

AMENDED 2025 FOURTH ROUND HOUSING PLAN

HOUSING ELEMENT & FAIR SHARE PLAN
BOROUGH OF PENNINGTON
MERCER COUNTY
NEW JERSEY

JANUARY 2, 2026

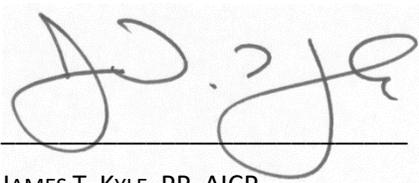
ADOPTED BY THE PLANNING BOARD

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INTRODUCTION & EXECUTIVE SUMMARY

Since the 1975 New Jersey Supreme Court decision known as “Mount Laurel I,” New Jersey municipalities have a constitutional obligation to provide opportunities for construction of low and moderate housing units through their zoning ordinances. This 1975 decision led to a body of case law, legislative changes and rulemaking by a state agency that collectively is known as the “Mount Laurel Doctrine”. Through the compliance process, New Jersey municipalities have been assigned their fair share of the region’s affordable housing need for each compliance period and must create mechanisms to address that need to have “satisfied” their constitutional obligation. The purpose of this Housing Element and Fair Share Plan (hereinafter the “Plan”) is to detail how Pennington will satisfy its constitutional obligation.

Affordable housing in New Jersey is defined as housing units which are reserved for households with incomes not more than 80% of the regional median income. Each affordable unit, depending on the age and type of housing, must remain reserved for low and moderate income households for up to 40 years, a requirement enforced by deed restriction. Each affordable unit is eligible for one “credit” against the obligation and certain units are eligible for “bonus credits,” which potentially provide more than one credit per unit. In addition to providing the minimum number of credits, municipalities must ensure diversity in the unit type (at least half of the units must be available to families and the remaining may be reserved for seniors and those with special needs), diversity in the level of affordability (very low, low and moderate income units), and diversity in the size of affordable units (one, two and three bedroom units).

Participation in this process and satisfaction of the affordable housing obligation can be achieved voluntarily or involuntarily, however, voluntary compliance is heavily incentivized. Municipalities that do not successfully participate may be vulnerable to exclusionary zoning litigation or a builder’s remedy, which is a litigation tool that can grant a developer the right to construct what is typically multifamily development on land that was not zoned to permit that use or density.

This amended Housing Plan addresses the Borough of Pennington’s fourth round affordable housing obligation consisting of a present need (rehabilitation) of 4 units and a prospective need (new construction) of 58 units. As the Borough did not participate in the third round process and never received a judgment of compliance and repose relative to that obligation, this plan also addresses the third round obligation determined in accordance with the Jacobsen methodology. As part of this amended plan, the Borough will meet its entire fourth round obligation while also addressing more third round Unmet Need as compared to the plan adopted in June of 2025.

Pennington is a one square mile Borough that lies entirely within Hopewell Township. It is a mature suburb that for all intent and purposes is built out, with no significant vacant land remaining and a Realistic Development Potential (RDP) of only 3 units as discussed later in this plan. Based on this lack of available vacant land, the Borough has provided analysis that demonstrates it is entitled to a vacant land adjustment. There are, however, a number of redevelopment opportunities in Pennington that will create affordable units and help reduce Unmet Need.

This Plan supersedes all previously adopted housing plans and will serve as the foundation for the Borough’s compliance with its affordable housing obligations and a request to Superior Court of Mercer County for a judgment of compliance and repose. As detailed in this Plan, the Borough – like all New Jersey municipalities – has four components of its affordable housing obligation. Each component of the Borough’s obligation is identified on the following page and further detail is provided in later sections of this plan.

- **Rehabilitation Obligation: 4 units**
The rehabilitation obligation can be defined as an estimate of the number of deteriorated housing units existing in Pennington that are occupied by low- and moderate-income households. This component is also referred to as “present need”.
- **First & Second Rounds Obligation: 52 units**
The first and second round obligations can be defined as the cumulative 1987 through 1999 new construction affordable housing obligation. This component is often referred to as the “prior round” obligation.
- **Third Round Obligation: 134 units**
The third round obligation can be defined as the 1999 through 2025 new construction affordable housing obligation.
- **Fourth Round Obligation: 58 units**
The fourth round obligation can be defined as the 2025-2035 new construction affordable housing obligation. The current round of affordable housing, now the fourth round, is also referred to as the “prospective need”.

AFFORDABLE HOUSING IN NEW JERSEY

In its landmark 1975 decision, now referred to as “Mount Laurel I,” the NJ Supreme Court ruled that developing municipalities have a constitutional obligation to provide variety and choice of housing types affordable to low- and moderate-income households. In its 1983 “Mount Laurel II” decision, the NJ Supreme Court extended the regional fair share obligation to all municipalities with any “growth area” as designated in the State Development Guide Plan (NJDC 1978) and determined that each municipality would have to establish its fair share obligation and provide zoning strategies to create a realistic opportunity for fulfillment of that fair share obligation. Mount Laurel II also gave developers, in certain situations, the opportunity to secure a builder’s remedy, a litigation tool that grants a developer the right to develop what is typically a multi-family development on land that was not zoned to permit the use or the residential density desired by the developer provided a “substantial” percentage of the units are reserved for low and moderate income households. Pennington seeks to avoid this possibility and preparation of this fourth round plan along with those previously adopted are evidence of that.

In 1985, the Legislature enacted the Fair Housing Act in response to Mount Laurel II. The Fair Housing Act created the Council on Affordable Housing (hereinafter “COAH”) as an administrative alternative to compliance in a court proceeding. The Legislature conferred “primary jurisdiction” on COAH and charged COAH with promulgating regulations to establish housing regions, to estimate the state’s low- and moderate-income housing needs, set criteria and guidelines for municipalities to determine and satisfy their affordable housing obligation, and to create a process for the review and approval of appropriate housing elements and fair share plans. Approval of a municipal housing element and fair share plan by COAH was referred to as “substantive certification” and it provided protection from builder’s remedy litigation during the period which the housing element and fair share plan addresses (i.e. the round).

COAH created the criteria and guidelines for municipalities to determine and address their respective affordable housing obligations. COAH originally established a formula for determining municipal affordable housing obligation for the six-year period between 1987 and 1993 (*N.J.A.C. 5:92-1 et seq.*), which became known as the “first round.” These rules established the first round rehabilitation obligation (also referred to as the “present need”) and the first round new construction obligation.

The first round formula was superseded by COAH regulations in 1994 (*N.J.A.C. 5:93-1.1 et seq.*). The 1994 regulations recalculated a portion of the first round 1987-1993 affordable housing obligations for each municipality and computed the additional municipal affordable housing need from 1993 to 1999 using 1990 U.S. Census data. The regulations COAH adopted in 1994 to identify a municipality’s “cumulative” obligations for the first and second rounds are known as “the second round” regulations. Under regulations adopted for the third round, the obligation of municipalities to create new affordable housing for the first and second rounds was referred to as the “prior round” obligation.

On December 20, 2004, COAH’s first version of the third round rules became effective some five years after the end of the second round in 1999. At that time, the third round was defined as the time from 1999 to 2014 but condensed into an affordable housing delivery period from January 1, 2004 through January 1, 2014. The third round rules marked a significant departure from the methods utilized in COAH’s earlier rounds by creating a “growth share” approach that linked the production of affordable housing to residential and non-residential development within a municipality.

The growth share approach and the rules under which it was created was the subject of significant litigation and ultimately overturned by the New Jersey Appellate Court. On January 25, 2007, the New Jersey Appellate Court decision, *In re Adoption of N.J.A.C. 5:94 and 5:95*, 390 N.J. Super. 1, invalidated key elements of the first version of the third round rules, including the growth share approach. COAH issued revised rules on June 2, 2008 (as well as a further rule revision effective on October 20, 2008). Included in the 2008 rules was a recalculation of the cumulative first and second rounds obligation to account for updated data addressing secondary sources (filtering, demolitions, and residential conversions). Just as various parties challenged COAH’s initial third round regulations, parties challenged COAH’s 2008 revised third round rules. On October 8, 2010, the Appellate Division issued its decision, *In re Adoption of N.J.A.C. 5:96 and 5:97*, 416 N.J. Super. 462, with respect to the challenge to the second iteration of COAH’s third round regulations. The Appellate Division upheld the COAH regulations that assigned rehabilitation and first and second rounds obligations to each municipality but invalidated the regulations by which the agency assigned housing obligations in the third round, finding that the Agency continued to utilize a growth share approach, albeit an amended one.

COAH sought a stay from the NJ Supreme Court of the deadline to issue new third round housing rules set forth by the Appellate Division. Additionally, there were various challenges to the Appellate Division’s 2010 decision. On September 26, 2013, the NJ Supreme Court upheld the Appellate Court decision in *In re Adoption of N.J.A.C. 5:96 and 5:97 by New Jersey Council On Affordable Housing*, 215 N.J. 578 (2013), and ordered COAH to prepare the necessary rules. Subsequent delays in COAH’s rule preparation and ensuing litigation led to the NJ Supreme Court, on March 14, 2014, setting forth a schedule for adoption.

Although ordered by the NJ Supreme Court to adopt revised new rules on or before October 22, 2014, COAH deadlocked 3-3 at its October 20th meeting and failed to adopt the draft rules it had issued on April 30, 2014. In response, Fair Share Housing Center (hereinafter “FSHC”) filed a motion in aid of litigant’s rights with the NJ Supreme Court.

On March 10, 2015, the NJ Supreme Court issued a ruling on the Motion In Aid of Litigant's Rights (In re Adoption of N.J.A.C. 5:96 & 5:97, 221 NJ 1, aka "Mount Laurel IV"). This long-awaited decision provided a new direction for how New Jersey municipalities were to comply with the constitutional requirement to provide their fair share of affordable housing. The Court transferred responsibility to review and approve housing elements and fair share plans from COAH to designated Mount Laurel trial judges. The implication was that municipalities were required to apply to Superior Court with a Declaratory Judgment Action, instead of to COAH, if they wished to be protected from exclusionary zoning litigation, including builder's remedy. These trial judges, with the assistance of an appointed Special Adjudicator to the Court, reviewed municipal plans much in the same manner as COAH previously did.

While the NJ Supreme Court's decision set a process in motion for Boroughs to address their third round obligations, it did not assign those obligations. Instead, the task was completed by the trial courts. However, the NJ Supreme Court did direct that the method of determining municipal affordable housing obligations were to be "similar to" the methodologies used in the first and second round rules and municipalities should rely on COAH's 1993 second round rules (*N.J.A.C. 5:93*) and certain components of COAH's 2008 regulations that were specifically, as well as the Fair Housing Act (*N.J.S.A. 52:27D – 301 et seq.*), in their preparation of third round housing elements and fair share plans.

FSHC, the only public interest advocacy organization in New Jersey devoted exclusively to promoting the production of housing affordable to low and moderate income households, was permitted to serve as an interested party in every municipal Declaratory Judgment Action. In this role the organization calculated municipal affordable housing obligations and offered to settle with municipalities. Such settlements addressed the municipal affordable housing obligation, compliance strategies and other terms intended to promote affordable housing production. Most municipalities that filed a Declaratory Judgment Action settled with FSHC, finding it to be in their best interest. The typical alternative to settlement with FSHC was conducting a trial in Superior Court to determine the municipal affordable housing obligation.

In addition to the State agency activity and judicial decisions through 2015, the New Jersey Legislature amended the Fair Housing Act in 2008 (P.L. 2008, c. 46, often referred to as the "Roberts Bill", or "A500"). This amendment established a statewide 2.5% nonresidential development fee, prohibited new regional contribution agreements (hereinafter "RCAs"), required that 13% of all new affordable housing units be restricted to very low income households (30% of median income), and added a requirement that municipalities had to commit to spend development fees within four (4) years of the date of collection. Additionally, the Fair Housing Act was amended in 2013 (P.L. 2013, c. 6) to permit municipalities to enter into an agreement with a developer or development owner to provide a preference for veterans who served in time of war or other emergency to occupy up to 50% of the affordable units in a particular development. The preference is applicable to the first 90 of the 120 days of initial marketing and thereafter may be on a special waiting list for future available affordable units in the development. These amendments to the Fair Housing Act are not promulgated in any valid COAH regulations.

On March 20, 2024, an amendment to the Fair Housing Act was adopted by the Legislature (P.L. 2024, c.2.). This amendment created significant changes to the fourth round of affordable housing and all subsequent rounds going forward. Such changes include the process in which municipalities obtain protection from builder's remedy litigation – including but not limited to the elimination of COAH and the creation of the Affordable Housing Dispute Resolution Program, the methodology to calculate municipal prospective need obligations, and the administration of affordable housing units. However, the Fair Housing Act does not create or direct the creation of new rules that would provide further guidance,

instead it states municipalities shall rely on rules adopted by COAH, unless contradicted by statute or binding court decisions, for municipal crediting, adjustments and compliance strategies. One notable example of contradiction is the generation of and use of bonus credits. See the sections that follow for additional information regarding this amendment to the Fair Housing Act.

The Affordable Housing Dispute Resolution Program (hereinafter the “Program”) resides within the judiciary and is made up of an odd number of Judges with a minimum of 3 and not more than 7. The Program, in its discretion and in accordance with the Rules of Court, may consult or employ services of one or more special adjudicators or staff to assist it in rendering determinations, resolving disputes, and facilitating communication among municipalities and interested parties. The Program is responsible for reviewing municipal affordable housing obligations, housing plans, and conducting mediation. However, final determinations of compliance, disputes, and other issues, as well as Court orders may only be issued by a County-level housing judge.

In addition to changes addressing the compliance process and elimination of COAH, the amendment also revised minimum affordability controls for rental units from 30 years to 40 years and those for extension of affordability controls from 30 years to as little as 20 years, provided the total control period is not less than 60 years. It also created new roles for the Department of Community Affairs (hereinafter “DCA”), including calculation of non-binding rehabilitation and prospective need affordable housing obligations, oversight and adoption of rules regulating municipal affordable housing trust funds, municipal housing liaisons and affordable housing administrative agents, as well as oversight of affordable unit administration. The amendment also directed the New Jersey Housing and Mortgage Finance Agency to revise the Uniform Housing Affordability Control Rules (*N.J.A.C. 5:80-26.1 et seq.*).

The Compliance Process

The first step in a municipality’s compliance process is to establish the affordable housing obligation. The first, second and third round obligations are already established by COAH or Superior Court, as applicable. Only the rehabilitation obligation and current prospective need, the fourth round obligation, are subject to the current determination.

