

THIRD ROUND AFFORDABLE HOUSING
MIDPOINT REALISTIC OPPORTUNITY REVIEW
CITY OF LAMBERTVILLE
HUNTERDON COUNTY, NEW JERSEY

IMO Application of the City of Lambertville
Docket No. HUN-L-311-15

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Table of Contents

1.0	Purpose.....	1
2.0	Background.....	2
3.0	Rehabilitation Obligation Review	3
4.0	Prior Round Review	3
5.0	Third Round Review	3
6.0	Very Low Income Analysis	6
7.0	Conclusion	7

1.0 PURPOSE

The requirement for a midpoint realistic opportunity review derives from the Fair Housing Act (“FHA”) at N.J.S.A. 52:27D-313, which provides: “[t]he Council (Council on Affordable Housing or COAH) shall establish procedures for a realistic opportunity review at the midpoint of the certification period and shall provide for notice to the public.” Although COAH failed to adopt regulations or procedures for a midpoint realistic opportunity review, the purpose and process is set forth in the City of Lambertville’s Court-approved Settlement Agreement with Fair Share Housing Center (“FSHC”).

The purpose of the midpoint realistic opportunity review is for Lambertville to provide a status report as to the City’s implementation of its Housing Element and Fair Share Plan (“HEFSP”), an analysis of whether any unbuilt sites or unfulfilled mechanisms towards its realistic development potential (“RDP”) continue to present a realistic opportunity and an update on unmet need mechanisms. Pursuant to the Lambertville/FSHC Agreement, there’s a requirement for the City to post on its website, with a copy to FSHC and an opportunity for comment, a status report regarding its fair share compliance mechanisms and whether or not unbuilt sites/unfulfilled mechanisms continue to present a realistic opportunity for construction of affordable housing. In the event the Court determines that an RDP site or mechanism no longer presents a realistic opportunity and should be replaced or if the Court determines that any unmet need mechanisms should be revised or supplemented, then the City of Lambertville shall have the opportunity to supplement or revise its plan to correct any RDP or unmet need deficiency.

To facilitate the review process, in addition to posting this Midpoint Review Report on its website and submitting copies to FSHC, the City of Lambertville will place on file a copy of this report for public inspection at the office of the Lambertville City Clerk or, if the municipal building is still closed due to the pandemic, interested parties may request a copy be mailed. Lastly, the City will provide newspaper notice of the availability of this report. The City’s notice to the public of this Midpoint Review Report will include a 30-day deadline for any interested party comments/ requests for a court hearing to be submitted.

2.0 BACKGROUND

Following the New Jersey Supreme Court's 2015 Mount Laurel decision, the City filed its Declaratory Judgment action with the Superior Court on July 8, 2015. Through the declaratory judgment process, the City and FSHC agreed to settle the litigation and to present that settlement to the trial court with jurisdiction over the matter to review. The City of Lambertville entered into a Settlement Agreement with FSHC dated May 22, 2018. Following a fairness hearing conducted on September 13, 2018, the municipality's affordable housing proposal was deemed fair to the low- and moderate-income citizens of the state, and an order approving the settlement agreement was entered on October 11, 2018.

Subsequently, the City of Lambertville entered into an Amended Settlement Agreement with FSHC dated January 29, 2020 (fully executed February 4, 2020). Following a fairness and compliance hearing conducted on May 12, 2020, the municipality's affordable housing proposal was deemed fair to the low- and moderate-income citizens of the state, and an order approving the amended settlement agreement and a conditional Judgment of Repose ("JOR") was entered on June 23, 2020.

This report has been prepared to comply with the terms of that Amended Settlement Agreement, which require a review at the midpoint of the Third Round (July 1, 2020) of whether the unbuilt compliance mechanisms included in the Settlement Agreement and the HEFSP continue to present a realistic opportunity for the development of affordable housing. As reflected in the City's Court-approved Amended Settlement Agreement, the City's Third Round Fair Share obligation is as follows:

- Rehabilitation Share/Present Need: 1 units
- Prior Round Obligation: 0 units
- Third Round Gap and Prospective Need Obligation: 137 units

3.0 REHABILITATION OBLIGATION REVIEW

The City has a Rehabilitation Obligation/Present Need of 1 unit, which, at the time the HEFSP was adopted, was addressed through the rehabilitation of two (2) units.

