assisting Cranbury Township in its obligation to provide housing for low and moderate income citizens; and

Secondly, a willingness to work with the Planning Board to assist them in complying with the mandate of the New Jersey Supreme Court.

We hope we will have an opportunity to work with you on the revisions of the Master Plan which will be needed to implement this proposal and that you will not choose to spend public monies on litigation which you cannot win and which will most probably result in zoning changes much more drastic than those proposed herein.

Very truly yours,


Guliet D. Hirsch

GDH:klp

TOLL BROTHERS, INC.
PROPOSED AMENDMENTS TO CRANBURY TOWNSHIP
LAND DEVELOPMENT ORDINANCE

I. Amend Section 150-7 to add the following definitions:

Net Density:

The quotient of the total number of dwelling units within a designated development or residential land use parcel divided by the total land area within the designated parcel. The result is expressed as dwelling units per acre (DU/AC). This definition replaces the current definition of "density net")

Maisonette:

One building containing four (4) or more dwelling units located adjacent to one another in a side to side and back-to-back configuration separated by a vertical party wall and may include manufactured housing.

Manufactured Housing

Manufactured housing means a housing unit all or part of which is portable, and may be built on a chassis. The unit must be designed to be used with a permanent foundation (such as a concrete pad) as a dwelling for year round occupancy when connected to required utilities. The term manufactured housing includes modular housing, housing built with panelized construction and mobile homes.

Townhouse:

One building containing two (2) or more dwelling units located adjacent to one another in a side-to-side configuration and separated by a vertical party wall and may include manufactured housing. (This definition replaces the current definition of "dwelling, townhouse".)

Economically Feasible Housing

Housing as to a household in a given income range, where housing costs are no greater on an annual basis than thirty (30%) percent of the maximum annual income of households in that income range.

Lot Area:

The area contained within the lot lines of a lot, including road right of ways. (This definition replaces the current definition of "lot area".)

Planned Residential Development

An area with a specified minimum contiguous acreage of ten (10) acres or more to be developed as a single entity according to a plan containing one or more residential clusters, which may include appropriate commercial, or public or quasi-public uses, all primarily for the benefits of the residential development.

Reviewing Body

The Planning Board, except where otherwise required by the N.J.S.A. 40:55 D-1 et. seq.

Yard

Rear Yard:

An open space extending across the full width of the lot and lying between the rear lot line and the closest point of the principal building on the lot. The depth of the rear yard shall be measured horizontally and at right angles to either a straight rear lot line or the tangent of the curved rear lot lines. (This definition replaces the definition of "yard, rear".)

Side Yard:

An open space extending from the front yard and lying between each side lot line. The width of the required side yard shall be measured horizontally and at right angles to either a straight line or tangent or curved lot lines. (This definition replaces the definition of "yard, side".)

Front Yard:

An open space extending across the full width of the lot and lying between the front lot line and the closest point of the principal building on the

lot. The depth of the front yard shall be measured horizontally and at right angles to either a straight front lot line or the tangent of the curved front lot lines. (This definition replaces the definition of "yard, front".)

2. Amend The Land Development Ordinance by adding the following new Article X and renumbering all Articles which follow:

Section 150-32 Planned Residential Development Zone

A. Purpose

It is the intent of the Planned Residential Development regulations to provide a realistic opportunity for a variety of housing types and income levels in the Township, including housing for lower income households; and to encourage the development of such lower income housing, and other housing, by providing land use regulations which afford for and make possible more creative and imaginative design for the development of residential and non-residential areas than is generally possible under conventional zoning.

B. Priority of Regulations

Notwithstanding any and all provisions elsewhere in this ordinance or any other ordinance of the Township, Planned Residential Developments are subject only to the standards and provisions contained in this Article.

C. Location and Size

Planned Residential Developments shall be permitted in the area designated on the zone map as amended by Ordinance No. _____.

D. Maximum Dwelling Units Permitted

Notwithstanding any other provisions of this ordinance, a Planned Residential Development shall permit an overall gross density of 9 dwelling units per acre.