The methodology and formulas each municipality must rely upon to determine its rehabilitation and fourth round obligation (as well as subsequent round obligations) are set forth within *N.J.S.A. 52:27D-304.1* thru *-304.3* of the Fair Housing Act. The March 8, 2018 unpublished decision of the Superior Court, Law Division, Mercer County, *In re Application of Municipality of Princeton* (“Jacobson Decision”) is also to be referenced as to datasets and methodologies that are not explicitly addressed in *N.J.S.A. 52:27D-304.3*. Notwithstanding the methodology set forth in the Fair Housing Act, the Act also required the DCA to release a non-binding report calculating obligations for each municipality in the State.

The following provides an overview of the process and deadlines associated with fourth round compliance.

- Establishing the Affordable Housing Obligation
 - October 20, 2024: DCA Regional and Municipal Fair Share Obligation Report Issued.
 - January 31, 2025: Deadline for municipalities to adopt a binding commitment to the affordable housing obligation and seeking a Compliance Certification through participation in the Program.

- February 28, 2025: Deadline for an interested party to challenge the municipality’s determination of its obligation to the Program. It shall apply “an objective assessment standard”.
- March 1, 2025: The municipality’s determination of its obligation will be established by default if no challenge.
- March 31, 2025: The Program must issue a decision on the obligation challenge.
- Obtaining a Compliance Certification
 - June 30, 2025: Municipality shall adopt a Housing Plan and propose drafts of ordinances and resolutions to implement the plan. If a municipality does not adopt a Housing Element and Fair Share Plan by June 30, 2025, the Rules of Court may permit the Program or County Level Judge to allow the municipality to secure a grace period. If a municipality does not adopt a Housing Plan by June 30, 2025 and does not secure a grace period, the municipality will have its immunity revoked.
 - August 31, 2025: Deadline for an interested party to file a challenge to the Housing Plan with the Program. If there is no challenge by this date the Program will begin review of the Housing Plan for consistency with the FHA.
 - December 31, 2025: Deadline for a municipality to settle any challenge or provide an explanation as to why it will not make all, or some of the changes brought by the challenge.
 - March 15, 2026: Municipality to amend the Housing Plan and implement the agreed upon revisions resulting from a challenge and adopt all pertinent ordinances. The Housing Plan and adopted ordinances shall be immediately filed with the Program.
- Ongoing Compliance
 - Midpoint (2030): Action by municipality or interested party filed to seek a realistic opportunity review of any developments that have not moved forward.

Affordability Requirements

Affordable housing is defined under New Jersey’s Fair Housing Act as a dwelling, either for sale or rent, that is within the financial means of households of low- or moderate-income, as is measured within each housing region. Pennington is in Region 4, which includes Mercer, Monmouth and Ocean counties. Moderate-income households are those with annual incomes greater than 50%, but less than 80% of the regional median income. Low-income households are those with annual incomes that are 50% or less of regional median income and very low-income households are a subset of low-income households and are defined as those with incomes 30% or less than of regional median income.

The Uniform Housing Affordability Controls (hereinafter “UHAC”) at *N.J.A.C. 5:80-26.4(c)* and (d) requires that the maximum rent for a qualified unit be affordable to households with incomes 70% or less than the median income for the region, provided the development includes 13% or more very low income units. The number of units priced at 70% of regional median income cannot exceed the number of very low income units plus one additional unit. The average rent must be affordable to households with incomes no greater than 52% of the median income. The maximum sale prices for affordable units must be

affordable to households with incomes 70% or less than the median income. The average sale price must be affordable to a household with an income of 55% or less than the median income.

The regional median income is defined using the federal income limits established by Department of Housing and Urban Development (hereinafter “HUD”) on an annual basis. In the spring of each year, HUD releases updated regional income limits, and it is from these income limits that rents and sale prices for affordable units are derived. The table below reflects the 2025 affordable housing regional income limits for Region 4, prepared by NJHMFA.

2025 Income Limits for Region 4					
Household Income Levels	1-Person Household	2-Person Household	3-Person Household	4-Person Household	5-Person Household
Median	\$94,300	\$107,700	\$121,200	\$134,600	\$145,400
Moderate	\$75,440	\$86,160	\$96,960	\$107,680	\$116,320
Low	\$47,150	\$53,850	\$60,600	\$67,300	\$72,700
Very Low	\$28,290	\$32,310	\$36,360	\$40,380	\$43,620

Source: 2025 Income Limits prepared by NJHMFA, effective May 16, 2025.

Overview of Compliance Requirements

There are extensive requirements that municipalities must meet to ensure their affordable housing strategies result in a Compliance Certification. Further, those requirements vary by round. The following provides a brief overview of the requirements.

- Rental Obligation. Not less than 25% of affordable units addressing the obligation of a round must be rental housing units.
- Family Obligation. Not less than 50% of affordable units addressing the obligation of a round must be available to families, meaning they are not restricted to a particular population. This obligation does not apply to the first and second rounds.
- Family Rental Obligation. Not less than 50% of the units meeting the rental obligation of a round must be available to families, meaning they are not restricted to a particular population. This obligation does not apply to the first and second rounds.
- Senior Maximum. Up to 30% of affordable units addressing the obligation of a round may be reserved for seniors. The maximum was 25% for the first, second and third rounds.
- Income Distribution of Affordable Units
 - Very Low Income Obligation. Not less than 13% of affordable units created or approved on or after July 1, 2008 must be reserved for very low income units (30% or less than the regional median income). Very low income units are a subset of low income units.

- Family Very Low Income Obligation. Not less than 50% of the units meeting the very low income obligation must be available to families, meaning they are not restricted to a particular population.
- Low Income Obligation. Not less than 50% of affordable units in any development must be reserved for low income households (50% or less than the regional median income, which includes very low income units). The remaining may be available to moderate income households (51-80% of regional median income).
- Bedroom Distribution of Affordable Units
 - The total bedrooms within the affordable units in any development must be not less than twice the number of affordable units. This requirement does not apply to the first, second or third round.
 - Studio and 1-bedroom Units. Not more than 20% of units in any development.
 - 2-bedroom Units. Not less than 30% of units in any development.
 - 3-bedroom Units. Not less than 20% of units in any development.
 - The above requirements do not apply to special needs housing or senior housing.
 - Senior developments are subject to a modified bedroom distribution such that the total bedrooms within the affordable units must be not less than the number of affordable units.
 - Senior and supportive housing developments with 20 or more affordable units shall have not less than 5% 2-bedroom and 3-bedroom affordable units. This requirement does not apply to the first, second or third round.
- Bonus Credits
 - No more than 25% of the obligation for each round.
 - Only one type of bonus credit may be applied to a unit.
 - Rental bonus credits (1.0) are only applicable to the first, second and third rounds.
 - The following unit types are eligible for 1.0 bonus credit in the fourth round.
 - Supportive and special needs bedrooms.
 - Market to affordable (conversion of a market rate unit to an affordable unit).
 - 100% affordable developments: Units within 100% development provided the municipality supplies the land or a minimum of 3% of the development costs.
 - The following unit types are eligible for 0.5 bonus credit in the fourth round.
 - Partnership with non-profit.
 - Proximity to transit: units within ½ mile of transit (rail, bus, ferry).
 - Senior: limited to 10% of the affordable age-restricted units proposed but capped at 30% of the obligation.

- Units with at least three bedrooms above the minimum number required by the bedroom distribution requirements in UHAC.
- Redevelopment for units on land previously utilized for retail, office or commercial use.
- Extension of affordability controls on rental housing only, provided the municipality funds the cost for extension.
- Very Low-Income units above the 13% required.

AFFORDABLE HOUSING IN PENNINGTON

The Borough adopted its first housing plan in 2002, addressing its obligation from 1987 to 1999, a plan that was certified by COAH on June 5, 2002. As part of that plan, Pennington received a vacant land adjustment with a RDP of 20 units and Unmet Need of 32 units; the plan included a development fee ordinance and overlay inclusionary zoning on the landfill property as required by COAH at that time.

In December of 2008, the Planning Board adopted a housing plan addressing the Borough's third round obligation from 1987 to 2018 which was based on the growth share approach in COAH's rules at the time. The amended plan was never certified by COAH and as noted previously, litigation surrounding the third round rules delayed the process until the Supreme Court's decision in March of 2015. The Borough never completed a third round plan and never received a judgment of compliance and repose from the courts.

In the fourth round, the Borough adopted a binding resolution accepting its affordable housing obligations as calculated by DCA and committing to participation in the Affordable Housing Dispute Resolution Program (hereafter "AHDRP" or "the Program"). Upon timely filing of its Housing Element and Fair Share Plan with the AHDRP, a challenge was filed by Fair Share Housing Center, although it did not formally challenge the compliance mechanisms but rather sought additional information relative to those mechanisms. One request in that challenge was to provide additional mechanisms to address Unmet Need, which this amended Plan addresses.

CONSIDERATION OF LANDS MOST APPROPRIATE FOR AFFORDABLE HOUSING

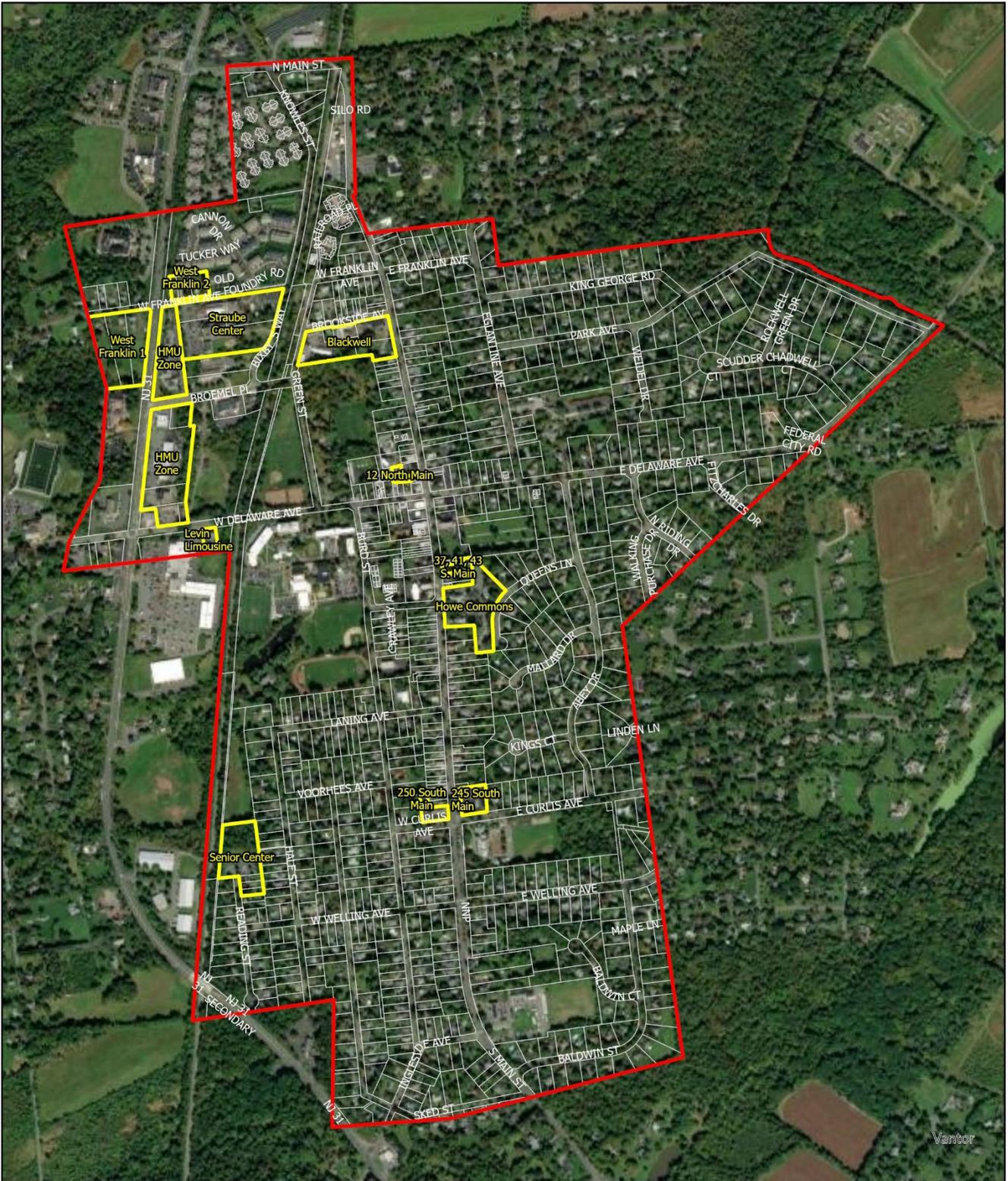
Pennington Borough is a largely built out suburban community of approximately 1 square mile. As noted earlier in this plan, there is limited vacant land to support opportunities for the construction of significant additional housing. There are, however, opportunities for redevelopment, although they are somewhat limited. In conjunction with preparation of a new Land Use Plan near the end of 2025, it became apparent that the zoning changes to be recommended in the new Master Plan could provide opportunity for more affordable housing than identified in the June 2025 housing plan. There was also additional property owner interest expressed after June of 2025.

In assessing lands most appropriate for affordable housing, the Borough has focused on areas that can potentially be redeveloped, as shown on the map on the following page. Each of these properties currently have structures and uses on them, but there is opportunity to develop them more efficiently and with multifamily housing to help address the Borough's Unmet Need. Two of the properties are in various stages of the redevelopment process as required by the New Jersey Local Redevelopment and

Housing Law, with the Blackwell properties along Brookside Avenue already designated as an “area in need of redevelopment” by Mayor and Council and the 12 North Main property under preliminary investigation by the Planning Board as directed by Mayor and Council.

While not yet adopted by the Planning Board, the Borough’s new Land Use Plan has been under development for the last 4 months, with the Master Plan Committee (hereafter “MPC”) formulating recommendations and reviewing them with the Planning Board at a public meeting. As part of the preparation of this amended Housing Plan, the MPC reviewed proposed zoning changes with an eye to creating opportunity for multifamily housing in a mixed-use environment as recommended in the Economic Development Plan Element, which has been conditionally adopted by the Planning Board.

The map on the following page shows the location of each of the mechanisms proposed in the Fair Share Plan.