4.0 PRIOR ROUND REVIEW

The City does not have a Prior Round obligation.

5.0 THIRD ROUND REVIEW

The Amended Settlement agreement and the Fairness/Conditional JOR reflect the Court's approval of Lambertville's vacant land adjustment ("VLA"), which adjusts the 137-unit Third Round obligation to an 88-unit "Agreed RDP" and a 49-unit unmet need.

Realistic Opportunity Review – RDP Compliance Mechanisms

Per the COAH Prior Round regulations as upheld by the NJ Supreme Court, the realistic opportunity standard applies to all mechanisms for non-VLA municipalities and to RDP mechanisms for VLA municipalities such as the City of Lambertville. The City continues to provide a realistic opportunity for each Court-approved RDP compliance mechanism as shown in the chart below:

Mechanism	Description	Ordinance Adopted (Yes/No)	Status	Notes/Additional Information
Little Haven Group Home	Prior Cycle Supportive Special Needs	N/A	Completed	11 of 18 bedrooms
Habitat for Humanity	100% Affordable	N/A	Completed	4 family for-sale units
Heritage Village	100% Affordable	N/A	Completed	22 of 37 age-restricted rental units

Munice Accessory Apartment	Accessory Apartment	N/A	Completed	1 family rental unit
Lambertville High School Redevelopment Area	Inclusionary Development	Yes (April 23, 2020)	Proposed	28 family rental units

Unmet Need

In addition to being required to create a realistic opportunity for the construction of its RDP obligation during the Round 3 compliance period, the City was also required to take certain measures towards addressing the unmet need portion of its obligation, which it has done as follows:

Mechanism	Ordinance Adopted (Yes/No)	Additional Information
Development Fee Ordinance	Yes (November 26, 2018)	
Little Haven Group Home	N/A	7 of 18 bedrooms
Heritage Village	N/A	12 of 37 age-restricted units; capped
Lily Street Apartment	N/A	1 family rental unit
IO-1 Inclusionary Overlay Ordinance	Yes (April 18, 2019)	Burd and Corboy properties
IO-2 Inclusionary Overlay Ordinance	Yes (April 18, 2019)	Trenton Cracker Factory property
Police Station Redevelopment	To be adopted by December 31, 2020	At least 5 affordable, family rental units
Accessory Apartments	N/A	Proposed as 5 units
City-wide mandatory set-aside ordinance	Yes (November 26, 2018)	

The City recently received a development application for an accessory apartment. The Zoning Board of Adjustment reviewed the application for Completeness only on June 25, 2020. The merits of the application will be reviewed at a public hearing scheduled to be heard by the Zoning Board of Adjustments on July 30, 2020.

No development has occurred or been proposed within the City's new IO-1 or IO-2 inclusionary overlay zoning or to trigger the new City-wide mandatory set-aside ordinance.

Changed Circumstances

Pursuant to Item 6 of the Amended Settlement Agreement, the City has a RDP of forty-one (41) units. However, FSHC and the City agreed that the City's RDP shall be inflated to an "Agreed RDP" of eighty-eight (88) units based on the City's ability to meet this higher RDP as recommended by the Special Master. The Amended Settlement Agreement further states "*should the City's Calculated RDP increase due to unanticipated future changed circumstances, the increased RDP shall first be addressed by the forty-seven (47) unit difference between the Agreed RDP of eighty-eight (88) units that is proposed to be addressed through the City's Plan and the currently Calculated RDP of forty-one (41) units resulting from the VLA*".

FSHC v. Township of Cherry Hill, 802 A 2d 512 – NJ Supreme Court 2002 established "*the Council's ["COAH"] administration of vacant land adjustment [for] municipalities has always allowed for changes in the RDP calculation due to changed municipal circumstances.*" The circumstances on two properties within the City have changed since the initial VLA was performed – the Police Station Site and the YMAC site.

