

February 10, 2026

Pennington Borough Planning Board
30 North Main Street
Pennington, NJ 08534



POLICY
PLANNING
DESIGN

**Re: Consistency Review under N.J.S.A. 40:55D-26
Ordinance Nos. 2026-4 through 2026-15**

Dear Board Members:

Pursuant to the Board's request, I have reviewed Ordinance Nos. 2026-4 through 2026-15, referred by Borough Council on February 3, 2026, as well as the Borough's Master Plan, including the January 14, 2026 Amended Fourth Round Housing Plan. This memo summarizes my review and is for the Board's consideration and discussion at its February 11th regular meeting.

Referral of the ordinances by Borough Council to the Board is by way of N.J.S.A. 40:55D-64, which reads "*Prior to the hearing on adoption of a zoning ordinance, or any amendments thereto, the governing body shall refer any such proposed ordinance or amendment thereto to the planning board pursuant to subsection 17a. of this act [40:55D-26].*" N.J.S.A. 40:55D-26a states "*Prior to the adoption of a development regulation, revision, or amendment thereto, the planning board shall make and transmit to the governing body, within 35 days after referral, a report including identification of any provisions in the proposed development regulation, revision or amendment which are inconsistent with the master plan and recommendations concerning these inconsistencies and any other matters as the board deems appropriate. The governing body, when considering the adoption of a development regulation, revision or amendment thereto, shall review the report of the planning board and may disapprove or change any recommendation by a vote of a majority of its full authorized membership and shall record in its minutes the reasons for not following such recommendation.*" This function is a critical component of the municipal power to zone, as 40:55D-62a states "*....all of the provisions of such zoning ordinance or any amendment or revision thereto shall either be substantially consistent with the land use plan element and the housing plan element of the master plan or designed to effectuate such plan elements.....*" The Supreme Court, in *Manalapan Realty v. Township Committee*, 140 N.J. 366, 384 (1995), ruled that some inconsistency is allowed "*provided it does not substantially or materially undermine or distort the basic provisions and objectives of the Master Plan.*"

In short, the Board's function is to determine if there are any provisions of the ordinances, as introduced, that are inconsistent with the Borough's Master Plan. As noted above, recommendations by the Board should focus on these inconsistencies, but may also include other recommendations as the Board sees fit. If there are specific changes recommended, whether to permitted uses or bulk standards, these should be discussed on February 11th.

As the Board is aware, we have conditionally adopted almost all the elements that are part of the Master Plan update, with only the Land Use Plan remaining. Since those elements have not been the subject of public hearings and officially adopted, they are not a consideration relative to this analysis. Also not a consideration is the 2023 Reexamination Report, as it is technically not part of the Master Plan but rather a review of it. One exception is the Amended 2025 Fourth Round Housing Plan, which was adopted by the Board after a public hearing on January 14th. In my view this is the most relevant document, as obviously none of the existing elements of the Master Plan could have contemplated a compliance approach to affordable housing requirements 25 years in the future.

As noted on the prior page, the Supreme Court in its decision in *Manalapan Realty v. Township Committee* references "*the basic provisions and objectives of the Master Plan*". For the Board's reference, the goals and objectives from the 1998 Master Plan as modified by the 2005 and 2013 reexamination reports are provided below and should be considered relative to the consistency of the ordinances.

1. The Borough should remain primarily a residential community.
 - Existing residential use areas should be maintained.
 - New residential development should be consistent in scale and character to existing development.
 - Open space and recreational areas, both public and private, should be preserved and enhanced (e.g. green linkages to nearby preserved areas, environmental protection, stream corridor protection, etc.).
2. The community-serving role of the Borough center area should be preserved and enhanced.
 - Maintain a mixture of residential, public, semi-public and business uses.
 - Work toward the establishment of a multi-use social and recreational community facility for use by all age groups.
 - The broad concepts of the Borough Center Area Plan Element should be further considered and developed through a joint effort of the Planning and Zoning Boards, the Economic Development Commission and other community interest groups.
3. The visual quality and historic character of the Borough should be protected and enhanced.
 - Adopt historic district standards and boundaries.
 - Incorporate non-residential building design guidelines into an updated site plan ordinance for the entire Borough.
 - Establish a new shade tree nursery and locate all utility wires underground.
 - Reduce through traffic and enhance pedestrian safety and access.
4. The existing distinction between highway business uses and town center housing and business uses should be maintained.
 - The Route 31 business area should continue to meet the needs of regional and highway-oriented business uses.
 - The Borough center establishments should continue as a mix of residential uses and "village" type businesses.

- Pedestrian linkages between the two business areas should be improved.

5. The Borough should work toward a more proactive effort on regional issues such as traffic and circulation, open space preservation, community facilities, stream corridor protection, and water quality improvement.”

Reviewing the January 14, 2026 Amended Fourth Round Housing Plan, all of the ordinances introduced by Council on February 3, 2026, are intended to implement the compliance mechanisms outlined in that plan. The Plan includes recommendations for the creation of specific zoning districts within the Borough that will provide the opportunity for the construction of affordable housing, and the draft ordinances were included as appendices. In short, ordinances 2026-4 through 2026-11 have been introduced by Council to implement the compliance strategy recommended in the Plan and can, in my professional opinion, be viewed as “not inconsistent” with the Master Plan as they are specifically discussed and recommended.

Proposed amendments to the Borough’s development fee ordinance (2026-13) and affordable housing regulating ordinance (2026-12) are being undertaken to bring our local ordinances into conformance with requirements in the Uniform Housing Affordability Controls and DCA’s Affordable Housing Rules (N.J.A.C. 5:99), both of which were amended by the DCA on December 15, 2025. Ordinance 2026-11 implements mandatory setaside requirements for projects that are not currently part of the Housing Plan and ensures the Borough can capture opportunities for additional affordable housing as they arise. Finally, ordinance 2026-14 amends the Zoning Map to show the districts being created in ordinances 2026-4 through 2026-11. In my professional opinion, there are no aspects of these ordinances that are inconsistent with the current Borough Master Plan.

I will attend the Board’s meeting on February 11th to review this memo and participate in Board discussion. Should you have any questions in the meantime, please feel free to contact me via e-mail (jkyle@kylemcmanus.com).

Sincerely,



James T. Kyle, PP/AICP
Principal

Cc: Ed Schmierer, Esq., Board Attorney