Vantor

OPPORTUNITY FOR MULTIGENERATIONAL HOUSING

The Fair Housing Act requires “an analysis of the extent to which municipal ordinances and other local factors advance or detract from the goal of preserving multigenerational family continuity as expressed in the recommendations of the Multigenerational Family Housing Continuity Commission”. As of the date of this Housing Plan, there have been no recommendations by the Multigenerational Family Housing Continuity Commission on which to provide the required analysis. However, the Commission has the primary goal of enabling senior citizens to reside at the homes of their extended families, thereby preserving and enhancing multigenerational family continuity. Borough land use policies are not in conflict with this goal and much of the Borough’s housing stock is large enough to accommodate multigenerational living. Nothing in the zoning prohibits creation of additional living space consisting of a bedroom and bathroom, but inclusion of separate kitchen facilities would constitute a second dwelling unit, which is not permitted but is also not necessary to permit multigenerational living. The Planning Board has approved a number of applications permitting additional living space to accommodate multigenerational living arrangements in recent years.

DEMOGRAPHIC, HOUSING & EMPLOYMENT ANALYSIS -HOUSING PLAN ELEMENT

See Appendix 1 for the demographic, housing and employment analysis.

AFFORDABLE HOUSING OBLIGATION & SATISFACTION – THE FAIR SHARE PLAN

Fourth round housing plans must address four components of a municipality’s affordable housing obligation. These include the rehabilitation obligation to improve substandard housing occupied by low- and moderate-income households, the first and second round obligation of new construction from 1987 to 1999, third round obligation of new construction from 1999 to 2025, and the fourth round obligation of new construction from 2025 to 2035.

Rehabilitation Obligation: 4 units

The rehabilitation obligation can be defined as an estimate of the number of deteriorated housing units existing in Pennington that are occupied by low- and moderate-income households. The Fair Housing Act, N.J.S.A. 52:27D-304.3.b., describes present need as being determined by “estimating the existing deficient housing units currently occupied by low- and moderate-income households within the municipality, following a methodology comparable to the methodology used to determine third round present need, through the use of datasets made available through the federal decennial census and the American Community Survey, including the Comprehensive Housing Affordability Strategy dataset thereof.” The DCA calculated municipal present need obligations in *Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background*, released on or about October 18, 2024. This DCA Report calculated a rehabilitation obligation of 4-units for the Borough, which was accepted in the Borough’s binding resolution adopted in conformance with the requirements of the law.

The Borough will address this obligation through a municipal housing rehabilitation program, which will be funded by the Borough’s affordable housing trust fund. Community Grants, Planning and Housing is Pennington’s Administrative Agent and they will provide an updated program manual.

First & Second Rounds Obligation: 52 units, Partially Satisfied

Pennington Borough’s first and second round obligation, also referred to as the prior round obligation, is 52 units. This obligation is defined as the cumulative new construction obligation from 1987 through 1999 (1987-1993 is the first round; 1993-1999 is the second round). The Borough’s obligation was published by COAH in 2008 and originally calculated in 1993-1994 pursuant to N.J.A.C 5:93 and was part of the Borough’s plan that was granted substantive certification on June 5, 2002. As noted in that plan, the Borough was granted a vacant land adjustment by COAH, and RDP was determined to be 20 units resulting in Unmet Need of 32 units.

Satisfaction of the 52-unit Prior Round Obligation			
Program	Units	Bonus Credits	Total Credits
Pennington Point	6	0	6
Capital Health - Heritage	8	0	8
Accessory Apts.	6	0	6
RDP			20
Unmet Need			32
Total			52

Pennington Point

This age-restricted for-sale development was built in both Pennington and Hopewell Township in the mid-90’s, with 6 of the affordable units located in the Borough. All units are 1 bedroom and restricted to moderate income households.

Capital Health- Heritage (American Properties)

This family housing project, which has a total of 80 for-sale units, ended up having 16 townhomes deed restricted for low and moderate income households instead of the 8 identified in the Borough’s first housing plan, including 2 one bedroom units, 10 two bedroom units and 4 three bedroom units. Eight of the units are restricted to low income households and eight are restricted to moderate income households with deed restrictions of 30 years.

Accessory Apartments

The Borough received credit in its prior round plan for 6 proposed accessory apartments, a plan that was certified by COAH.

Third Round Obligation: 134 Units, Partially Satisfied

As noted previously, the Borough did not receive court approval of a third round plan. As an obligation was never agreed to through the declaratory judgment process and settlement with Fair Share Housing Center, Pennington relies on the March 18, 2018 report prepared by Econsult Solutions, Inc. (ESI) which calculated statewide obligations based on the methodology outlined in the 2018 court decision by the Honorable Mary C. Jacobson, J.S.C. In the Matter of the Application of the Municipality of Princeton. As calculated by ESI, Pennington Borough’s third round obligation included a gap present need of 72 units and a prospective need of 62 units for a total of 134 units. The Borough has provided the below mechanisms to address its realistic development potential (RDP) of 9 units, consisting of 8 existing units at the Capital Health-Heritage site and 1 accessory apartment constructed during the third round. Since the Borough did not prepare a vacant land analysis for the third round, it relies on the 9 units that are built and occupied as the RDP for this compliance period, which results in Unmet Need of 125 units, which is addressed on the following page.

Satisfaction of the 134 Unit Third Round Obligation – RDP (9 Units)				
Program	# Units	Bonus Credits	Total Credits	Status
Capital Health – Heritage (Family for-sale)	8	0	8	Constructed
Accessory Apartment (Family rental)	1	0	1	Constructed
Units Addressing RDP			9	
Unmet Need			125	
Total			134	

Capital Health- Heritage (American Properties)

This family housing project, which has a total of 80 for-sale units, ended up having 16 townhomes deed restricted for low and moderate income households instead of 8 identified in the Borough’s first housing plan, including 2 one bedroom units, 10 two bedroom units and 4 three bedroom units. Eight of the units are restricted to low income households and 8 are restricted to moderate income households with deed restrictions of 30 years. The remaining 8 units are noted as RDP and applied to the third round obligation.

Accessory Apartment

The Borough provided a \$25,000 subsidy to assist with the creation of one accessory apartment in 2012. With a deed restriction period of 10 years (which ended in 2022), the Borough is eligible for one unit of

credit for this unit, which has been included in RDP since a vacant land adjustment was not approved by the court in the third round. See Appendix 2 for documentation on this unit.

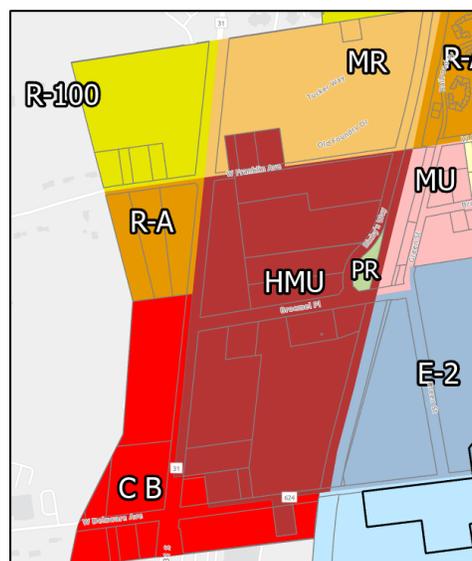
The mechanisms provided below are intended to address a portion of the 125 unit Unmet Need obligation from the third round. Each site or area of the Borough is described below the table and as Unmet need mechanisms will require a 20% seaside in accordance with COAH’s rules.

Partial Satisfaction of the 125 Unit Third Round Obligation – Unmet Need				
Program	# Units	Bonus Credits	Total Credits	Status
Highway Mixed Use Zone (HMU) (Family)	22	0	22	Proposed
Howe Commons (Family)	8	0	8	Proposed
37, 41 and 43 South Main (Family)	2	0	2	Proposed
Levin Limousine (Family) – 1 of 3 units	1	0	1	Proposed
245 and 250 South Main Street (Family)	4	0	4	Proposed
Units Addressing Unmet Need			37	
Remaining Unmet Need			94	

HMU – Highway Mixed-Use District

The Economic Development Committee, in the Economic Development Plan Element conditionally adopted by the Planning Board, recommended zoning along Route 31 be consolidated into a single mixed-use zone permitting retail, retail service, restaurant and office uses in combination with residential multifamily apartments. This concept has been discussed by the Planning Board in public meetings and will be incorporated into the forthcoming update to the Land Use Plan.

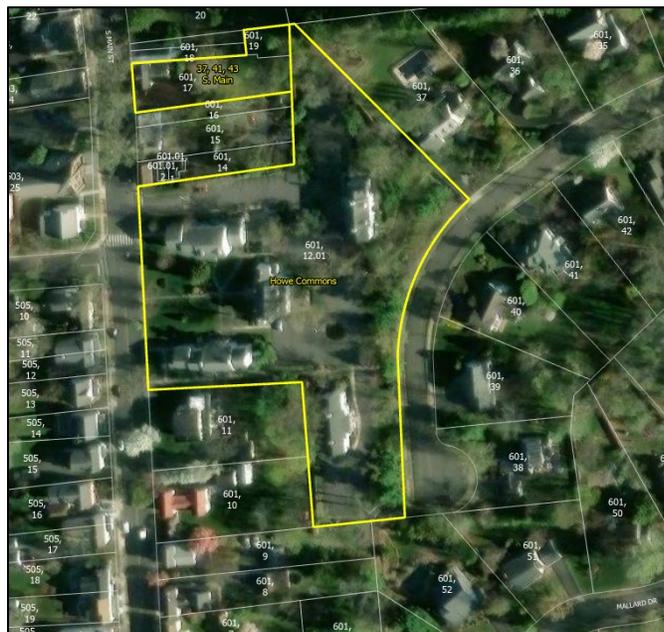
The HMU district, the proposed extent of which is shown on a portion of the draft Land Use Plan Map to the right, would permit nonresidential uses on the ground floor and residential uses on upper floors with buildings no taller than 3 stories. In areas of the district that do not front directly on Route 31, multifamily apartment buildings will be permitted and encouraged. While it’s difficult to predict the number of units that could be realized and whether wholesale redevelopment of sites is likely with this change in zoning, it is a mechanism sufficient to demonstrate a realistic opportunity for affordable housing in the context of Unmet Need. Conservatively a total of 106 units are possible over existing buildings in the two shopping centers fronting Route 31 on either side of Broemel Place (Pennington Square Shopping Center and Shoppes at Pennington), which would result in 22 affordable housing units under the required 20%



setaside for Unmet Need mechanisms. Redevelopment of the Pennington Square Shopping Center has the potential to yield far more housing opportunity with a more efficient layout. A draft ordinance for the HMU zone is provided in Appendix 3.

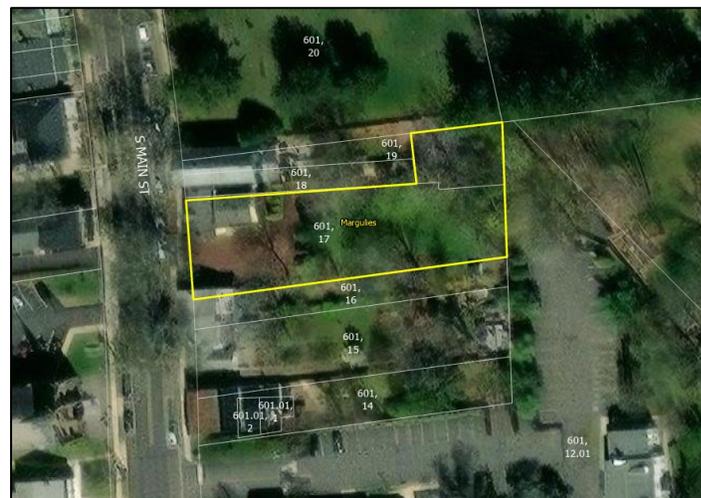
Howe Commons (Block 601, Lot 12.01)

Howe Commons is a 3.82 acre property located on the east side of South Main Street immediately opposite Academy Avenue. While the site is currently occupied by 5 two-story buildings containing office uses (see aerial photo at right), a mixed-use zoning designation will provide the opportunity for construction of as many as 40 multifamily apartments yielding as many as 8 affordable units. Given the state of the office market in Mercer County and New Jersey in general, redevelopment of this site, whether through conversion of existing office space to residential units or reconfiguration of the site, is viewed as likely with appropriate zoning. Located within a short walk of downtown and an NJ Transit bus stop, this site is seen as an appropriate location for affordable housing. As part of the proposed amendment to the Land Use Plan, this property will be included in the MU Mixed-use zone and a draft of proposed zoning is included in Appendix 4.



37, 41 and 43 South Main Street (Block 601, Lots 17 and 19)

The property owner submitted a concept plan proposing development of a new 9-unit building at the rear of site, which would provide a total of 2 affordable units. Currently there are three existing units in two buildings fronting South Main Street with parking located to the side and rear of those buildings as shown in the aerial image to the right.

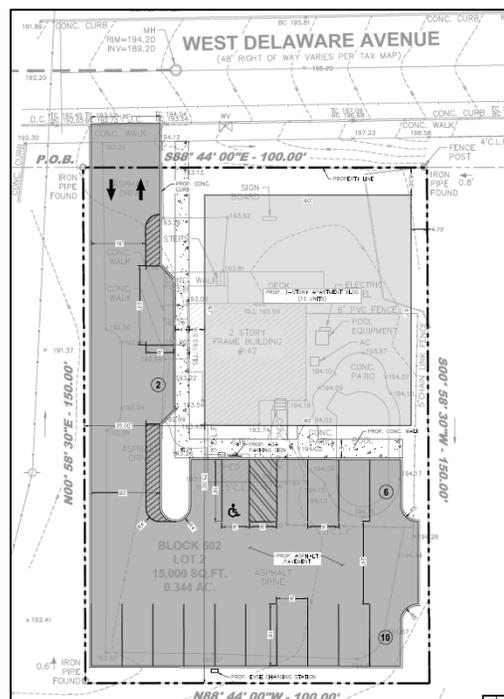


As shown on the concept on the following page, the proposed 3 story building would be situated adjacent to a portion of Howe Commons, located directly to the east. While the owner submitted a plan for 9 units, based on the size of the building proposed, it's location in the Historic District and the size and scale of surrounding buildings, it is suggested this site can accommodate no more than 8 units and the Borough work with the owner on the final configuration of the building so it is no more than 2 ½ stories. Historic Commission approval will be required under the Borough's Historic Preservation ordinance. A draft zoning ordinance for this site is provided in Appendix 5.



