

Why does Lambertville need to provide an opportunity for low and moderate income housing?

Within New Jersey, all municipalities are required to plan, zone for, and take affirmative steps to provide a realistic opportunity for the development of affordable housing within their borders. This obligation comes from the State Constitution and a series of court decisions, often referred to as the Mount Laurel decisions. These New Jersey Supreme Court decisions state New Jersey municipalities have a constitutional obligation to provide a realistic opportunity for satisfaction of their “fair share” of affordable housing. This essentially means New Jersey municipalities may meet their fair share – also known as the affordable housing obligation – by creating the required number of affordable units or by adopting zoning that allows for the required number of affordable units to be developed.

What if Lambertville decided not to provide an opportunity for low and moderate income housing?

If Lambertville does not zone for or provide a realistic opportunity for the construction of low and moderate income housing, it can be subject to lawsuits, called “builders remedy” lawsuits. A builder can come forward, challenge a municipality’s compliance with its obligations to provide low and moderate income housing and then, if the Court agrees with the builder, then the Court gets to decide what type of housing project the builder can build—how large a building, how many units, and how many affordable housing units and **where it will be built**. The Court has the ability to override any existing zoning. In brief, in such lawsuits, municipalities lose almost all control over any new housing development projects.

How does the law define affordable housing? What’s the difference between low and moderate income housing?

Very often, affordable housing can be described as “workforce housing,” meaning housing for individuals with earned income that is insufficient to secure quality housing in reasonable proximity to his/her workplace. The law requires that at least half of all affordable housing units constructed be for low income households, or households earning between 50% of median household income in the region or less. The low income units include the required very low income units, 13% of all of the affordable housing units, which are those households earning 30% of median household regional income or less.. The other half of affordable units constructed may be affordable to moderate income households (defined as those which earn between 50% and 80% of median regional income).

For 2019, the Affordable Housing Professionals of New Jersey and Fair Share Housing Center have jointly developed updated income limits for all housing regions in New Jersey, which were

calculated using the methodology outlined above. These income limits for Region 3 will be utilized for Lambertville. See Table 1 for 2019 income limits for Region 3.

Table 1: 2019 Income Limits for Region 3					
Household Income Levels	1-Person Household	2-Person Household	3-Person Household	4-Person Household	5-Person Household
Moderate	\$66,248	\$75,712	\$85,176	\$94,640	\$102,211
Low	\$41,405	\$47,320	\$53,235	\$59,150	\$63,882
Very Low	\$24,843	\$28,392	\$31,941	\$35,490	\$38,329

Source: 2019 Income Limits prepared by Affordable Housing Professionals of New Jersey

Even luxury developments, including rental buildings, must designate some portion of the building to be low and moderate income housing. meaning that a certain number of units in that building are available at lower rental rates for individuals and families who meet the income requirements set out above.

What is the Fair Share Housing Center and why is there a settlement agreement with it?

The Fair Share Housing Center (FSHC) is a court-recognized affordable housing advocacy group. FSHC has been heavily involved in monitoring NJ municipalities’ efforts to comply with affordable housing obligations. The City of Lambertville and FSHC entered into negotiations to determine an affordable housing strategy for Lambertville. Lambertville, FSHC, and a court appointed Special Housing Master identified appropriate locations for new housing developments, and agreed to a Settlement Agreement that was approved unanimously by the Mayor and City Council in May of 2018. This plan had significant public backlash and is in the process of amendments now. See the timeline below for more detailed information of Lambertville’s settlement agreement process.

Why even settle? Why not litigate?

There is uncertainty surrounding affordable housing obligations within the State and a risk that inaction on the part of Lambertville could result in the Court dictating how we will meet our very low, low and moderate income housing requirements. Recent court decisions have not been

favorable to municipalities, such as South Brunswick¹, Englewood Cliffs², and Middletown³. By entering into an Amended Settlement Agreement that removes condemnation and focuses on realistic housing development, Lambertville gains both finality and certainty in terms of meeting its affordable housing obligation; and effectively eliminates any future costs associated with litigation with FSHC and other interested parties. In the last 5 years Lambertville has spent over \$350,000 on affordable housing litigation and professional costs. With no guarantee of continued control over the process. That is not sustainable in the long term.

What does the Settlement Agreement call for?

The new Amended Settlement Agreement that Lambertville is advocating for lays out the steps that Lambertville will take to meet its affordable housing obligations. The highlights include much of the same as the settlement agreement from 2018. It allows the City to convert the Condemnation Redevelopment Plan for the former Lambertville High School site to a Non-Condemnation Redevelopment Plan. It removes the overlay requirement from the Closson Farm Property and identifies the Police station as a site to develop inclusionary (both market-rate and affordable housing) affordable housing. This plan also allows for the city to count any new accessory apartments created between now and 2025. This new amended settlement agreement removes the need for overlays in dense neighborhoods such as the YMAC property, the NAPA auto parts store, the Finkles warehouse property and more.

