

RULES-AD-1984-495

10-29-84

Mt. Laurel II Compliance Agreement
w/ Bedmstr

21 pgs

PPA-1 11/5/84
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Mt. Laurel II Compliance Agreement

WHEREAS, this litigation was initiated by the filing of a Complaint by the Cieswick plaintiffs in 1971, followed by the consolidation with other litigation in 1973; and

WHEREAS these cases have been vigorously litigated by the parties; and

WHEREAS, Bedminster Township revised its zoning ordinance in 1980 with the assistance of the court-appointed Planning Master, George Raymond, after which an Order for Final Judgment on Issue of Defendant's Zoning Obligation and Order for Specific Corporate Relief was entered by the Honorable Thomas Leahy on March 20, 1981; and

WHEREAS, an appeal was taken from said order by the Cieswick plaintiffs, and the Appellate Division, by decision dated August 3, 1983, remanded the consolidated cases to the Honorable Eugene Serpentelli, specially-assigned Mt. Laurel judge, for consideration of all issues in light of the opinion of the New Jersey Supreme Court in Southern Burlington County N.A.A.C.P. v. Township of Mt. Laurel, 92 N.J. 158 (1983) ("Mt. Laurel II"); and

WHEREAS, Bedminster Township on its own initiative introduced proposed amendments to the zoning ordinance in September 1983 which would replace the "least cost housing" requirements with "affordable housing" requirements for purposes of

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complying with the new standards created by the Mt. Laurel II decision; and

WHEREAS, Bedminster Township subsequently tabled action on the proposed amendments at the request of the Cieswick plaintiffs and agreed to enter into discussions with respect to the proposed amendments in order to voluntarily and amicably resolve all issues with respect to Bedminster Township's obligations under Mt. Laurel II; and

WHEREAS, the trial court entered a Case Management Order on November 3, 1983, which authorized and directed George Raymond to continue to function as the court-appointed Master and to (1) review the development application of Hills Development Corporation, successor in title to plaintiff Allan-Deane Corporation, and report to the Court whether the development proposal contained in said application complies with the requirements placed upon a developer receiving a builder's remedy under Mt. Laurel II, (2) review the fair share studies of Bedminster Township, materials submitted by the parties and the relevant planning facts of Bedminster Township and report to the Court on Bedminster Township's appropriate region, regional need, and fair share; and (3) review Bedminster Township's land development regulations, including recently proposed amendments, and report to the Court on whether said regulations make realistically possible the satisfaction of Bedminster Township's fair share; and

WHEREAS, the parties subsequently engaged in extensive settlement discussions, many of which included the participation of the Master; and

WHEREAS, the trial court entered an Order dated May 25, 1984, approving the builder's remedy for Hills Development Company, successor in interest to the Allan-Deane Corporation, and pursuant to said Order construction has already started on two-hundred-sixty (260) lower income housing units; and

WHEREAS, the Court by Order dated May 25, 1984, gave the Ceiswick plaintiffs and Bedminster Township thirty (30) days (subsequently extended for an additional two weeks) to attempt to resolve the remaining issues in the case; and

WHEREAS, the parties subsequently engaged in further settlement discussions with respect to all remaining issues; and

WHEREAS, the "consensus" Lerman methodology produces a fair share number for Bedminster Township of eight hundred nineteen (819); and

WHEREAS, Bedminster Township vigorously asserts that the consensus methodology is flawed in many respects and that its fair share number is substantially less; and that because of the special circumstances of Bedminster Township it should be permitted to phase in its fair share over a longer period than six (6) years; and

WHEREAS, resolution of this litigation will permit the

construction of lower income housing, while prolonged litigation would probably delay such construction and also consume considerable time and resources of the parties and the trial court; and

WHEREAS, the parties have agreed in order to settle this litigation to accept as Bedminster's fair share number six hundred fifty-six (656), which is eighty (80%) percent of eight hundred nineteen (819), and which the parties conclude is reasonable in light of the positions of the parties asserted in this litigation and the risks, uncertainties and delays of litigation; and

WHEREAS, Bedminster Township has proposed further amendments to its land development regulations and zoning map so as to make realistically possible the satisfaction of Bedminster Township's fair share obligation under Mt. Laurel II; and