Levin Limousine (Block 502, Lot 2)

The owner of the property has submitted a concept plan that would provide a total of 12 apartment units in a new 3-story building, 3 of which would be affordable under the 20% setaside required for Unmet Need mechanisms. As shown on the concept at right, a total of 18 parking stalls can be provided. The site is adjacent to shopping and commercial services at the Pennington Center and a short walk from Main Street and Broemel Place where NJ Transit bus stops are located. One of the three affordable units from this site is applied towards third round Unmet Need. A draft zoning ordinance is included in Appendix 6.



245 and 250 South Main Street (Block 801, Lot 22 and Block 703, Lot 30)

As part of discussions related to the land use plan, the Planning Board will recommend rezoning of these two properties, currently zoned O-B, to MU-Mixed-Use. 245 South Main Street is a single-story medical office building with substantial existing parking and 250 South Main Street is an existing single-story building containing retail and service uses. Both properties have the potential to accommodate apartments on new upper floors with buildings



to be no more than 3 stories in height. 245 South Main Street could likely support upper floors added to the existing one-story structure while 250 South Main Street could include additional stories on the existing one-story structure or the site could be redeveloped with a new mixed-use structure. The aerial image at right shows the location of these properties in more detail. It is estimated that a total of 16 new units could be constructed, which would provide a total of 4 affordable housing units. A draft of the proposed MU zone standards is provided in Appendix 4.

Third Round Minimum Requirements

In addition to meeting the total 134 unit obligation, the Borough must also meet minimum and maximum requirements related to the rental obligation, maximum number of age-restricted units, minimum family unit obligation, and the minimum very low income unit obligation of 13%. Given the vacant land adjustment sought for the third round, these requirements detailed below are based on the 9 unit RDP, not the 134 unit obligation. Should unmet need mechanisms be constructed, the Borough's affordable housing ordinance will govern and the Borough will ensure compliance with the regulations below.

Minimum Rental Obligation = 3 units

.25 (obligation) = Minimum # rental units or .25 (9) = 2.25 round up to 3 units

This is not satisfied as only the accessory apartment qualifies as a rental unit. Most of the Unmet Need mechanisms proposed will likely include rental units.

Maximum Senior Units = 2 units

.25 (obligation) = Maximum # age-restricted units or .25 (9) = 2.25 round down to 2 units

None of the credits proposed are age-restricted.

Minimum Family Unit Obligation = 5 units

.50 (obligation) = Minimum # family units or .50 (9) = 4.5 round up to 5 units

This obligation is satisfied with the Heritage project, which are all family units. Mechanisms addressing Unmet Need will likely result in additional family units as no age-restricted or supportive housing is proposed.

Minimum Family Rental Obligation= 3 units

.50 (rental obligation) = Minimum # Family Rental Units or .50 (5) = 2.5 round up to 3 units.

This obligation could not be satisfied as only for-sale units were constructed in the Heritage project. Should Unmet Need mechanisms come to fruition, they will likely include family rental units.

Minimum Very Low Income Unit Obligation = 2 units

.13 (units created or approved on or after July 1, 2008) = Minimum # very low income units or .13 (9) = 1.17 units rounds up to 2 units

While the accessory apartment created was for a low income household, this falls short of the 2 units required. All projects addressing third round Unmet Need will be required to provide 13% of the units as affordable to very-low income households.

Fourth Round Obligation

Present Need (Rehabilitation Share)

As calculated by DCA and accepted by the Borough in its binding resolution, Pennington's present need for the fourth round is four (4) units. The Borough is proposing a rehabilitation program utilizing affordable housing trust funds as discussed in the spending plan. A rehabilitation manual will be provided by the Borough's administrative agent Community Grants, Planning and Housing as needed prior to marketing of the rehabilitation program.

Prospective Need

Pennington's fourth round obligation (also referred to as the prospective need) is 58 units. This obligation is defined as the new construction obligation for 2025-2035. The Fair Housing Act, *N.J.S.A. 52:27D-304.3.b.*, describes the obligation as a "projection of housing needs based on development and growth which is reasonably likely to occur in a region or a municipality, as the case may be, as a result of actual determination of public and private entities. Prospective need shall be determined by the methodology set forth pursuant to sections 6 and 7 of P.L.2024, c. 2 (C.52:27D-304.2 and C.52:27D-304.3) for the fourth round and all future rounds of housing obligations".

The methodology to calculate the obligation begins with determining the need for affordable housing in which the municipality is located. That regional need is then allocated to each municipality in the region, excluding qualified urban aid municipalities, based on an average of three factors: 1) equalized nonresidential valuation factor, which serves as a proxy for the municipal share of the region's change in employment during the previous affordable housing round, 2) income capacity factor, which is the municipal share of the region's median household income, and 3) land capacity factor, which is the municipal share of the region's developable land.

The DCA calculated municipal fourth round obligations in *Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background*, released on or about October 18, 2024. This DCA Report calculated a fourth round obligation of 58 units for the Borough which was accepted in the binding resolution adopted by Mayor and Council.

Vacant Land Analysis

Pennington has prepared a vacant land analysis in accordance with the requirements of N.J.A.C. 5:93-4.2, first studying existing land use in the Borough as required by 5:93-4.2(a). As shown in the table below and the map in Appendix 7, the Borough consists primarily of single family detached homes, with 1,010 of its 1,152 parcels (87.7%) designated as property class 2. Only 5 parcels are classified as vacant, totaling 0.85 acres. All publicly-owned property is either listed on the Borough’s ROSI and permanently restricted as open space or supports a public use such as Borough Hall, the library, public parking or is utilized as part of the Borough’s public water supply. The one exception is the former Borough landfill, which is not appropriate to consider for residential development due to documented contamination as well as a host of regulatory issues related to wetlands, flood hazard areas and riparian zones on the property.

Existing Land Use				
Property Type	# Properties	% of Total Properties	Total Acreage	% Total Acreage
Vacant	5	0.43%	0.85	0.16%
Residential	1,010	87.67%	351.12	65.15%
Apartment	2	0.17%	1.19	0.22%
Commercial	61	5.3%	46.96	8.71%
Industrial	2	0.17%	7	1.30 %
Public School Property	2	0.17%	13.75	2.55%
Other School Property	4	0.17%	11.79	2.19%
Public Property	27	2.34%	30.71	5.70%
Church and Charitable	15	1.3%	13.08	2.43%
Cemetery	4	0.35%	5.53	1.03%
Other Exempt	8	0.69%	41.14	7.63%
Class I Railroad	7	0.61%	15.07	2.80%
Class II Railroad	5	0.43%	0.73	0.13%

townhome project built by American Properties and now fully occupied. The site has no steep slopes, wetlands, streams or regulated flood hazard area. The site is therefore “suitable”.

- Adequate sewer and water capacity is available and will be provided by the Borough water and sewer systems. The site is therefore “developable”.
- The site can be developed in accordance with the New Jersey Residential Site Improvement Standards, N.J.A.C. 5:21-1 et seq and will be rezoned to permit inclusionary development. The site is therefore “approvable”.

Development of the site is consistent with the State Development and Redevelopment Plan (hereinafter the “State Plan”) and the rules and regulations of all agencies with jurisdiction over the site.

- Pursuant to the recently adopted 2025 State Plan, the site is located in the Fringe Planning Area, PA-3, an area where affordable housing is encouraged within Centers, however redevelopment is encouraged, which will be the case here. While not in a Center, the site is already developed with single family dwellings and has access to water and sewer.
- The site will comply with all applicable environmental regulations. The site contains no steep slopes in the area of development, and has no wetlands, stream corridors or flood hazard within or surrounding its boundaries.
- The site will not impact any historic or architecturally important sites and districts. The site is not located in or proximate to a historic district that would preclude development of residential units.

In addition to site suitability, the project will meet the applicable requirements for affordable housing projects in the substantive rules, as well as the Uniform Housing Affordability Control rules (UHAC) (N.J.A.C. 5:80-26.1 et seq.). See below as well as supplementary documentation in support of this site in the Appendices.

- Affirmative Marketing. The affordable units will be affirmatively marketed in accordance with N.J.A.C. 5:93 et seq. and N.J.A.C. 5:80-26.
- Controls on Affordability. The affordable units will have minimum 40-year affordability controls in accordance with UHAC regulations.
- Bedroom Distribution. The project will meet the bedroom distribution requirements of UHAC.
- Zoning. As noted the property will be included in the HMU Highway Mixed-Use zone, with draft zoning provided in Appendix 3.

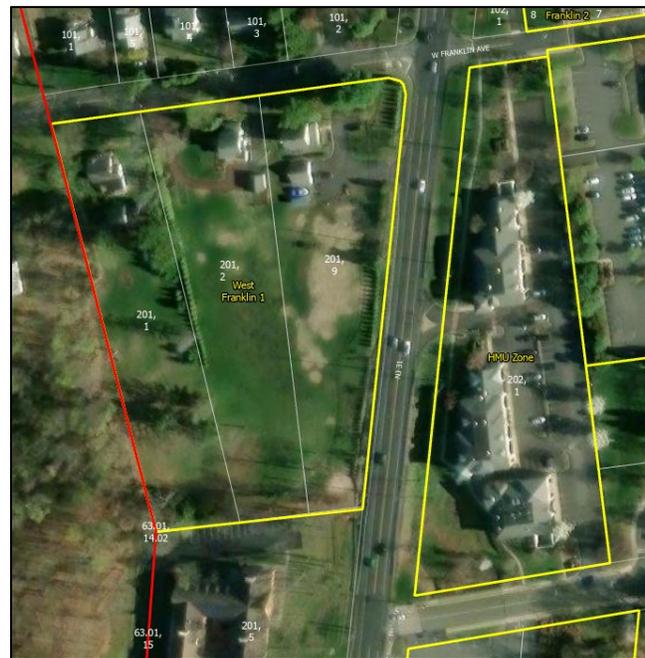
As noted previously, the Borough’s fourth round Unmet Need obligation is 55 units, which will be fully met with the mechanisms identified in the table on the following page. Although the Borough is not entitled to bonus credits until units are constructed, deed-restricted and occupied, all mechanisms identified have developer interest and bonuses are expected to be realized during the fourth round. Based on a total obligation of 58 units and no bonus claimed relative to RDP, the Borough could take advantage of up to 15 bonus credits. The supportive housing bedrooms proposed at the Senior Center are each eligible for 1 bonus credit and all other projects addressing the fourth round obligation are within ½ mile of a NJ Transit bus stop, with stops at Main Street and Delaware Avenue, South Main Street and Curlis Avenue, West Delaware Avenue and Green Street and Route 31 and Broemel Place.

Satisfaction of the 55-unit Fourth Round Unmet Need			
Mechanism	# Units	Potential Bonus Credits	Total Credits
West Franklin 1 (Family for-sale)	6	0	6
West Franklin 2 (Family rental) – 3 of 6 units	3	2*	5
Levin Limousine (Family rental) - 2 of 3 units	2	0	3
Straube Center (Family rental)	15	7	22
12 North Main (Family rental)	4	0	4
Senior Center Supportive Housing Bedrooms	6	6	12
Blackwell (Family rental)	6	0	6
Potential Extension of Expiring Controls – Pennington Point (age-restricted for-sale)	6	0	6
Totals	49	15	64
Unmet Need Remaining			0

* **Additional bonus credit realized from 3 units addressing RDP.**

West Franklin 1 – Block 201, Lots 1, 2 and 9

These properties, located on the west side of Route 31 and the south side of West Franklin Avenue, total 3.3 acres and are currently occupied by three single family dwellings (see aerial photo at right). The Borough has been discussing development options with the current owner of Lots 2 and 9 and as a result of changes proposed to the Land Use Plan, will rezone this property to R-A Apartment-Townhouse Residence Zone which permits density up to 8 units per acre. If all three properties were developed together, a total of 26 units could be realized, providing as many as 6 units affordable to low and moderate income households.



West Franklin 2 – Block 102, Lots 6, 7 and 8

This site, located on the east side of Route 31 and the north side of West Franklin Avenue, totals 1.16 acres and is currently occupied by two single family dwellings. The property owner has submitted a concept plan proposing a total of 30 units (see prior image), 6 of which would be affordable to low and moderate income households and 3 of which will be applied towards Unmet Need.

Levin Limousine (Block 502, Lot 2)

The owner of the property has submitted a concept plan that would provide a total of 12 apartment units in a new 3-story building, 3 of which would be affordable under the 20% setaside required for Unmet Need mechanisms. As shown on the concept in the previous section addressing the third round, a total of 18 parking stalls can be provided. The site is adjacent to shopping and commercial services at the Pennington Center and a short walk from Main Street and Broemel Place where NJ Transit bus stops are located. Two of the three affordable units from this site are applied towards third round Unmet Need.

Straube Center (Block 202, Lot 2)

Recent conversations with the property owner revealed a desire to reimagine the site, which presents the opportunity for inclusion of affordable housing. The concept plan prepared by the property owner (see following page) proposes a new three-story building with a total of 75 units at the corner of West Franklin Avenue and Bixby’s Way, which would yield a total of 15 affordable housing units. This replaces an existing parking area and accessory building, and residential parking would be underneath the structure, taking advantage of the grade. This site is within walking distance of the NJ Transit bus stop on Broemel Place and is within walking distance of restaurants and shops. This area is proposed for inclusion in the new HMU Highway Mixed-Use district, which would permit standalone multifamily apartment structures provided they do not front on Route 31. See Appendix 3 for draft zoning for the HMU zone.