E. Principal permitted uses on the land and in buildings include:

1. Public utility uses as conditional uses under N.J.S.A. 40:55D-67.
2. Multifamily.
3. Townhouses.
4. Single Family Attached.
5. Single Family Detached.
6. Manufactured Housing.
7. Commercial - shall be permitted conditioned upon the presence of mobile homes in the Planned Residential Development. The purpose of said commercial use shall be for the sale, leasing, rental, display or other disposition of mobile homes to the public.
8. Public parks, playgrounds, conservation areas and public purpose uses.
9. Open space as defined in N.J.S.A. 40:55D-1 - et. seq.

F. Accessory uses permitted on the land and in buildings include:

1. Private residential swimming pools in rear yards only.
2. Private residential tool and storage sheds not to exceed fifteen (15) feet in height.
3. Boats on trailers and campers to be parked or stored only and located in specifically designated areas only.
4. Recreational facilities.
5. Off street parking and private garages.
6. Fences and walls not exceeding six (6) feet in height.
7. Signs.
8. Residential agriculture.
9. Home Occupations.

C. Maximum Building Height

No building shall exceed thirty-five (35) feet in height.

H. Area and Yard Requirements

Schedule of Area and Yard Requirements - Residential.

Permitted Use	Min. Lot Area (S.F.)	Min. Lot Width (Ft.)	Min. Front Yard (Ft.)	Min. Side Yard (Ft.)	Min. Rear Yard (Ft.)
Townhouse	1,200	16	10	10 ¹	20
Single Fam. Detached	6,500	65	20	10/5	20
Maisonette	600	16	10	10 ¹	N/A
Manufactured Housing	1,400	22	22	11/3 ²	7
Multifamily	N.A.	N.A.	10/5 ³	10	20

Accessory buildings shall set back at least 4' from the lot line.

I. In instances where no subdivision of the land is planned, the permitted buildings shall be placed on the land in such a manner as to make it possible to subdivide the lot in conformity with the above requirements.

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1. One side only and applicable only to end units.
 2. Primary/Secondary
 3. Without attached covered parking/with attached covered parking.

J. Schedule of area and yard requirements - Commercial

Minimum Front Yard: 20'

Minimum Side Yard: 15'

Minimum Rear Yard: 8'

Minimum Lot Area: 7,200 Square Feet

Minimum Lot Width: 44'

K. Minimum Off Street Parking Requirements

1. Residential. Each dwelling unit shall provide off-street parking in the following manner:

Dwelling units with one (1) bedroom or less: 1.5 spaces

Dwelling units with two (2) bedrooms or more: 2.0 spaces

2. The required parking spaces shall be permitted within the yard areas specified herein. However, nothing contained herein shall require the off-street parking closer than one hundred and fifty (150) feet from the dwelling unit.

L. Lower Income Residential Requirement

1. Number of Dwelling Units Required. All Planned Residential Developments shall be required to provide twenty (20) percent of the dwelling units therein to be economically feasible for lower income households.

2. Subsidies. While governmental subsidies may be used at the discretion of the applicant to fulfill the requirement of the section, the lack of said subsidies shall in no way alter or diminish the lower income requirements of this section.

3. Resolution of Need. If to fulfill the requirements of this Section, an applicant may require a Resolution of Need in order to qualify for governmental subsidies the governing body shall

upon thirty (30) days of a written request act upon such a resolution.

4. Tax Abatement. Notwithstanding any ordinance of the Township of Cranbury, any applicant who is granted General Development Plan approval for a Planned Residential Development shall be granted the maximum legally permitted tax abatement for all dwelling units in the Planned Residential Development, and other subsequent purchasers, leasees or other occupants of said dwelling units shall be granted such tax abatement.

5. Resale of Lower Income Housing. All lower income dwelling units within a Planned Residential Development may be required by the approving body to have covenants running with the land to control the resale price of "for sale" units or to employ other legal mechanisms which may be approved by the Township Attorney and will, in his opinion, ensure that such housing will remain economically feasible to persons of lower income.