Why weren't we told sooner?

The City could not discuss the details of the affordable housing negotiations publicly due to being involved in mediation of ongoing litigation. The litigation was a result of a 2015 ruling by the New Jersey Supreme Court that the state affordable housing agency, COAH (Council on Affordable Housing), was ineffective in establishing rules. Since this time, the City has been preparing a plan to address affordable housing in accordance with the constitutional obligation as required under the Fair Housing Act, including completing a Vacant Land Analysis to reduce the City's Third Round obligation and pursuing numerous options to satisfy what is termed the Realistic Development Potential (RDP) and Unmet Need and ways to address the need, specifically for what qualifies as required family and rental units. As soon as the City had a confirmation from FSHC that the Police site and an accessory apartment program would be a

¹<https://patch.com/new-jersey/southbrunswick/amp/26723392/south-brunswick-ordered-build-1-374-affordable-housing-units>

²<https://www.insidernj.com/press-release/englewood-cliffs-required-allow-hundreds-affordable-homes-violating-fair-housing-laws-decades/>

³ <https://patch.com/new-jersey/middletown-nj/middletown-withdraws-njs-affordable-housing-mandate>

suitable alternative to the Closson Farm site, the City went to the public with this plan, January 31st, 2020.

What is an overlay zone?

An overlay zone expands the zoning in designated underlying areas and permits an additional use in those areas. In the case of the affordable housing overlay zone districts, a property owner can continue to use the property as currently zoned, or develop the property with multifamily housing which would include an affordable housing component.

Where are the “overlay zones?”

Lambertville has three previously approved overlay zones as a part of the 2018 Settlement Agreement. They are located on Bill Corboy’s property (block 1072 and lots 3 and 3.01), Dave Burd’s property (block 1058 and lot 15) and the historic Trenton cracker factory (block 1022 and lot 8). The 2018 Settlement Agreement required that the city also produce an overlay for the Closson Farm Property. Due to the historic nature of this property there was significant public backlash. As a response the city tried multiple alternatives, which all received similar community backlash. Ultimately, the city determined that an accessory apartment program and an inclusionary (both market-rate and affordable housing units) multifamily apartment development at the Police site were the best alternate sites that resulted in the least impact to the City’s individual neighborhoods.

Why can't the City look at other properties?

The City has reviewed other properties and considered other options although, with the current developed condition in the City, there are not many locations to consider either available or where it would be most beneficial to address this need. The City has attempted throughout 2019 to identify areas throughout the city to spread the affordable housing obligation - including the Napa Auto Parts, YMAC, Finkels Warehouse site and others. There was widespread public backlash to each of these projects, each of which were considered intrusive to the neighborhoods where they were proposed.

Why can't we just provide zoning?

Despite information about Affordable Housing Policy being easily found online, it doesn’t tell the whole story. It is not true, in practice, that municipalities must merely zone for realistic opportunities for the development of affordable housing. Now that the courts and an advocacy organization oversee municipal compliance with state mandates, municipalities must not only adopt the necessary zoning identified within the settlement agreements, but approve

applications for projects identified within the settlement agreement. For instance, the East Brunswick Planning Board failed to approve a development application for a project identified within the settlement agreement and the Judge ordered the Township to approve the project and requires a court-appointed independent compliance monitor to attend all future planning board meetings involving applications for projects identified in the Settlement Agreement.⁴

In Lambertville's case, the [May 2018 affordable housing settlement agreement](#) that was approved by Council, along with the October 2018 court order in response to the September 2018 fairness hearing⁵, included designating the former high school site as an area in need of redevelopment with condemnation and required the City to 1) take all necessary steps to condemn and acquire the site within 120 days of the October 2018 court order (March 2019), which would have cost millions of dollars, 2) identify a developer within six months of the final judgment (approximately October 2019), and 3) finalize a redevelopment agreement within nine months of the final judgment (approximately January 2020). More details about the history of Lambertville's affordable housing process and our most current mandates can be found [here](#).

The most important piece of this puzzle in relation to the potential consolidation of municipal facilities is the timeline. We were not required to merely zone for affordable housing. We were required to facilitate the actual and timely development of the former high school site. Doing so was agreed to by the previous administration and would have been prohibitively expensive. So this administration identified an alternative plan - which includes facilitating the development of the Police station. This alternative plan would not only address our affordable housing obligations but also our structural deficit concerns. This alternative plan also addresses some other significant concerns about the 2018 agreement including identifying necessary replacements for the Closson Farmstead overlay zoning.

What will this do to our taxes?