WHEREAS, Bedminster Township has agreed to enact said amendments into law in accordance with the terms and conditions of this Agreement, upon court approval as set forth in this Agreement; and

WHEREAS, any strategy to meet the fair share number of Bedminster Township will require affirmative action by the New Jersey Department of Environmental Protection ("DEP") through expansion of either the Bedminster-Far Hills plant or the Environmental Disposal Corporation ("EDC") plant, or through approval of one or more new on-site treatment facilities, such as the one proposed by Leonard Dobbs; and

WHEREAS, the Dobbs' site is not readily available for development now because no construction could begin unless DEP granted approval of Dobbs' on-site treatment proposal and there is no indication that said approval could be readily obtained; and

WHEREAS, the Timber Properties' site is not readily available for development now because no construction could begin unless DEP granted approval for a plan for expansion of the Bedminster-Far Hills plant; and

WHEREAS, expeditious approval by DEP of any new project is most likely if there is a concerted effort by all parties to get a single proposal approved by DEP, rather than piecemeal efforts for DEP approval of three separate projects; and

WHEREAS, Bedminster Township has legitimate planning reasons for seeking to channel its future growth into the EDC franchise area; and

WHEREAS, Bedminster Township and EDC are in the process of entering into an agreement providing for cooperation with respect to an expeditious application by EDC to obtain approval for the expansion of the EDC treatment plant and franchise area; and

WHEREAS, all parties have agreed that a concerted cooperative effort by all parties to have DEP approve the expansion of the EDC plant offers the best strategy for most quickly providing sewer capacity to accommodate the construction of Bedminster

Township's entire fair share of low and moderate income housing;
and

WHEREAS, the areas chosen by Bedminster Township for lower income housing are consistent with principles of sound land use planning; and

WHEREAS, Bedminster's prior proposal, which is substantially similar to the proposal set forth in this Agreement, was approved by the master, George Raymond, and this Compliance Agreement provides an even stronger likelihood that the fair share will be achieved; and

WHEREAS, this Agreement provides the realistic opportunity for the construction of 900 lower income housing units, which constitutes an overzoning of more than 37% in excess of the agreed upon fair share number;

NOW, THEREFORE, in consideration of the mutual covenants, promises, terms and conditions hereinafter provided, it is agreed by and between the Township and the Cieswick plaintiffs as follows:

1. This agreement is reached after due deliberation by all parties and upon the considered judgment of all parties based upon the advice of counsel and professional planning consultants that it is in the best interest of the public good and welfare to settle the aforesaid litigation upon the terms and conditions contained herein so as to meet the fair share obligation of the Township.

2. The Township agrees to enact into law, in accordance with the provisions of the Municipal Land Use Law, the amendments to the zoning ordinance and zoning map of the Township as set forth in Exhibit "A" attached hereto and made a part hereof, subject to the conditions set forth in paragraph 10 herein.

3. The zoning amendments provided for by this Agreement include senior citizen housing as a conditional use for certain designated areas, subject to the requirement that all units be affordable to lower income housing. In order to encourage and facilitate the construction of such housing, Bedminster Township agrees to ^{Form} ~~cause~~ or cause to be formed a nonprofit corporation whose purpose would be to seek funding from federal, state, charitable and other sources for the construction of one or more projects totalling at least 125 lower income housing units for senior citizens.

4. The parties agree that six hundred fifty-six (656) units represents the Township's fair share through the year 1990 and that the settlement permits the construction of nine hundred (900) units of low and moderate income housing.

5. On or before July 1, 1990, the Township shall, through its normal planning process, re-assess its housing needs to determine whether an opportunity for additional low and moderate income units is required pursuant to the then-applicable

statutory and case law and, if so, to take appropriate action in response thereto.

6. In the event that housing affordable to low or moderate income households in excess of the Township's fair share of 656 is constructed in the Township on or before July 1, 1990, or otherwise is added to or identified as a part of the Township's housing stock, the Township shall receive credit for each such additional unit towards satisfaction of any subsequent fair share or other housing obligation.