12 North Main – Block 205, Lot 22

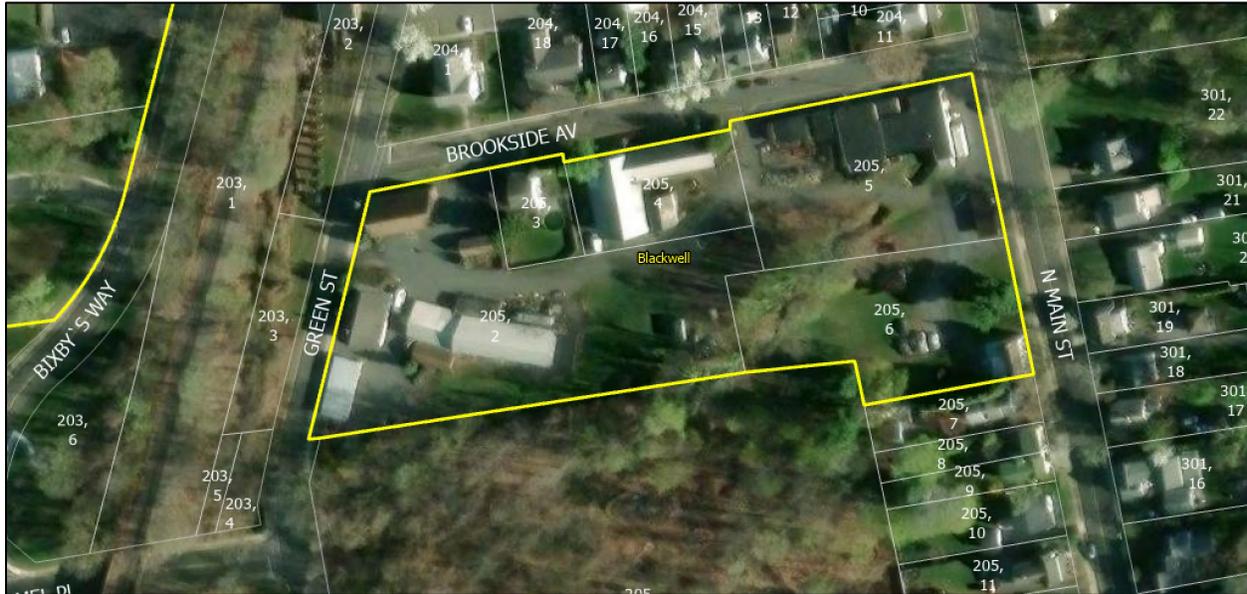
Located in the heart of Pennington’s Main Street corridor, this property fronts on North Main Street and extends west, abutting the Borough’s public parking lot and municipal facilities including Borough Hall, the library and the police station (see aerial photo at right). Currently the property contains a storefront with second floor apartment on North Main Street, which is attached to a one and two story office building that fronts on the Borough’s public parking lot. Sixteen spaces on the property are dedicated to the uses currently on the property. The owner has received subdivision approval to separate the storefront and apartment from the office building, although the two will remain attached. Current plans are to construct an addition to the office building, making it three stories and converting it to a minimum of 16 apartments, which would yield at least 4 affordable units under the required 20% setaside for Unmet Need mechanisms. Draft zoning for this site is provided in Appendix 8.

**Senior Center – Block 701, Lots 5, 6, 7 and 8**

As part of a development project proposed in Hopewell Township, the Hopewell Valley Senior Center will eventually be relocated to Hopewell Township under a shared services agreement between Hopewell Borough, Pennington Borough and Hopewell Township. Once constructed, the current Senior Center, located on 3.13 acres at the end of Reading Street, will no longer operate. Owned by Pennington Borough, the site could become available and permit conversion of the existing building into 6 supportive housing bedrooms. While no site improvement work would be necessary, the approximately 2,500 square foot single-story building would require renovation to provide 6 bedrooms and appropriate kitchen and bathroom facilities.

Blackwell – Brookside Avenue

Although these properties are encumbered by flood hazard area associated with the Lewis Brook and regulated by NJDEP, County capital and other improvements contemplated along the stream are likely to reduce the regulated area in the future. There may also be other creative solutions to meet dry access requirements in NJDEP’s flood hazard control act rules related to residential multifamily development. Areas on the west side of the site could potentially accommodate residential units with parking located off-site along Green Street or on-site if delineation of the flood hazard area is more favorable and dry access can be achieved. Conservatively and considering the opportunity for off-site parking, a total of 30 units could be built, with 6 deed restricted for low and moderate income households. The property is already within a designated area in need of redevelopment, but is proposed to be included within the MU Mixed-Use zone as part of the amended Land Use Plan (see Appendix 4). Below is a recent aerial showing the properties.



Extension of Expiring Controls – Pennington Point

With units initially deed restricted in 1995 for a period of 30 years, the 6 age-restricted for-sale units in Pennington Point are eligible for extension of expiring controls as of late 2025. According to the recently amended Uniform Housing Affordability Controls, the Borough is eligible to extend controls depending on the specific language contained in the deed restriction. While it is possible the Borough can extend the controls via ordinance, it is also possible the Borough may have to pay an amount equal to the owner's equity share in order to extend the controls. The Borough will work with its Administrative Agent, Community Grants, Planning and Housing, to review the deed restrictions and extend these controls to make them eligible for credit in the fourth round to address Unmet Need.

Additional Mechanisms to Address Unmet Need

Aside from adopting ordinances or redevelopment plans to address Unmet Need, the Borough will adopt a mandatory setaside ordinance, a draft of which is provided in Appendix 9. This will permit the Planning Board or Zoning Board to capture affordable housing units when projects of 5 or more units that are not part of the Fair Share Plan are proposed. A payment-in-lieu option is provided for fractional units of four tenths or less.

Compliance with N.J.A.C. C.52:27D-310.1

The Fair Housing Act amendments of March 2024 requires a municipality receiving a vacant land adjustment to *“identify sufficient parcels likely to redevelop during the current round of obligations to address at least 25 percent of the prospective need obligation that has been adjusted and adopt realistic zoning that allows for such adjusted obligation, or demonstrate why the municipality is unable to do so.”* While there is some disagreement as to how this section of the Act is to be interpreted, for the purposes of this plan, it is interpreted to mean 25% of Unmet Need.

With a fourth round obligation of 58 units and RDP established at 3 units, the resulting Unmet Need is 55 units and 25% of that is 14 units (13.75 rounded up). As documented in the previous sections, the Borough

has identified redevelopment opportunities such that at least 14 affordable housing units will be created, therefore this requirement is met and in fact, far exceeded.

Fourth Round Obligation Requirements

In addition to meeting the total 58 unit fourth round obligation, the Borough must also meet the minimum rental obligation, maximum number of senior units, minimum family unit obligation, minimum very low income obligation, and maximum bonus credits, as set forth in the Fair Housing Act. Compliance with these requirements is noted for the 58 unit obligation as most of the Unmet Need mechanisms identified previously are anticipated to be constructed. Where applicable and as noted, the requirements are calculated based on the units meeting the obligation rather than the entire obligation.

Maximum Bonus = 15 credits

- Maximum bonus credits = 25% (obligation) | $25\% (58) = 14.5$ rounded up to 15 credits

Minimum Rental Units = 11 units

- Minimum rental units = 25% (of units meeting the obligation) | $25\% (43) = 10.75$ rounded up to 11 units

All of the units except the age-restricted units where expiring controls are proposed to be extended and those proposed with the West Franklin 1 project are rental units.

Maximum Senior Units = 12 units

- Maximum age-restricted units = 30% (units meeting the obligation) | $30\% (43) = 12.9$ units rounded down to 12 units

As the units in Pennington Point are age-restricted, extension of these expiring controls would result in 6 age-restricted credits in the fourth round, which complies with the maximum of 12 permitted.

Minimum Family Units = 22 units

- Minimum family units = 50% (units meeting the obligation) | $50\% (43) = 21.5$ rounded up to 22 units

With the exception of the age-restricted units at Pennington Point where controls may be extended, all units are family units.

Minimum Family Rental Units = 6 units

- Minimum family rental = 50% (rental obligation) | $50\% (11) = 5.5$ rounded up to 6 units

Other than the expiring controls proposed to be extended in Pennington Point, all other units are family rentals, satisfying this requirement.

Minimum Very Low Income Units= 6 units

- Minimum very low income units = 13% (fourth round units created or approved on or after July 1, 2008) | $13\% (43) = 5.59$, rounded up to 6 units

The Borough will require that 13% of all units constructed are available to very low income households. As detailed in the tables on the previous pages, the total number of units currently proposed is 43, and applying 13% to the individual projects results in the creation of at least 6 very low income units, meeting

the minimum required. All future projects will be required to meet the minimum 13% on an individual basis.

Minimum Family Very Low Income Units = 1 unit

- Minimum family very low income units = 50% (very low income obligation) | 13% (6) = 0.78 units rounded up to 1 unit

As noted, all but one proposed mechanism will include family units, and a minimum of 6 very low income units will be provided, meeting this requirement.

Affordability Assistance

As required, the Borough will undertake a variety of affordability assistance activities to render units more affordable. These strategies are outlined in the spending plan (Appendix 10) and a draft affordability assistance program manual is provided in Appendix 11 although a new manual will be prepared by the Borough’s Administrative Agent.

CONSISTENCY WITH THE STATE DEVELOPMENT AND REDEVELOPMENT PLAN

Pennington Borough is classified as Planning Areas 3, Fringe Planning Area, in the State Plan adopted in December of 2025. General policies related to housing are aimed at promoting an adequate supply of housing affordable to all age groups and income levels with access to transit, jobs, education, services and amenities. The Plan specifically notes limiting development in environmentally sensitive and vulnerable areas, facilitating multi-generational housing opportunities, providing housing across the “traditional housing lifecycle” and expanding access to family-friendly apartments, senior residences, starter homes, condos and townhomes. More specific to Planning Area 3, the State plan encourages the siting of affordable housing within Centers.

Although Pennington is not a Center identified in the 2025 State Plan, all mechanisms proposed to meet the fair share obligation are within existing sewer service area and have access to public water. All promote the goal of providing housing with access to transit, jobs, education, services and amenities as they are located within close proximity to NJ Transit bus stops and have ready access to a multitude of commercial services and amenities, in many cases within walking distance. Pennington’s Housing Element and Fair Share Plan is therefore consistent with the 2025 State Development and Redevelopment Plan.

AFFORDABLE HOUSING ADMINISTRATION & AFFIRMATIVE MARKETING

Pennington Borough’s Affordable Housing Ordinance is consistent with the Fair Housing Act , the Uniform Housing Affordability Control Rules, *N.J.A.C. 5:80-26.1 et seq.*, and the Division of Local Planning Services Fair Housing Act Rules, *N.J.A.C. 5:99*. The Borough’s proposed affordable housing ordinance is provided in Appendix 12.

The Borough’s Affordable Housing Ordinance, Chapter 58, governs the establishment of affordable units in the Borough as well as regulating the occupancy of such units. The Borough’s Affordable Housing Ordinance addresses the phasing of affordable units, the low/moderate income split, bedroom

distribution, occupancy standards, affordability controls, establishing rents and prices, affirmative marketing, income qualification, etc. All newly created affordable units, with limited exceptions, will comply with the affordability control period of 30 years for sale units or 40 years for rental units, as required by the Fair Housing Act and the Uniform Housing Affordability Control Rules.

The Borough has established the position of the Municipal Housing Liaison as required by the Fair Housing Act amendments (see Appendix 12). However, the Borough will likely rely on its affordable housing administrator to conduct the administration and affirmative marketing of its affordable housing sites that will not be administered by the developers and for the rehabilitation and extension of expiring controls programs. It is expected that all developers will administer their own affordable housing units.

The Borough's affirmative marketing plan is designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to the affordable units located in the Borough. Additionally, the affirmative marketing plan is intended to target those potentially eligible persons who are least likely to apply for affordable units and who reside in the Borough's housing region (Region 4), consisting of Mercer, Monmouth and Ocean counties.

The affirmative marketing plans include regulations for qualification of income eligibility, price and rent restrictions, bedroom distribution, affordability control periods, and unit marketing in accordance with N.J.A.C. 5:80-26.1 et seq. This plan must be adhered to by all private, non-profit, and municipal developers of affordable housing units and must cover the period of deed restriction or affordability controls on each affordable unit. A copy of the affirmative market plan is provided in Appendix 13 but will be updated by the Borough's Administrative Agent.

AFFORDABLE HOUSING TRUST FUND

Pennington has amended its development fee ordinance, a draft of which is included in Appendix 15. The Borough has prepared a new Spending Plan, provided in Appendix 10, which discusses anticipated revenues, collection of revenues, and the use of revenues, and it has been prepared in accordance with N.J.A.C. 5:99, the Fair Housing Act Rules. All collected revenues will be placed in the Borough's Affordable Housing Trust fund and will be disbursed for the use of eligible affordable housing activities including, but not limited to:

- Affordability assistance program; and
- Extension of expiring controls program; and
- Rehabilitation program; and
- Any other activity as specified in the approved spending plan.

The Borough is required to fund eligible programs in a Court-approved Housing Element and Fair Share Plan, as well as provide affordability assistance. At least 30% of collected development fees, excluding expenditures made since July 17, 2008, when affordability assistance became a statutory requirement in the Fair Housing Act, shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in a municipal Fair Share Plan. At least one-third (1/3) of the affordability assistance must be expended on very-low income units. Additionally, no more than 20% of

the revenues collected from development fees each year shall be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to prepare or implement a rehabilitation program, a new construction program, a housing element and fair share plan, and/or an affirmative marketing program.

Appendix 1

2025 FOURTH ROUND HOUSING PLAN

DEMOGRAPHIC ANALYSIS
BOROUGH OF PENNINGTON
MERCER COUNTY
NEW JERSEY

JUNE 12, 2025

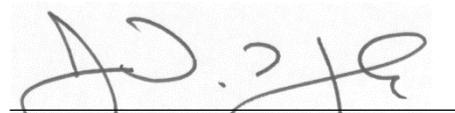
ADOPTED BY THE PLANNING BOARD

JUNE 24TH, 2025

ENDORSED BY THE BOROUGH COUNCIL

JUNE 24TH, 2025

PREPARED BY:



JAMES T. KYLE, PP, AICP
NEW JERSEY PROFESSIONAL PLANNER LICENSE 5667

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A SIGNED AND SEALED ORIGINAL IS ON FILE WITH THE BOROUGH CLERK



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DEMOGRAPHIC ANALYSIS

The population of the Borough of Pennington (“Pennington” or the “Borough”) has nearly doubled since 1940, growing from 1,492 to 2,802 residents according to data found in Table 1. While the Borough experienced growth in the 1940s, its largest decade over decade population increase came in the 1950s. Growth slowed in the 1960s, however, when the population only grew by 4.3%, and it even declined in the 1970s, when the population dropped by two percent. While not seeing a decline in growth, it is notable that the rate of growth slowed to under three percent for both Mercer County and New Jersey during this period. Pennington saw a 20.3% increase in the 1980s, which was substantially higher than the 5.8% and 5% growth rates for the county and state, respectively. The borough registered a 6.3% rate of growth in the 1990s, which was comparable to its county and state counterparts. Growth was short lived, however, as unlike the county and state, the borough saw negative growth in the 2000s. More recently, the population has climbed, registering an 8.4% growth rate in the 2010s, a statistic that outpaced the comparable rate of 5.7% for both the county and state. Growth was also swift in the 1940s when the number of residents grew by 12.7%. It should be noted here that although the total population data in Table 1 is drawn from various U.S. Census Bureau (“Census Bureau”) decennial censuses, all subsequent Census Bureau data contained herein comes from the 2019-2023 American Community Survey (“ACS”), which is calculated as a 5-year estimate, unless otherwise noted.