Tax implications are not permitted to be included in the analysis or planning of affordable housing. However, the City of Lambertville is in need of new ratables to deal with the ongoing structural deficit and former irresponsible budget practices. The development of the police site into a mixed income, inclusionary apartment building will increase the total number of taxpayers in town. This proposal of the police site development will be seeking a Payment In Lieu Of Taxes (PILOT) which will reduce the total amount of taxes paid by the developer, but increase

⁴ <https://drive.google.com/file/d/173L0vUjzjFDa4WGhdUJGIGplcynX9iU0/view?usp=sharing>

⁵ [October 2018 Court Order](#), p 98/237 pp 3e, p 99/237, pp 7 and 8

the percentage paid to the municipality. For more information on this PILOT please go to the [community development site](#).

Why can't the City spread this need around with smaller and less intrusive projects?

The City has attempted throughout 2019 to identify areas throughout the city to spread the affordable housing obligation - including the Napa Auto Parts, YMAC, Finkels warehouse site and others. There was widespread public backlash to each of these projects, each of which were considered intrusive to the neighborhoods where they were proposed.

What is our number?

To answer this question, the affordable housing need as required by state affordable housing regulations, is composed of several types of need:

- Rehabilitation Obligation (Present Need);
- Prior Round Obligation; and
- Third Round Obligation (Prospective Need + Gap)

The City of Lambertville and FSHC entered into a Settlement Agreement to establish the City's Rehabilitation Share, Prior Round obligation, and Third Round obligation, which was approved by the Superior Court at a Fairness Hearing on September 13, 2018 and reflected in a Court Order dated October 11, 2018 as identified in Table 2. As a result of limited vacant and developable land in the municipality, the Court approved an adjustment of the City's Third Round obligation - splitting it between a Realistic Development Potential and Unmet Need.

Table 2: Lambertville's Affordable Housing Obligation	
Fair Share Obligation	Obligation
Rehabilitation Obligation	1 unit
Prior Round Obligation	0 units
Third Round Obligation (Prospective Need + Gap)	137 units
<i>Realist Development Potential</i>	<i>88 units</i>
<i>Unmet Need</i>	<i>49 units</i>

Why can't we just have Senior or special needs housing?

Lambertville has been extremely proactive on the creation of affordable housing well before the 2015 Mount Laurel decision. However, in the eyes of the court and Fair Share Housing Center, we have already provided too much senior housing. We can't just have senior housing since it is limited by state rules. We are able to limit up to 25 percent of the obligation to seniors. Additionally, at least 50 percent of the affordable housing units must be available to families (i.e. not seniors or special needs housing).

What are the next steps?

Lambertville is now in what is called the "compliance phase," which means that the City is carrying out the tasks agreed to in the 2018 Settlement Agreement and then 2020 Settlement Agreement by the Mayor and Council. Implementing ordinances and adoption of the Housing Element and Fair Share Plan must be in place by mid-May 2020. The Superior Court will hold what is called a Fairness and Preliminary Compliance Hearing where it will review the housing plan for compliance with applicable rules; likely grant the City a Conditional Judgment of Repose and immunity from builder's remedy lawsuits; and provide for ongoing monitoring of the City's affordable housing strategy.

What about the police site? What's next?

There are three main steps in the redevelopment process.

First, the City of Lambertville must designate a redevelopment area. The designation starts with a recommendation by the municipal governing body to the planning board to investigate whether the area identified by the City Council meets the statutory criteria for designation as an "area in need of redevelopment." The Planning Board then undertakes an investigation, which includes (a) creating a map that delineates the blocks and lots under consideration, and (b) conducting a public hearing to review evidence and public input on the proposed redevelopment designation. After the Planning Board determines that the proposed area satisfies the statutory criteria for designation as an area in need of redevelopment, the City Council can determine whether to make such designation, which is done by resolution of the Council.

Second, the City must adopt a Redevelopment Plan. The Redevelopment Plan will first be developed by the planner and administration, next presented to be edited and commented on including redevelopment and planning suggestions from the Community Advisory Team, finally public design forums will be held to present the current plan and take public comment regarding

design elements. The Redevelopment Plan will then be introduced via ordinance at the City Council and referred to the Planning Board who will review the Redevelopment Plan for consistency with the Master Plan. After review by the Planning Board, City Council will hold a public hearing on the ordinance to adopt the Redevelopment Plan.

Third, the City, at its discretion, can select a redeveloper to begin to build the site and negotiate potential financing options such as PILOTs.

How does our affordable housing plan affect the rest of the community development conversations?

While this agreement does identify the police site for sale - it does not obligate the City to move forward on a full scale consolidation plan. The City is in the first steps of ideation about how to move forward with our City's facility needs. That could look like a few services consolidated in an existing building, a new building with limited consolidation, or just a new police site. We are still early in the process. Learn more about the process and how to get involved [here](#).