7. Commencing on the date on which all the conditions set forth in paragraph 10 hereof shall have been satisfied (the "effective date"), and subject to an express determination by the trial court that the Township may lawfully do so, the Township agrees to enact ordinance provisions for the waiver of the following fees for the low and moderate income units in affordable housing developments:

(a) Subdivision and site plan application fees on a pro rata basis based upon the percentage of low and moderate income housing in the development.

(b) Building permit fees, except state fees.

(c) Certificate of Occupancy fees.

(d) Engineering fees on a pro rata basis based upon the percentage of low and moderate income housing in the development.

Provided, however, that the foregoing waiver shall not apply with respect to any fees which have been paid to the Township prior to the effective date or which are due and payable to the Township by any developer or applicant as of the effective date.

8. The Township agrees to require developers to utilize or establish mechanisms and procedures to ensure that units are marketed to and remain affordable by eligible lower income households.

9. The Township agrees to require applicants to provide written notice to the Department of The Public Advocate of any applications for conceptual, preliminary, or final approval by developers in the affordable housing zones, and of any preliminary or final approvals or denials, whether conditional or unconditional.

10. This Compliance Agreement is conditioned upon, and shall not be effective until (1) the approval by the trial court of the within agreement, including an express determination that neither Leonard Dobbs nor Timber Properties (or their successors in interest) is entitled to a builder's remedy or otherwise entitled to zoning for lower income housing; and (2) the entry by the trial court of a final judgment of Mt. Laurel II compliance including a six-year period of repose from Mt. Laurel litigation as provided for by the New Jersey Supreme Court in Southern

Burlington County N.A.A.C.P. v. Mt. Laurel Twp., 92 N.J. 158, 291-2 (1983).

11. Upon the construction and occupancy of sufficient units affordable to low and moderate income households under the ordinance provisions set forth as Exhibit A to satisfy the municipality's fair share of 656 and upon written notice to the Department of The Public Advocate, the Township may repeal or amend the ordinance provisions set forth in Exhibit A.

12. The municipality shall not zone, rezone, grant variances, or grant any preliminary or final site plan approval for townhouses, garden apartments or residential uses at gross densities higher than four (4) units per acre unless:

(a) the development is subject to a mandatory set-aside for units affordable to lower and moderate income households analogous to that contained in Exhibit A, or

(b) the municipality has met its fair share obligation as set forth in this Agreement.

13. Upon enactment into law, the low and moderate income housing provisions as set forth in Exhibit A shall not be repealed, amended or modified without prior notice to the Department of the Public Advocate, except as provided in paragraph 11 above. The Township agrees to submit any proposed amendments to the Public Advocate for review. If no written objections are received within ten (10) days thereafter, then the Township may

proceed with the adoption of the proposed amendments. If written objections are received within said time period, then the parties agree to attempt to amicably resolve any differences. If agreement cannot be achieved and the Public Advocate believes the proposed amendment will adversely affect the ordinance's compliance with the requirements of law, then the Public Advocate may by motion submit the issue to the trial court.

14. The parties hereto acknowledge and agree that this Compliance Agreement shall in no way be construed by any party in any other case as a model, guide or precedent, since this case reflects unique circumstances and was uniquely positioned as a matter which included many issues which were thoroughly litigated and largely decided prior to Mt. Laurel.

Date:

Kenneth E. Meiser

JOSEPH H. RODRIGUEZ,
Public Advocate
Attorneys for Plaintiffs

By: KENNETH E. MEISER, Deputy Director

Attest:

Township of Bedminster

Margaret C. Francusca

By:

Paul J. [Signature]

Date:

10/29/84

PROPOSED ORDINANCE AMENDMENTS
BEDMINSTER TOWNSHIP, NEW JERSEY

1. Add new Subsections 13-404.1 h. and 13-405.1 h.

"h. Senior Citizen Housing as a conditional use under N.J.S.A. 40:55D-67 (see Section 13.601 for standards).

2. Change 13-601.2 in its entirety to read:

13-601.2 Senior Citizen Housing.