6. Notwithstanding any provisions set forth elsewhere in this ordinance, and any ordinance enacted by the township, the reviewing body shall waive any other design requirements contained in this ordinance, or any other ordinance enacted by the Township, in order to permit all housing within a planned residential development to be built at lowest cost, provided that the reviewing body shall be satisfied that such a waiver does not jeopardize the public health and safety.

7. Phasing of Lower Income Housing. Lower income housing shall be phased in accordance with the following schedule:

Percentage of Total Dwelling Units	Minimum Percentage of Lower Income Dwelling Units
25%	0%
50%	25%
75%	50%
100%	100%

The above percentage shall refer to the percentage of total dwelling units having final site plan or subdivision approval and the percentage of lower income dwelling units under construction.

8. Waiver of Fees. Notwithstanding any ordinance requirement of the Township of Cranbury the applicable approving agency shall waive the following fees for every unit designated as lower income housing:

- a. Planning board application fees;
- b. Building permit fees;
- c. Certificate of occupancy fees;
- d. Sewer and water connection and application fees;
- e. Engineering fees;
- f. Other waivers. Environmental and Community impact statements shall not be required for projects which include lower income housing. The Planning Board may waive any standards of this Article X in order to promote the provision of lower income housing so long as it is satisfied that such a waiver does not jeopardize the public health and safety.

M. Common Open Space Requirements

1. A minimum land area equal to twenty (20) percent of the land area of the Planned Residential Development which may include environmentally restricted land, shall be designated for conservation, open space, recreation and/or other common open space.
2. All property owners and tenants shall have the right to use the common open space.
3. Common Open Space may be deeded to the Township, to an Open space organization or trust, or to a private organization charged with the provision of recreation activities.
4. All common open space deeded to an open space organization or trust shall be owned and maintained as provided for in N.J.S.A. 40-55D-43.

N. Drainage

Where non-structural means of controlling surface runoff, such as swales, is feasible and adequate such non-structural means shall be preferred.

1. The system shall be adequate to carry off the storm water and natural drainage water which originates not only within the lot or tract boundaries but also that which originates beyond the lot or tract boundaries in their current state of development. No storm water runoff or natural drainage water shall be so diverted as to overload existing drainage systems or create flooding or the need for additional drainage structures on other private properties or public lands without proper and approved provisions being made for taking care of these conditions.

2. Techniques for computing water runoff shall be as follows:

a. Collection Systems; Rational Method.

b. Detention Systems: "U.S.D.A. Soil Conservation Service, Technical Release #55." Determination of the "R" factors shall be as contained in the ACE Manual #37, latest edition.

3. Storm sewers, open channels, bridges and culverts shall be designed from minimum flow capacities as follows:

	<u>Design Capacity</u>
Collection Systems	15 years
Culverts	25 years
Detention Systems	100 years

4. All materials used in the construction of storm sewers, bridges and other drainage structures shall be in accordance with the specifications of the "Standard Specifications for Road and Bridge Construction of the New Jersey Highway Department," current edition, and any supplements, addenda and modifications thereof unless otherwise specified by the reviewing municipal agency. Lesser specifications may be approved by the reviewing authority.

5. Lots and buildings shall be graded to secure proper drainage away from buildings. Additionally, drainage shall be provided in a manner which will prevent the collection of storm water in pools or other unauthorized concentrations of flow.

6. Detention or retention basins shall be required to hold storm water runoff such that discharge will not exceed pre-development rates. A waiver of this provision may be granted only when the applicant shows that the additional runoff

resulting from the proposed development will be negligible. Where detention or retention basins are required, they shall be designed in accordance with the "U.S.D.A. Soil Conservation Service, Technical Release" using the routing procedure, and where feasible, the outlet from the detention facility must require that 90 percent of the runoff from one and one-fourth inches of rainfall, falling in two hours, be retained, so that not over 90 percent will be evacuated prior to 36 hours. The following exceptions to this provision will be acceptable in any case:

- a. Retention will not be required to an extent which would reduce the outlet size to a diameter less than three inches;
- b. Dry basins serving residential projects may allow evacuation of 90 percent in 18 hours.