Table 1: Population Trends (1940-2020)

Year	Pennington		Mercer County		New Jersey	
	Total Population	% Change, Decade-on-Decade	Total Population	% Change, Decade-on-Decade	Total Population	% Change, Decade-on-Decade
1940	1,492	--	197,318	--	4,160,165	--
1950	1,682	12.7%	229,781	16.5%	4,835,329	16.2%
1960	2,063	22.7%	266,392	15.9%	6,066,782	25.5%
1970	2,151	4.3%	304,116	14.2%	7,171,112	18.2%
1980	2,109	-2.0%	307,863	1.2%	7,365,011	2.7%
1990	2,537	20.3%	325,824	5.8%	7,730,188	5.0%
2000	2,696	6.3%	350,761	7.7%	8,414,350	8.9%
2010	2,585	-4.1%	366,513	4.5%	8,791,894	4.5%
2020	2,802	8.4%	387,340	5.7%	9,288,944	5.7%

Source: U.S. Census Bureau, Various Decennial Censuses; N.J. Department of Labor and Workforce Development

Table 2 shows the population cohorts for Pennington as of 2023. Women comprise a narrow majority of residents, 50.1%, while 49.9% of residents are men. The largest age group, which consists of persons between the ages of 35 and 54, comprises a quarter of the community’s population. The cohort for residents over 65 years of age is the second largest at 24.4%. After these groups, the 55 to 64 years of age 5 to 19 years of age cohorts are nearly identical, at 16.9% and 16.5%, respectively. Younger adults, which consist of those persons between the ages of 20 and 34, are the second smallest age group, constituting

only 11.9% of residents. Children under the age of 5 comprise the smallest population group at 5.1%. The community has a median age of 49.0, which is substantially older than the median age of 39.2 for Mercer County and 40.1 for New Jersey.

Table 2: Population by Age and Sex

Age Group	Total Population		Male		Female	
	Number	% of Population	Number	% of Population	Number	% of Population
Under 5 years	143	5.1%	115	8.2%	28	2.0%
5 to 19 years	463	16.5%	249	17.8%	214	15.3%
20 to 34 years	334	11.9%	154	11.0%	180	12.8%
35 to 54 years	702	25.1%	360	25.8%	342	24.4%
55 to 64 years	473	16.9%	213	15.3%	260	18.5%
65 years and over	683	24.4%	304	21.8%	379	27.0%
Total	2,798	--	1,395	--	1,403	--
Median Age (years)	49.0		45.8		52.4	

Source: U.S. Census Bureau, 2019-2023 American Community Survey 5-Year Estimates

Pennington’s population is relatively old, and the two oldest age groups are the fastest growing groups according to Table 3. The number of seniors, commonly defined as those 65 years of age and older, grew by 43.5% between 2013 and 2023. For its part, the 55 to 64 years of age group expanded by a little bit less at 41.2%. As these older cohorts grew, the median age of the borough rose by more than five years, going from 43.6 to 49.0 years of age in 2023. The younger cohort of those 20 to 34 years of age saw a substantial increase of 28.5%. The cohort for children less than 5 years old saw an increase of 21.2%. The population of persons between 5 to 19 years of age and 35 and 54 years of age saw declines of 23.1% and 12.3%, respectively.

Table 3: Population Change by Age (2013-2023)

Age Group	2013		2023		Change, 2013 to 2023	
	2013	% Total Population	2023	% Total Population	Total Change	% Change
Under 5 years	118	4.6%	143	5.1%	25	21.2%
5 to 19 years	602	23.2%	463	16.5%	-139	-23.1%
20 to 34 years	260	10.0%	334	11.9%	74	28.5%
35 to 54 years	800	30.9%	702	25.1%	-98	-12.3%
55 to 64 years	335	12.9%	473	16.9%	138	41.2%
65 years and over	476	18.4%	683	24.4%	207	43.5%

Source: U.S. Census Bureau, 2009-2013 and 2019-2023 American Community Survey 5-Year Estimates

Overall, 1,168 households call Pennington home. The distribution of households in the municipality by size generally mirrors the distribution for Mercer County as demonstrated in Table 4. Even so, the average household size in Pennington, 2.31 persons, is significantly below the average household size of 2.58 persons in the county. For Pennington, two-person households are the most numerous household size, 38.4%, with one-person households the next highest, comprising 28.8% of households. In other words, one- and two-person households compose 67.2% of all households in the borough, surpassing the cumulative figures of 58.3% for the county and 57.5% for the state. Three-person households make up a relatively large share of the community, 14.6% of households, but this ratio is lower than the comparable rates for the county and state of 17.0% and 17.1%, respectively. Another 13.5% of households consist of four persons, a lower percentage than is observed at the county or state level, which are 15.7% and 15.3%, respectively. Households of five or more persons account for the remaining 4.7% of households in the community, which is about half the rates for the county and state.

Table 4: Household Size

Household Size	Pennington		Mercer County		New Jersey	
	Total	%	Total	%	Total	%
1-person	336	28.8%	40,821	28.9%	918,897	26.4%
2-person	449	38.4%	41,584	29.4%	1,081,842	31.1%
3-person	170	14.6%	24,043	17.0%	594,946	17.1%
4-person	158	13.5%	22,268	15.7%	530,520	15.3%
5-person	37	3.2%	7,937	5.6%	218,492	6.3%
6-person	18	1.5%	2,786	2.0%	79,678	2.3%
7-or-more person	0	0.0%	2,025	1.4%	53,980	1.6%
Households, Total	1,168	--	141,464	--	3,478,355	--
Average Household Size	2.31		2.58		2.61	

Source: U.S. Census Bureau, 2019-2023 American Community Survey 5-Year Estimates

Pennington is very similar to Mercer County and New Jersey in that that the share of family and nonfamily households accounts for nearly the same ratios of around 66% and 34%, respectively per Table 5. Family households in the borough consist of 2.9 persons on average, while nonfamily households consist of 1.14 persons. These figures are similar to data for the county and state.

Table 5: Family and Nonfamily Households

Household Type	Pennington	Mercer County	New Jersey
Family households	66.4%	65.7%	67.8%
Nonfamily households	33.6%	34.3%	32.2%
Average household size, family households	2.90	3.20	3.19
Average household size, nonfamily households	1.14	1.22	1.22

Source: U.S. Census Bureau, 2019-2023 American Community Survey 5-Year Estimates

According to Table 6, residents in Pennington have exceptionally high rates of educational attainment. Of all residents at least 25 years of age, a staggering 73.6% have at least a bachelor’s degree while 39.5% have a graduate or professional degree. The rates surpass those for Mercer County, where 44.9% of residents possess a bachelor’s degree and 20.6% have a graduate or professional degree. Overall, 98.3% of relevant residents have earned a high school diploma, compared to 89.9% in Mercer County. Given the strong relationship between educational attainment and income, the high levels of education play a major role in shaping the borough’s economy.

Table 6: Educational Attainment, Population 25 Years and Over

Educational Attainment	Pennington	Mercer County	New Jersey
Less than 9th grade	0.0%	4.9%	4.6%
9th to 12th grade, no diploma	1.7%	5.2%	4.7%
High school graduate (includes equivalency)	12.8%	24.5%	25.7%
Some college, no degree	5.6%	14.3%	15.3%
Associate’s degree	6.2%	6.2%	6.7%
Bachelor’s degree	34.1%	24.3%	25.8%
Graduate or professional degree	39.5%	20.6%	17.1%
High school graduate or higher	98.3%	89.9%	90.7%
Bachelor’s degree or higher	73.6%	44.9%	42.9%

Source: U.S. Census Bureau, 2019-2023 American Community Survey 5-Year Estimates

Regarding race and ethnicity, persons considered by the Census Bureau as “Not Hispanic or Latino, White alone” make up an overwhelming share of Pennington residents at 83% (Table 7). This racial and ethnic group represents 44.2% of the Mercer County population and just over one-half of all New Jerseyans. Approximately 5.8% of the community is “Hispanic or Latino,” a relatively small amount considering the county and statewide figures are 22.2% and 21.9%, respectively. Of other minorities, the ratio for “Not Hispanic or Latino, Asian alone” is 7.4%, which is well below the county figure of 12% and the state figure of 9.8%.

Table 7: Race and Ethnicity

Race and Ethnicity	Pennington	Mercer County	New Jersey
Not Hispanic or Latino	94.2%	77.8%	78.1%
White alone	83.0%	44.2%	51.9%
Black or African American alone	2.1%	18.3%	12.3%
Asian alone	7.4%	12.0%	9.8%
Other races alone	0.4%	0.4%	0.8%
Two or more Races	1.3%	2.8%	3.2%

Race and Ethnicity	Pennington	Mercer County	New Jersey
Hispanic or Latino:	5.8%	22.2%	21.9%
White alone	2.5%	5.6%	5.0%
Black or African American alone	0.0%	0.9%	0.7%
Other races alone	0.8%	9.6%	8.9%
Two or more races	2.5%	6.3%	7.4%

Source: U.S. Census Bureau, 2019-2023 American Community Survey 5-Year Estimates

SOCIOECONOMIC ANALYSIS

More than forty percent of households in Pennington have an income of at least \$200,000 according to Table 8. This doubles the relative percentage of such households in Mercer County and New Jersey, with each location hovering around twenty percent. An additional 28% of households have an income of at least \$100,000. The median household income of \$171,282 in the borough is higher than the figure for either the county or state, which are \$96,333 and \$101,050, respectively. All told, 69.1% of Pennington households have an income of \$100,000 or higher. Just under eleven percent of households in Pennington have an income of under \$50,000. To be precise, 3.2% of households have an income between \$25,000 and \$49,999, and 7.6% of households have an income less than \$25,000.

Table 8: Household Income

Household Income	Pennington	Mercer County	New Jersey
Less than \$24,999	7.6%	13.9%	11.9%
\$25,000-\$49,999	3.2%	13.8%	13.3%
\$50,000-\$99,999	20.2%	23.8%	24.3%
\$100,000-199,999	28.0%	28.1%	29.7%
\$200,000 or more	41.1%	20.2%	20.7%
Median Household Income	\$171,282	\$96,333	\$101,050
Mean Household Income	\$206,343	\$138,732	\$140,299

Source: U.S. Census Bureau, 2019-2023 American Community Survey 5-Year Estimates

The poverty rate in Pennington is 4.5% as shown in Table 9. This is relatively low for Mercer County, where 11.1% of persons live in poverty, though the county rate is magnified by the high rate for the City of Trenton. The poverty rate for children and seniors, two vulnerable groups for whom poverty can be especially challenging, is also low compared to the overall rates. The borough’s child poverty rate is 6.5%, which compares to a figure of around thirteen percent for the county and state. The poverty rate for seniors is 3.7%, which compares to a figure of around ten percent for the county and state.

Table 9: Poverty Rate

Poverty Status	Pennington	Mercer County	New Jersey
Percent below poverty level, overall	4.5%	11.1%	9.8%
Percent below poverty level, under 18 years old	6.5%	13.8%	13.3%
Percent below poverty level, 65 years old and over	3.7%	10.2%	9.5%

Source: U.S. Census Bureau, 2019-2023 American Community Survey 5-Year Estimates

Over the past decade, Pennington workers have had an easier time finding jobs than their compatriots in the rest of the county and state. During this time, the municipality’s unemployment rate stayed consistently below the countywide and statewide rates according to Table 10. In the 2010s, the unemployment rate trended downward, reaching a low of 1.6% in 2019. The unemployment rate subsequently spiked to 3.9% in 2020, with the emergence of the Covid-19 pandemic, before tapering to below three percent in 2021. Even in 2020, Pennington withstood the economic disruption from the pandemic better than the county and state, where the unemployment rates spiked to 8% and 9.5%, respectively. The data indicate that employment and household finances, by extension, are relatively stable.

Table 10: Unemployment Rate

Year	Pennington	Mercer County	New Jersey
2013	5.5%	7.4%	8.4%
2014	3.6%	5.8%	6.7%
2015	2.9%	4.9%	5.7%
2016	2.9%	4.7%	4.9%
2017	2.7%	4.4%	4.5%
2018	2.4%	3.9%	4.0%
2019	1.6%	3.4%	3.5%
2020	3.9%	8.0%	9.5%
2021	2.8%	6.1%	6.7%
2022	2.1%	3.6%	3.9%
2023	2.5%	4.1%	4.3%

Source: N.J. Department of Labor and Workforce Development

Data for various occupation types (Table 11) reinforces how relatively skilled the Pennington workforce is compared to the overall population. Irrespective of the industry, 67.2% of the employed population of Pennington works in a management, business, science, or arts position. About 12.3% of Pennington

workers earn their pay in service occupations. Service workers comprise a slightly smaller share of the population than they do in Mercer County, 15.7%, or New Jersey, 14.8%. An additional 11.8% of residents work in sales and office occupations, slightly less than the share for Mercer County, 17.6%, and New Jersey, 20%. Workers in positions that require fewer skills compose a relatively small share of the working population. About six percent of employed borough residents work in natural resources, construction, and maintenance occupations, which is nearly equivalent to the shares for the county and state. Only 2.6 % of Pennington workers work in production, transportation, and material moving, compared to 11.4% in Mercer County and 11.3% in New Jersey.

Table 11: Occupation

Occupation	Pennington	Mercer County	New Jersey
Management, business, science, and arts	67.2%	49.0%	46.9%
Service occupations	12.3%	15.7%	14.8%
Sales and office occupations	11.8%	17.6%	20.0%
Natural resources, construction, and maintenance occupations	6.1%	6.3%	6.9%
Production, transportation, and material moving	2.6%	11.4%	11.3%

Source: U.S. Census Bureau, 2019-2023 American Community Survey 5-Year Estimates

Pennington residents are employed in all the major industrial sectors, but the professional, scientific, and management sector is especially critical to the local economy. This sector employs 23.3% of Pennington’s employed population, surpassing the respective shares for the county and state, 14.9% and 14.3%, respectively (Table 12). According to the US Bureau of Labor Statistics, these are “activities that require a high degree of expertise and training” and encompass professions as disparate as the law, accounting, and engineering. The educational sector also figures prominently. Given that Pennington is home to a private boarding school in addition to local public school facilities, a considerable number of residents work in educational services at 19% in all. This is much greater than the statewide percentage of 10.5%. The third largest category is health care and social assistance, which employs 15.7% of the local workforce, a figure comparable to data for the county and state.