- a. No site shall contain less than four acres.
- b. The maximum residential density shall not exceed fifteen dwelling units per gross acre.
- c. No dwelling unit shall contain more than two bedrooms except that a dwelling unit for a resident manager of the building may contain more than two bedrooms.
- d. Individual dwelling units shall meet the minimum design requirements specified by the New Jersey Housing Finance Agency.
- e. The maximum building height shall not exceed 35 feet and three (3) stories.
- f. A minimum 1.0 parking spaces shall be provided for each dwelling unit except that a lesser number, as determined by the subsidizing governmental authority, can be paved.
- g. A land area or areas equal in aggregate to at least 250 square feet per dwelling unit shall be designated on the site plan for the recreational use of the residents of the project; except that where a project is located within 300 feet of any existing or previously approved park or recreational area, the Planning Board may waive this requirement at the time of site plan review.
- h. Prior to any Township site plan approval, the following prerequisites shall have been accomplished:
 - 1. Verification that there are or will be adequate utility services and support facilities for the project, including transportation facilities and commercial establishments serving everyday needs, within a one mile walking distance of the proposed site.
 - 2. Assurance that the occupancy of such housing will be limited to households, the single member of which, or the husband and/or wife of which, or any of a number of siblings or unrelated individuals of which, or a parent of children of which, is/are 62 years of age or older, or as otherwise defined by the Social Security Act, as amended, except that this provision shall not apply to any resident manager and family resident on the premises.

3. Verification of conceptual approval of the project by any State or Federal agency which finances or assists the financing or operation of such housing; except that if approval of the project by the subject State or Federal agency requires prior approval by the Township, then the Township may approve the site plan conditioned upon approval of the project by the appropriate State or Federal Agency.

4. A bona fide non-profit or limited dividend sponsor shall have been established and approved by the subsidizing governmental authority to develop the project; except that if the subsidizing governmental authority requires prior approval by the Township, then the Township may approve the site plan conditioned upon the establishment of a bona fide sponsor approved by the governmental authority.

5. Assurance that all dwelling units are rented or sold only to low and moderate income households and that such units will continue to be occupied by low and moderate income households for a period not less than 30 years.

3. Add new Subsection 13-606.1 e. to read:

"e. Single-family clusters are permitted on tracts of land at least fifty acres in area where indicated on the zoning map."

4. Add new Section 134-606.6 to read:

"13-606.6 Single Family Clusters.

a. Principal permitted uses on the land and in buildings.

1. Detached dwelling units.
2. Public playgrounds, conservation areas, parks and public purpose uses.
3. Public utility uses as conditional uses under N.J.S.A. 40:55D-67 (see Section 13-601 for standards).

b. Accessory uses permitted.

1. Private residential swimming pools in rear yard areas only (see Section 13-514).
2. Private residential tool sheds not to exceed 15 feet in height.
3. Boats on trailers and campers to be parked or stored and located in rear or side yards only. Their dimensions shall not be counted in determining total building coverage, and they shall not be used for temporary or permanent living quarters while situated on a lot.

4. Usual recreational facilities.
 5. Off-street parking and private garages (see Section 13-508).
 6. Fences and walls not exceeding six feet in height in rear and side yard areas and three feet in height in front yard areas (see Section 13-503).
 7. Signs (see Section 13-512).
 8. Residential agriculture (see Section 13-201 for definition).
 9. Home office occupations (see Section 13-201 for definition).
- c. Maximum building height. No detached dwelling shall exceed 35 feet and two and one-half stories in height.
- d. Maximum number of dwelling units permitted. The number of dwelling units permitted within a single-family cluster is equal to one dwelling unit per acre of non-critical land on the tract plus a transfer of an additional one-fifth dwelling unit per acre from the critical lands within the tract to the non-critical areas.
- e. Area and yard requirements.

Principal Building
Minimum

<u>Lot area</u>	14,500 sq. ft. minimum and 33,000 sq. ft. maximum, with an average lot size no less than 22,000 sq. ft.
Lot frontage	100'
Lot width	100'
Lot depth	125'
Side yard (each)	20', except 10' for an attached garage
Front yard	40'
Rear yard	30'

Accessory Building
Minimum

<u>Distance to side line</u>	10'
Distance to rear line	15'
Distance to other buildings	10'

Maximum

Building coverage of principal building	10%
Building coverage of accessory building(s)	2%

f. Minimum off-street parking.

1. Each detached dwelling unit shall be provided with no less than two off-street parking spaces and no parking space or driveway shall be located within six feet of any property line.