7. Approval of drainage structures shall be obtained from the appropriate municipal, county, State and Federal agencies and offices. Each applicant shall make application to the State Division of Environmental Protection, the Middlesex County Engineering Department and the township engineer.

8. Where required by the Township and as indicated on an improved development plan, a drainage right-of-way easement shall be provided to the Township where a tract or lot is traversed by a system, channel or stream. The drainage right-of-way easement shall conform substantially with the lines of such water-course and, in any event, shall meet any minimum widths and locations as shown on any official map and/or master plan.

O. Lighting

1. Street lighting shall be provided for all street intersections and along all collector and local streets, parking areas and anywhere else deemed necessary for safety reasons.

2. Any outdoor lighting such as building and sidewalk illumination, driveways with no adjacent parking, the lighting of signs and ornamental lighting, shall be shown on the lighting plan in sufficient detail to allow a determination of the effects upon adjacent properties, traffic safety and overhead sky glow. The objectives of these specifications is to minimize undesirable off-streets and driveways in such a manner as to interfere with or distract drive vision.

3. Specific lighting requirements.

a. The maximum intensity of lighting permitted on roadways shall be as follows:

Average Maintained Horizontal Illumination For Residential Areas

Collector	0.6 footcandles
Local	0.4 footcandles

b. The minimum intensity of lighting for other areas shall be as follows:

Intersections	2.0 footcandles
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Parking Areas/ Non Residential	1.0 footcandles
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Max at property lines	1.0 footcandles
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Residential areas	.0 footcandles (av.) .1 footcandles (min.)
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P. Sanitary Sewers

Where required and where a public or private treatment and collection system is provided, the developer shall design and

construct such facilities in accordance with the N.J.D.E.P. permit requirements and in such a manner as to make adequate sewage treatment available to each lot and structure within the development from said treatment and collection system. If a public or private treatment and collection system is included as part of a development application, the developer shall install dry sewers, including connections to each home to be constructed.

Q. Streets

1. All developments shall be served by paved streets in accordance with the approved subdivision and/or site plan, all such streets shall have an adequate crown.
2. Local streets shall be so planned and identified so as to discourage through traffic.
3. The minimum public street right-of-way and cartway and the minimum private street cartway shall be in accordance with the following schedule:

	<u>R.O.W.</u>	<u>Cartway</u>
<u>Collector Street</u>	50'	26'
<u>Local Street</u> serving single family detached	40'	22'
<u>Local Street</u> serving town house with attached garages or off-street parking	26'	20'
<u>Local Street</u> serving multifamily maisonette or townhouses with common or on-street parking	26'	20'
<u>Local Street</u> serving manufactured housing	26'	20'

4. Street intersections shall be as nearly as right angles as is possible and in no case shall be less than 80 degrees.

Approaches to all intersections shall follow a straight line for at least 100 feet or a curve with a radius of not less than 600 feet. No more than two streets shall meet or intersect at any point and the centerlines of both intersecting streets shall pass through a common point.

5. A tangent of at least 100 feet shall be provided between reserve curves on collector streets.

6. Cul de sac shall be no more than 1,250 feet in length nor shall they provide access to more than 80 dwelling units. A turn around shall be provided at the end of the cul de sac with a paved turning radius of 80 feet and a R.O.W. in the case of public streets of 100 feet.

7. The pavement standard for streets within a PRD under the jurisdiction of the Township shall be a base course of four (4) inches of Bituminous Stabilized Base, Stone Mix No. 1 placed on a compacted, unyielding subgrade, with a surface course of two (2) inches of Bituminous Concrete, type F.A.B.C. - 1, Mix #5 applied in accordance with State highway specifications. If the applicant can demonstrate that due to specific on site conditons an alternate pavement section would perform the same as the required section the alternative pavement standard shall be approved by the planning board.

R. Water Supply

Where public water is available, watermains shall be constructed in such a manner as to make adquate water sevice available to each lot or building within the development. The system shall be designed and constructed in accordance with the requirements and standards of the agency or authority having water supply jurisdiction.