Table 12: Industry

Industry	Pennington	Mercer County	New Jersey
Agriculture, forestry, fishing and hunting, and mining	1.0%	0.3%	0.3%
Construction	2.7%	5.2%	6.1%
Manufacturing	6.6%	7.6%	8.2%
Wholesale trade	1.4%	3.2%	2.9%
Retail trade	4.3%	8.9%	10.5%
Transportation and warehousing, and utilities	3.3%	5.9%	6.6%

Industry	Pennington	Mercer County	New Jersey
Information	2.5%	2.2%	2.6%
Finance and insurance, and real estate and rental and leasing	4.8%	8.0%	8.6%
Professional, scientific, and management, and administrative and waste management services	23.3%	14.9%	14.3%
Educational services	19.0%	14.0%	10.5%
Health care and social assistance	15.7%	12.8%	13.7%
Arts, entertainment, and recreation, and accommodation and food services	7.1%	6.8%	7.2%
Other services, except public administration	2.6%	4.1%	4.2%
Public administration	5.7%	6.2%	4.4%

Source: U.S. Census Bureau, 2019-2023 American Community Survey 5-Year Estimates

HOUSING ANALYSIS

Homeownership is the predominant form of tenure in Pennington as 79.5% of residents live in owner-occupied housing units according to Table 13. The remaining 20.5% of the populace are rental tenants. The percentage of Pennington residents living in owner-occupied housing significantly exceeds the respective shares of 61.9% and 63.7% for Mercer County and New Jersey.

Table 13: Tenure

Tenure	Pennington	Mercer County	New Jersey
Owner-Occupied	79.5%	61.9%	63.7%
Renter-Occupied	20.5%	38.1%	36.3%

Source: U.S. Census Bureau, 2019-2023 American Community Survey 5-Year Estimates

Pennington and New Jersey each report a housing vacancy rate of 7.9%, which is slightly higher than the figure of 6.1% for Mercer County as shown in Table 14. While the low vacancy rate surely boosts home values, it shows that available housing in Pennington is hard to find. Housing experts generally consider a vacancy rate of approximately seven percent to be optimal in the sense that vacant housing units find buyers and renters in a timely manner while the cost of housing remains relatively stable.

Table 14: Occupancy Status

Occupancy Status	Pennington	Mercer County	New Jersey
Occupied	92.1%	93.9%	92.1%
Vacant	7.9%	6.1%	7.9%

Source: U.S. Census Bureau, 2019-2023 American Community Survey 5-Year Estimates

It is important to note that the rates for Pennington shown in Table 15 are based on an estimate of 100 vacant homes. Homes for sale account for 6% of vacant units and the remaining 94% of vacant units are in the uncategorized class of units vacant for other reasons. Even though there is not much variation for Pennington, it is useful to reproduce this information as it shows the breakdown of different status types for vacant homes among Mercer County's and New Jersey's housing stock.

Table 15: Vacancy Status

Vacancy Status	Pennington	Mercer County	New Jersey
For rent	0.0%	18.4%	16.0%
Rented, not occupied	0.0%	1.6%	2.7%
For sale only	6.0%	6.1%	6.4%
Sold, not occupied	0.0%	0.5%	4.1%
For seasonal, recreational, or occasional use	0.0%	11.4%	43.7%
For migrant workers	0.0%	0.0%	0.0%
Other vacant	94.0%	62.0%	27.1%

Source: U.S. Census Bureau, 2019-2023 American Community Survey 5-Year Estimates

Table 16 indicates that a mere 104 persons in the municipality live in group quarters, or housing owned by an entity or organization where individuals live together in a group arrangement. In the case of Pennington, the Pennington School likely accounts for most of the population in group quarters. The ratio of 3.7%, is slightly less than the rest of the county, but approximately double the percentage statewide, 1.9%.

Table 16: Group Housing

Indicator	Pennington	Mercer County	New Jersey
Population in Group Quarters	104	18,675	173,579
%, Total Population	3.7%	4.9%	1.9%

Source: U.S. Census Bureau, 2019-2023 American Community Survey 5-Year Estimates

Housing in Pennington Borough is comprised mainly of single-family residences according to Table 17. To be precise, 67.4% of homes are detached one-family residences, with an additional 12.3% attached. The

combined figure of 79.7% for single-family houses slightly exceeds the 68.1% figure for Mercer County and substantially surpasses the 62.7% figure for the Garden State. Two-family dwellings comprise 2.1% of the housing stock while three- and four-family buildings comprise 5.7%. Multifamily housing accounts for the remaining 12.5% of the community’s housing. This is somewhat below the comparable share for Mercer County, or 23.0%. Buildings with 50 or more units constitute the largest portion of the multifamily stock and 8% of all housing structures in Pennington.

Table 17: Units in Structure

Housing Type	Pennington	Mercer County	New Jersey
1-unit, detached	67.4%	47.5%	52.7%
1-unit, attached	12.3%	20.6%	10.0%
2 units	2.1%	4.3%	8.6%
3 or 4 units	5.7%	4.1%	6.1%
5 to 9 units	0.4%	4.2%	4.7%
10 to 19 units	3.7%	8.0%	4.9%
20 to 49 units	0.4%	3.8%	4.2%
50 or more units	8.0%	7.0%	7.9%
Mobile home	0.0%	0.4%	0.9%
Boat, RV, van, etc.	0.0%	0.0%	0.0%

Source: U.S. Census Bureau, 2019-2023 American Community Survey 5-Year Estimates

Single-family housing accounts for most owner-occupied units. Altogether, one-unit attached and detached dwellings comprise 92.5% of owner-occupied housing units, with 79.3% in detached residences and 13.1% in attached residences per Table 18. Just under five percent of owner-occupied units are located in two-unit and 3- or 4-unit structures. The rest of the owner-occupied stock, 2.9%, is located in structures containing between 10 and 19 units. Single-family housing that is either attached or detached also accounts for most renter-occupied units at a rate of 40.6%. Around a quarter of renter-occupied units are in two-unit and 3- or 4-unit structures. Multifamily buildings comprise the final third of the rental housing stock, with structures containing 50 or more units accounting for 23.4% of all rental housing units. The remaining rental households are distributed as follows: 2.1% in housing with 5 to 9 units per structure, 8.4% in housing with 10 to 19 units per structure, and 2.5% in housing with 20 and 49 units per structure.

Table 18: Units in Structure by Tenure

Housing Type	Pennington		Mercer County		New Jersey	
	Owner-Occupied	Renter-Occupied	Owner-Occupied	Renter-Occupied	Owner-Occupied	Renter-Occupied
1-unit, detached	79.3%	33.5%	71.9%	10.8%	77.1%	11.7%
1-unit, attached	13.1%	7.1%	21.3%	17.9%	10.2%	8.4%
2 units	1.7%	4.2%	1.3%	9.0%	4.6%	15.5%

Housing Type	Pennington		Mercer County		New Jersey	
	Owner-Occupied	Renter-Occupied	Owner-Occupied	Renter-Occupied	Owner-Occupied	Renter-Occupied
3 or 4 units	2.9%	18.8%	0.7%	9.5%	1.7%	13.8%
5 to 9 units	0.0%	2.1%	1.2%	9.0%	1.4%	10.6%
10 to 19 units	2.9%	8.4%	2.1%	17.5%	1.2%	11.4%
20 to 49 units	0.0%	2.5%	0.8%	8.8%	1.0%	9.7%
50 or more units	0.0%	23.4%	0.3%	17.1%	1.8%	18.4%
Mobile home	0.0%	0.0%	0.4%	0.2%	1.1%	0.4%
Boat, RV, van, etc.	0.0%	0.0%	0.0%	0.1%	0.0%	0.1%

Source: U.S. Census Bureau, 2019-2023 American Community Survey 5-Year Estimates

As previously mentioned, Pennington experienced small surges in population growth during the 1940s, 1950s, and 1980s. This history is partially reflected in Census Bureau data reproduced in Table 19. Approximately one-third of the borough’s housing stock was constructed before 1940, while 21.5% overall was built between 1950 and 1960. Housing construction accelerated during the 1980s, when 11.3% of residential units were built, and continued into the 1990s, when 12.1% of residential structures were built. Another 12.9% of units were developed during the 1960s and 1970s. Just under nine percent of homes were constructed in the twenty-first century, which is less than Mercer County, at 13.8%, and New Jersey at 15.5%.

Table 19: Year Structure Built

Year Structure Built	Pennington	Mercer County	New Jersey
Built 2020 or later	1.2%	0.5%	0.6%
Built 2010 to 2019	3.8%	4.8%	5.8%
Built 2000 to 2009	3.9%	8.5%	9.1%
Built 1990 to 1999	12.1%	8.3%	9.1%
Built 1980 to 1989	11.3%	12.3%	11.9%
Built 1970 to 1979	6.8%	11.9%	12.4%
Built 1960 to 1969	6.1%	13.0%	13.0%
Built 1950 to 1959	12.5%	15.4%	14.1%
Built 1940 to 1949	9.0%	6.3%	6.7%
Built 1939 or earlier	33.4%	19.0%	17.5%

Source: U.S. Census Bureau, 2019-2023 American Community Survey 5-Year Estimates

The housing stock is well-suited for families. Approximately two-thirds of homes in Pennington have three bedrooms or more according to Table 20. This slightly exceeds the percentage for Mercer County at 58.2%. Three-bedroom units constitute 27.1% of the borough’s housing stock while four-bedroom units comprise

31.6% of homes overall. Another 8.2% of houses have five bedrooms or more. About one-third of homes in Pennington have two bedrooms or less. Specifically, 18% have two bedrooms, 10.6% have one bedroom, and 4.6% do not have a separate bedroom.

Table 20: Number of Bedrooms, Housing Stock

Total Bedrooms	Pennington	Mercer County	New Jersey
No bedroom	4.6%	2.8%	3.0%
1 bedroom	10.6%	13.5%	14.2%
2 bedrooms	18.0%	25.5%	25.5%
3 bedrooms	27.1%	32.1%	31.8%
4 bedrooms	31.6%	20.6%	19.7%
5 or more bedrooms	8.2%	5.5%	5.9%

Source: U.S. Census Bureau, 2019-2023 American Community Survey 5-Year Estimates

Pennington’s prosperity can also be discerned in the selected housing quality data reproduced in Table 21. This is most apparent in the metric for overcrowding. The survey found that nearly all housing units had an occupants per room ratio of one or less. Given the bedroom and total rooms data, this is not surprising. Few homes in Pennington lack essential facilities. The ACS reported that 3.3% of borough homes lack kitchen facilities and that most homes use natural gas, electricity, or fuel oil or kerosene for heating.

Table 21: Housing Quality Indicators

Home Heating Fuel	Pennington	Mercer County	New Jersey
Utility gas	70.4%	72.1%	73.3%
Bottled, tank, or LP gas	0.0%	1.5%	2.5%
Electricity	15.8%	18.9%	15.6%
Fuel oil, kerosene, etc.	12.8%	6.4%	6.8%
Coal or coke	0.6%	0.0%	0.0%
Wood	0.4%	0.1%	0.3%
Solar energy	0.0%	0.1%	0.2%
Other fuel	0.0%	0.4%	0.5%
No fuel used	0.0%	0.6%	0.8%
Lacking Facilities	Pennington	Mercer County	New Jersey
Lacking complete plumbing facilities	0.0%	0.3%	0.3%
Lacking complete kitchen facilities	3.3%	0.7%	0.8%
No telephone service available	0.0%	1.3%	0.9%

Occupants Per Room	Pennington	Mercer County	New Jersey
1.00 or less	99.5%	97.0%	96.3%
1.01 to 1.50	0.0%	2.2%	2.4%
1.51 or more	0.5%	0.9%	1.3%

Source: U.S. Census Bureau, 2019-2023 American Community Survey 5-Year Estimates

HOUSING MARKET ANALYSIS

Approximately 58.8% of Pennington homeowners have a mortgage while 41.2% do not per Table 22. The percentage of homeowners with a mortgage is just below the share for Mercer County, where 62.8% of homeowners have a mortgage.

Table 22: Mortgage Status

Mortgage Status	Pennington	Mercer County	New Jersey
With a mortgage	58.8%	62.8%	64.4%
Without a mortgage	41.2%	37.2%	35.6%

Source: U.S. Census Bureau, 2019-2023 American Community Survey 5-Year Estimates

Home values in the borough are higher than those for Mercer County overall. The median home value in Pennington is \$608,200, which surpasses the median home values of \$351,000 for Mercer County and \$427,600 for New Jersey according to Table 23. A sizable portion of homes is valued at the upper end of the market, with 4.1% of homes valued at \$1,000,000 or above, and another 32.3% valued between \$750,000 and \$999,999. In comparison, just 13.2% of homes in Mercer County have a value of at least \$750,000. Overall, 60.4% of borough homes have a value of \$500,000 or more. More than a quarter of homes are valued between \$300,000 and \$499,999. Approximately 11.6% are valued below \$300,000, but only a small portion are worth less than \$100,000.

Table 23: Home Values

Home Value	Pennington	Mercer Co.	New Jersey
Less than \$100,000	2.6%	7.2%	4.4%
\$100,000 to \$299,999	9.0%	33.9%	23.6%
\$300,000 to \$499,999	28.0%	29.6%	33.8%
\$500,000 to \$749,999	24.0%	16.1%	23.0%
\$750,000 to \$999,999	32.3%	7.1%	8.6%
\$1,000,000 or more	4.1%	6.1%	6.6%
Median Home Value	\$608,200	\$351,000	\$427,600

Source: U.S. Census Bureau, 2019-2023 American Community Survey 5-Year Estimates

In the five years before the Covid-19 pandemic, the average price of homes sold in Mercer County and, by extension, Pennington, remained stable. In the case of the latter, average annual prices stayed in a narrow range, between \$493,436 and \$517,502 as shown in Table 24. Prices in Mercer County remained in a relatively tight range as well, hovering between \$363,623 and \$405,154. The volume of homes sold also remained stable during this period. After a dip in 2020, the number of homes sold in Pennington rebounded in 2021, reaching a peak of 57 homes. In 2024, however, the annual home sales figure saw its lowest figure in a decade. This is not owing to lack of demand as prices have skyrocketed. Instead, fewer homeowners are putting their homes on the market. Overall, the average sales price in Pennington reached \$648,072 in 2024, which represents a 30% rise over 2020.