2. See Section 13-508 for additional standards.

g. Permitted signs.

1. Detached dwelling: Information and direction signs as defined in subsection 13-512.1e.

2. See Section 13-512 for additional standards.

h. Open space requirements. See subsection 13-606.5 hereinabove.

5. Change Subsection 13-606.3.i. in its entirety to read:

i. Low and moderate income housing requirements. At least twenty percent (20%) of the total number of residential dwellings within a development shall be subsidized or otherwise made affordable to low and moderate income households as discussed and defined in the "Mt. Laurel II" Supreme Court Decision (So. Burlington Cty. N.A.A.C.P. v. Mt. Laurel Tp., 92 N. J. 158 (1983)). The applicant shall submit, with the application for development, a narrative description of the mechanism to be used to insure that the required affordable dwelling units are rented or sold only to low and moderate income households and that such units will continue to be occupied by low and moderate income households for a period not less than 30 years. In addition to such description, actual samples of language to be included in the nature of covenants shall be submitted. The submitted description shall detail the entity or entities responsible for monitoring the occupancy of the low and moderate income units and shall provide a detailed discussion concerning resales, permitted increases in price, pre-qualification of occupants, etc. Every affordable unit shall be sold at a monthly carrying cost (including mortgage, taxes, owners association fees and insurance, but excluding utilities) not exceeding 28% of the earning limits calculated for low and moderate income households or rented at a monthly carrying cost (including utilities) not exceeding 30% of those earning limits; provided that the sales prices and rent levels shall be set so that units shall be affordable not only by households at the ceiling income for low income households and moderate income households, respectively, but by a reasonable cross-section of households within each category. For purposes of this Ordinance, "low income households" are those earning less than 50% of the median income calculated for the 11 northern New Jersey counties, utilizing HUD median family income data weighted by the number of

families in each county, exclusive of any area outside of New Jersey, and adjusted for household size. "Moderate income households" are those earning between 50% and 80% of the calculated median income figure.

1. At least 25 percent of the required 20 percent shall be rental units subsidized in accordance with available subsidy programs authorized and regulated by the Federal Department of Housing and Urban Development or the New Jersey Housing Finance Agency. If no subsidy programs are available, this fact shall be certified to the Planning Board, and the rental units shall be restricted in size to be no larger than 15 percent greater in area than the minimum net habitable floor area as specified by H.U.D. as a minimum for a particular unit. In any case, the developer shall insure that 50% of said rental units shall be provided for low income households and 50% for moderate income households. Moreover, not less than 20 percent (20%) of the units shall have three (3) bedrooms, and at least one-third (1/3) of these three (3) bedroom units shall be set aside for occupancy by low income households.
2. At least 25 percent of the required 20 percent, and such additional units as may be required to achieve the low and moderate income housing requirements within the development, shall be dwellings for sale. The developer shall insure that 50% of said sale units shall be provided for low income households and 50% for moderate income households. Moreover, not less than twenty percent (20%) of the units shall have three (3) bedrooms, and at least one-third (1/3) of these three (3) bedrooms shall be set aside for occupancy by low income households.
3. If the Planning Board determines, upon proofs submitted by the applicant, that low and moderate income housing units are more likely to be produced by the waiver of the mix requirements set forth in subsections 13-606.3i.1. and 13-606.3i.2. hereinabove, the Planning Board may, subject to such appropriate conditions as it may impose, permit the applicant to provide only rental or only sale units; provided, however, that if only sale units are proposed, the applicant shall propose a program for eliminating the necessity of down payments on up to twenty-five percent (25%) of the affordable units.
4. A developer may request the Planning Board and/or the Township to waive or modify requirements of the land development Ordinance (except with respect to permitted densities), or to take other actions authorized by law, if the developer believes that such actions are necessary to provide the twenty percent (20%) 'low' and 'moderate' income housing. If

such relief is sought, a developer must choose one of three impartial housing experts from a list prepared by the Planning Board and have the expert make recommendations, at the expense of the developer, on the necessity for the proposed waivers, modifications or other actions. The designated housing expert may, if necessary, utilize the services of an accountant, housing economist or similar professional, also at the expense of the developer. The developer shall provide the Township, Planning Board and the expert, and any persons assisting the expert, Township or Planning Board, with copies of, and full access to, all the developer's information and records, including, but not limited to, all financial records, actual costs and projections concerning the proposed development. The expert shall conduct an investigation and make findings with respect to the following:

- a. The financial feasibility of the proposed development without any modifications of the applicable regulations or other municipal action.
- b. The potential for cost savings through modifications to the proposed development plan which would not require the waiver or modification of applicable regulations or other municipal action.
- c. The potential for cost savings through the waiver or modification of any applicable regulations to the extent not necessary to protect public health or safety or through other municipal actions permitted by law.
- d. The relationship, under the circumstances, between sound principles of land use planning and any potential modifications of the development plan and/or the applicable regulations.

The expert shall prepare a preliminary report setting forth the preceding findings and recommending any modifications of the development plan or the applicable regulations or any other actions deemed necessary in order to provide the twenty percent (20%) lower income housing units. Said recommendations shall give preference to any actions or modifications by the developer before recommending any municipal waivers or actions. The developer, Planning Board and Township may review and comment upon the preliminary report, and the expert may revise the report and recommendations or conduct further studies in response to any comments or criticisms received. In the event that the expert determines that, even after any recommended actions, it is not economically feasible for the developer to provide the full amount of affordable 'low' and 'moderate' income units, the expert may recommend that the developer provide twelve percent (12%)

moderate income and eight percent (8%) low income units. Such a modification in the 'low' and 'moderate' income obligation shall not be approved unless the Planning Board, Township and developer have substantially complied with the recommendations to reduce costs. The recommendations shall not be binding upon the Township or Planning Board, but in the event that the Planning Board or Township declines to accept one or more recommendations of the expert, it shall detail its reasons in writing. All the costs and expenses of the housing expert and consultant(s) employed by the expert shall be paid by the applicant.

6. Change subsection 13-606.4j. in its entirety to read:

j. Low and moderate income housing requirements. See Subsection 13-606.3 i. for requirements.

7. Add a new subsection 13-404.7 to read:

13-404.7. Low And Moderate Income Housing Requirements. See Subsection 13-606.3 i. for requirements.

8. Add a new footnote "(4)" to the "Floor area ratio" portion of the chart within Section 13-406.4, Area and Yard Requirements for the 'CR' District, to read as follows, and change the existing footnote "(4)" to become footnote "(5)":

"(4) A developer may increase the square footage of the office/research space on any tract in excess of twenty (20) acres in size zoned "CR", provided that for every additional 7,623 square feet (0.175 F.A.R. X's 43,560 sq. ft. [1 ac.]) of space, an acre of land adjacent to the subject "CR" tract is dedicated to the Township for "public purpose uses" and, provided further, that no less four (4) such acres, nor more than six (6) such acres, be dedicated in this manner.

9. Change Section 13-805.3.h. to read:

h. In the case of "MF", "PRD" and "PUD" developments only, final approval shall not be granted for any section of the development unless the following phasing plan for the construction and occupancy of required 'low' and 'moderate' income units to market dwelling units has been adhered to (see Subsection 13-606.3.i.):

1. The developer may construct and occupy up to twenty-five percent (25%) of the total number of market units within the development prior to constructing any 'low' or 'moderate' income units.
2. The developer may thereafter construct and occupy an additional twenty-five percent (25%) of the market units

within the development, provided that at least twenty-five percent (25%) of the 'low' and 'moderate' income units are being constructed.

3. The developer may thereafter construct and occupy an additional twenty-five percent (25%) of the market units within the development, provided that an additional fifty percent (50%) of the 'low' and 'moderate' income units are being constructed.
4. The developer may thereafter construct and occupy the remaining twenty-five percent (25%) of the market units within the development, provided that the remaining twenty-five percent (25%) of the 'low' and 'moderate' income units are under construction and, provided further, that an equal percentage of 'low' and 'moderate' income units versus market units shall have received certificates of occupancy at any time.