The Police Station site has been added to the City Amended Settlement Agreement as a mechanism to partially satisfy its unmet need. The June 23, 2020 Court Order requires the City adopt a redevelopment plan for the site by December 31, 2020 that will permit a minimum of 23 apartment units with a 20% affordable housing set-aside. The change in land use, from a municipal use (police station) to a residential use, changes the City's RDP. The Police Site contains approximately 1.64 acres; therefore, the minimum proposed density is 14.02 units per acre. As a result, the Calculated RDP of 41 should increase by 5 units to a new Calculated RDP of 46. Since the new Calculated RDP is still less than the Agreed RDP, the City's proposed mechanisms still provide a realistic opportunity.

Despite the City's efforts to prepare a redevelopment plan to permit apartments with a 15% affordable housing set-aside on the YMAC site; a subdivision application for the YMAC site was deemed complete by the City's Planning Board on June 3, 2020. The applicant is proposing a nine-unit subdivision; eight semi-detached units and one single-family detached unit, based on the existing R-2 zoning requirements. The YMAC site is approximately 0.55 acres; therefore, the proposed density is 16.36 units per acre. Pursuant to N.J.A.C. 5:93-4.3(f), using a 20% affordable housing set-aside, this site could produce 2 affordable units (9 units x

20% set-aside = 1.8 units, round up). However, pursuant to Item 7 of the Amended Settlement Agreement, the City adopted a mandatory set-aside ordinance that requires the creation of affordable units for new multifamily developments that result in five or more units with a gross density of six dwelling units per acre created through any rezoning, use or density variance, redevelopment, rehabilitation plan or amendment to a redevelopment plan or rehabilitation plan. As that applicant is proposing an as-of-right development; they are not required to adhere to the mandatory set-aside ordinance and instead will be required to pay a residential developers fee. As a result, the Adjusted Calculated RDP of 46 should increase to 48. Since the Adjusted Calculated RDP of 48 is less than the Agreed RDP of 88 the City's proposed mechanisms still provide a realistic opportunity.

6.0 VERY LOW INCOME ANALYSIS

The amended Fair Housing Act requires the City to ensure that 13% of all affordable units built, approved, or proposed since July 2008 are affordable to very low income households with incomes of 30% or less of regional median income. The City has 42 affordable units proposed, approved, and constructed on or after July 17, 2008, of which at least 6 must be affordable to very low income households. Of those 6, at least 3 must be available to families.

Affordable Units Built Since 2008	Total Affordable Units	Project Containing VLI Units/Number of VLI Units	Status
Habitat for Humanity	3	0	Completed
Munice Accessory Apartment	1	0	Completed
Lambertville High School Redevelopment	28	4	Proposed
Police Site Redevelopment	5	1	Proposed
Proposed Accessory Apartment Program	5	0	Proposed
Burd Farmstead	TBD	TBD	Proposed
Corboy Site	TBD	TBD	Proposed
Trenton Cracker Factory	TBD	TBD	Proposed
Mandatory Set-Aside Ordinance	TBD	TBD	Proposed
TOTALS	42	5	-

The City intends to meet its minimum very low income requirements with 4 units from Heritage Village, 1 unit from the Lily Street Apartment, 4 units from the Lambertville High School Redevelopment, and 1 unit from the Police Site Redevelopment, for a total of 10 units, 4 units greater than the 6-unit minimum. The City also exceeds the 3-unit minimum very low income family rental requirement with 6 units from the Lily Street Apartment, Lambertville High School Redevelopment and the Police Site Redevelopment.

7.0 CONCLUSION

The City's Court-approved compliance mechanisms addressing its RDP create a realistic opportunity as set forth in the Court-approved Settlement Agreement. The City maintains sufficient mechanisms for addressing unmet need. In the event the Court determines that an RDP site or mechanism no longer presents a realistic opportunity and should be replaced or if the Court determines that any unmet need mechanisms should be revised or supplemented, then the City of Lambertville shall have the opportunity to supplement or revise its plan to correct any RDP or unmet need deficiency.