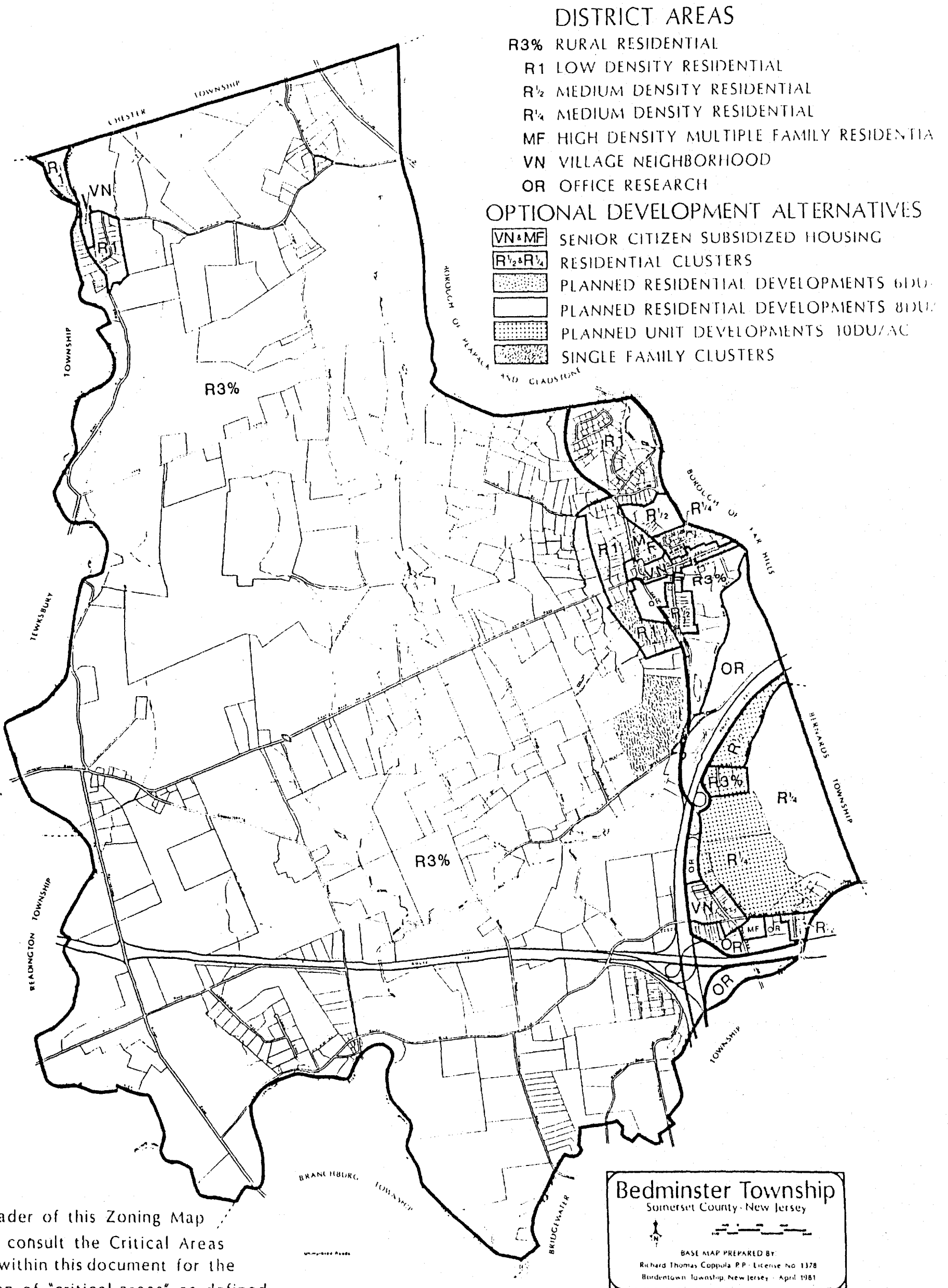
10. The Zoning Map is changed as attached herewith and dated June 1984.

Critical Areas : Steep Slopes November 1983



ZONING MAP

JUNE 1984



NOTE: The reader of this Zoning Map should consult the Critical Areas Maps within this document for the location of "critical areas" as defined and controlled by Section 13-605 of the Land Development Ordinance of the Township of Bedminster.

Bedminster Township
Somerset County - New Jersey

BASE MAP PREPARED BY:
Richard Thomas Coppola P.P. License No. 1378
Bordentown Township, New Jersey - April 1981