Table 24: Home Sales

Year	Pennington		Mercer County	
	Total Sales	Average Sales Price	Total Sales	Average Sales Price
2015	44	\$504,225	2,660	\$376,103
2016	35	\$493,436	2,452	\$405,154
2017	46	\$517,502	2,999	\$375,151
2018	34	\$516,865	3,094	\$363,623
2019	44	\$501,822	2,578	\$372,131
2020	32	\$500,442	2,891	\$357,424
2021	57	\$518,836	3,484	\$398,975
2022	51	\$599,402	4,325	\$417,251
2023	42	\$661,581	2,876	\$454,829
2024	29	\$648,072	2,514	\$500,349

Source: N.J. Department of Treasury, Division of Taxation

The spike in home values has not filtered down to residential tax assessments yet (Table 25). The average home assessment of \$488,135, in 2024 is slightly below \$493,650, the level recorded in 2016. In fact, home assessments actually declined marginally between 2016 and 2020. A similar pattern has played out in the rest of the county, where the average assessed value has increased only marginally, from \$273,152 to \$285,917.

Table 25: Residential Tax Assessments

Year	Total Lots, Pennington	Average Assessment	Total Lots, Mercer County	Average Assessment
2016	871	\$493,650	108,291	\$273,152
2020	912	\$489,693	108,531	\$283,712
2024	956	\$488,135	108,319	\$285,917

Source: N.J. Department of Treasury, Division of Taxation

Pennington’s households are somewhat better situated to meet the cost of housing than their peers in the rest of Mercer County. A sizable percentage of all households, 53.1%, spend less than 20% of their income on housing costs, compared to 41.2% in Mercer County according to Table 26. An additional 22.1% of households spend between 20% and 29% of their income on housing while 21.6% of households are what is considered cost-burdened, meaning that they spend at least 30% of household income on housing costs. Even so, the percentage of cost-burdened households in Pennington is lower than the percentage in Mercer County, 33.8%, and New Jersey, 35.7%.

Table 26: Burden of Housing Costs, All Households

Housing Costs as % of Household Income	Pennington	Mercer County	New Jersey
Less than 20% of Household Income	53.1%	41.2%	39.3%
20 to 29% of Household Income	22.1%	22.7%	22.9%
30% or more of Household Income	21.6%	33.8%	35.7%
Zero or negative income	0.9%	1.4%	1.1%
No cash rent	2.4%	0.9%	1.1%

Source: U.S. Census Bureau, 2019-2023 American Community Survey 5-Year Estimates

Homeowners are under less financial strain than renters. Of all homeowners, 20.4% spend at least 30% of their income on housing per Table 27. This is lower than both the percentages for Mercer County, 25.0%, and New Jersey, 28.5%. Another 20.7% of households spend between 20 to 29% of their income on housing 58.9% spend less than 20% of their income on housing costs.

Table 27: Burden of Housing Costs, Owner-Occupied Housing

Housing Costs as % of Household Income	Pennington	Mercer County	New Jersey
Less than 20% of Household Income	58.9%	51.0%	48.1%
20 to 29% of Household Income	20.7%	23.4%	22.7%
30% or more of Household Income	20.4%	25.0%	28.5%
Zero or negative income	0..6%	0.6%	0.6%

Source: U.S. Census Bureau, 2019-2023 American Community Survey 5-Year Estimates

Table 18 indicates that 58.6% of households with a mortgage pay \$3,000 or more on housing per month. This surpasses the share of 36.9% for Mercer County and the share of 42.7% for New Jersey. Another 25.3% of households in owner-occupied housing spend between \$2,000 and \$2,999 on housing costs every month. In other words, 83.9% of Pennington households spend at least \$2,000 on housing costs every month. In comparison. 71.7% of Mercer County homeowners have housing costs of at least \$2,000 per month. Overall, the median household in Pennington spends \$3,237 every month on housing costs. Exorbitant housing costs are a concerning issue for all of New Jersey, where the median monthly cost for homeowners with a mortgage is \$2,787. Countywide, the median cost for homes with a mortgage is \$2,577 per month.

Table 28: Monthly Costs, Homeowners with a Mortgage

Monthly Owner Costs	Pennington	Mercer County	New Jersey
Less than \$500	0.0%	0.3%	0.4%
\$500 to \$999	0.0%	2.0%	1.8%
\$1,000 to \$1,499	7.7%	8.8%	6.6%
\$1,500 to \$1,999	8.4%	17.2%	13.7%
\$2,000 to \$2,499	9.2%	19.3%	17.7%
\$2,500 to \$2,999	16.1%	15.5%	17.0%
\$3,000 or more	58.6%	36.9%	42.7%
Median Monthly Housing Cost	\$3,237	\$2,577	\$2,787

Source: U.S. Census Bureau, 2019-2023 American Community Survey 5-Year Estimates

Monthly housing costs are necessarily lower, if relatively high for those households without a mortgage. These expenditures go towards taxes, insurance payments, utilities, and other fees. In all, 82.5% of Pennington households without a mortgage pay \$1,000 per month or more in housing costs according to Table 29. This exceeds both the countywide share of 59.6% and the statewide share of 67.1%. For Pennington homeowners without a mortgage, the median monthly housing cost is over \$1,500. This is higher than the comparable figures of \$1,114 for the county and \$1,205 for the state. In addition, 2.9% of homeowners without a mortgage spend between \$800 and \$999 per month on housing while 6% of such households spend between \$600 and \$799 per month. The remaining 8.6% of households have monthly housing costs of between \$400 and \$599.

Table 29: Monthly Costs, Homeowners without a Mortgage

Monthly Owner Costs	Pennington	Mercer County	New Jersey
Less than \$250	0.0%	1.3%	1.9%
\$250 to \$399	0.0%	2.8%	2.6%
\$400 to \$599	8.6%	7.2%	5.0%
\$600 to \$799	6.0%	12.3%	8.8%
\$800 to \$999	2.9%	16.7%	14.6%
\$1,000 or more	82.5%	59.6%	67.1%
Median Monthly Housing Cost	\$1,500+	\$1,114	\$1,205

Source: U.S. Census Bureau, 2019-2023 American Community Survey 5-Year Estimates

Housing costs put a financial strain on renters, with 25.5% of households in renter-occupied housing spending at least 30% of their income on housing (Table 30). While renters in Pennington are more likely to be cost-burdened than their homeowner neighbors, they are comparatively less cost-burdened than renters in Mercer County overall, where 48.1% of households that rent set aside at least 30% of their

income towards housing costs. Roughly 27.6% of renters in Pennington spend between 20% and 29% of their income on housing while 30.5% of renters spend less than 20% of their income on housing. It is important to note that 16.3% of households in renter-occupied housing have zero or negative income and, presumably, use savings to pay for the cost of housing.

Table 30: Burden of Housing Costs, Renter-Occupied Housing

Housing Costs as % of Household Income	Pennington	Mercer County	New Jersey
Less than 20% of Household Income	30.5%	25.3%	23.8%
20 to 29% of Household Income	27.6%	21.5%	23.1%
30% or more of Household Income	25.5%	48.1%	48.3%
Zero or negative income	4.6%	2.7%	1.9%
No cash rent	11.7%	2.4%	2.9%

Source: U.S. Census Bureau, 2019-2023 American Community Survey 5-Year Estimates

Per Tab 31, Pennington’s median gross rent of \$1,819 is relatively high compared to the rest of Mercer County, where the median rent is \$1,515. There are relatively few units in Pennington at the upper end of the rental market as only 7.1% of households in renter-occupied housing have a gross rent of at least \$3,000, and just 1.9% of households have a gross rent between \$2,500 and \$2,999. Approximately 21.8% of renting households spend between \$2,000 and \$2,499 on gross rent, which is above the figures for the county and state. Most renting households spend between \$1,500 and \$1,999. The exact statistic, 53.1%, is nearly twice the amount of 27.4% for Mercer County and 28.5% for New Jersey. Only 16.1% of households in renter-occupied housing have a gross rent of less than \$1,500, compared to 49.2% of such households countywide.

Table 31: Gross Rent

Gross Rent	Pennington	Mercer Co.	New Jersey
Less than \$500	0.0%	8.7%	6.3%
\$500 to \$999	10.9%	10.3%	8.7%
\$1,000 to \$1,499	5.2%	30.2%	26.3%
\$1,500 to \$1,999	53.1%	27.4%	28.5%
\$2,000 to \$2,499	21.8%	11.7%	15.9%
\$2,500 to \$2,999	1.9%	5.2%	6.7%
\$3,000 or more	7.1%	6.6%	7.6%
Median Rent	\$1,819	\$1,515	\$1,653

Source: U.S. Census Bureau, 2019-2023 American Community Survey 5-Year Estimates

DEVELOPMENT TRENDS

Borough staffers have approved just over eight residential building permits per year on average since 2013. But for a municipality that is small in area and population, it is difficult to draw conclusions without looking into the raw data. The average is boosted by the rate of permitting in just three years, 2017, 2018, and 2020, when a total of 92 housing permits were issued. Only two of the other eight years in the chart show any construction activity, when two permits were issued between them.

Table 32: Housing Permits Issued Annually, 2013-2023

Year	Pennington	Mercer County	New Jersey
2013	0	862	18,795
2014	0	280	22,896
2015	0	708	19,503
2016	0	913	24,170
2017	16	439	25,961
2018	30	439	26,048
2019	1	423	30,770
2020	46	729	26,680
2021	1	404	30,044
2022	0	952	31,792
2023	0	740	21,682
Total	94	6,889	278,341
Annual Average	8.5	626	25,304

Source: N.J. Department of Community Affairs, Division of Codes and Standards

The construction of one- and two-family homes is responsible for most of the homes permitted in Pennington during the last eleven years. Since 2013, an average of 7.7 one- and two-family units were permitted in Pennington per year, compared with less than one multifamily unit on average according to Table 33. Multifamily construction is relatively infrequent. Building permits have been approved for nine multifamily units during the last eleven years on record.

Table 33: Total Housing Permits Issued by Type, 2013-2023

Year	Pennington			Mercer County			New Jersey		
	1-2 Units	Multi-family	Mixed-Use	1-2 Units	Multi-family	Mixed-Use	1-2 Units	Multi-family	Mixed-Use
2013	0	0	0	164	696	2	9,666	8,998	131
2014	0	0	0	221	58	1	10,678	11,909	309
2015	0	0	0	171	537	0	9,470	9,989	44
2016	0	0	0	176	737	0	8,885	15,217	68
2017	16	0	0	176	263	0	9,201	16,146	614
2018	30	0	0	215	224	0	9,026	16,811	211
2019	0	1	0	160	263	0	8,954	21,762	54
2020	38	8	0	190	536	3	8,673	17,950	57
2021	1	0	0	183	221	0	10,479	19,471	94
2022	0	0	0	135	817	0	9,163	21,913	716
2023	0	0	0	312	428	0	9,552	11,538	592
Total	85	9	0	2,103	4,780	6	103,747	171,704	2,890
Annual Avg.	7.7	0.8	0	191.2	434.5	0.5	9,431.5	15,609.5	262.7

Source: N.J. Department of Community Affairs, Division of Codes and Standards

Table 34 contains the data for demolition permits for the last eleven years. Since 2013, Pennington has approved less than one demolition permit a year for one- and two-family homes. No demolition permits were issued for any multifamily or mixed-use residential properties.

Table 34: Demolition Permits, 2013-2023

Year	1-2 Family	Multifamily	Mixed-Use
2013	0	0	0
2014	0	0	0
2015	0	0	0
2016	0	0	0
2017	2	0	0
2018	1	0	0
2019	0	0	0
2020	1	0	0
2021	0	0	0
2022	0	0	0
2023	0	0	0
Total	4	0	0
Annual Average	0.4	0	0

Source: N.J. Department of Community Affairs, Division of Codes and Standards

Adjusting for demolition, the municipality has permitted, on net, an average of 8.2 housing units annually since 2013 according to Table 35. The infrequency of demolitions in the borough means that the overall number of housing permits shown in Table 33 above is not significantly offset by a deliberate reduction in housing stock.

Table 35: Net Housing Permits, 2013-2023

Year	1-2 Family	Multi-family	Mixed-Use	Total
2013	0	0	0	0
2014	0	0	0	0
2015	0	0	0	0
2016	0	0	0	0
2017	14	0	0	14
2018	29	0	0	29
2019	0	1	0	1
2020	37	8	0	45
2021	1	0	0	1
2022	0	0	0	0
2023	0	0	0	0
Total	81	9	0	90
Annual Avg.	7.4	0.8	0	8.2

Source: N.J. Department of Community Affairs, Division of Codes and Standards

Compared to Mercer County, a paltry amount of office space, which is classified as either “new” or “addition,” has been constructed in Pennington since 2013. As shown in Table 37, 2013 and 2015 are the only years to have office growth, when the borough issued construction permits for a total of 8,556 square feet of new or additional office space. No new or additional retail space of any kind has been permitted for construction since 2013. This is unlike Mercer County, which has experienced substantial retail growth over the same period.

Table 36: Building Permits, Select Nonresidential Construction, 2013-2023

Year	Pennington		Mercer County	
	Office (SF)	Retail (SF)	Office (SF)	Retail (SF)
2013	6,373	0	115,739	23,617
2014	0	0	516,203	29,186
2015	2,183	0	821,678	390,101
2016	0	0	212,470	55,699
2017	0	0	148,603	86,964
2018	0	0	331,641	14,273
2019	0	0	1,048,176	35,968
2020	0	0	33,918	9,783
2021	0	0	153,245	98,403
2022	0	0	398,494	24,747
2023	0	0	95,812	20,400
Total	8,556	0	3,875,979	789,141
Annual Avg.	778	0	352,362	71,740

Source: N.J. Department of Community Affairs, Division of Codes and Standards

PLANNING PROJECTIONS

Mercer County is served by the Delaware Valley Regional Planning Commission (“DVRPC”), one of New Jersey’s three metropolitan planning organizations. DVRPC calculates population and employment projections to anticipate the long-range planning needs of the Greater Philadelphia Region.

The agency expects the population of the borough to grow at a slower pace compared to Mercer County and DVRPC’s planning area, which consists of Burlington, Camden, Gloucester, and Mercer Counties in New Jersey, and Chester, Delaware, Montgomery, and Philadelphia Counties in Pennsylvania. Specifically, DVRPC forecasts the borough’s population to rise to 2,885 residents by 2050, a 2.96% increase over 2020 as shown in Table 37. In comparison, DVRPC is forecasting the population of Mercer County to increase by 9.21% and the DVRPC planning area to increase by 7.79%.

DVRPC expects household growth in Pennington to be slightly more robust, climbing to 1,104 households by 2050, a 7.39% increase over 2020. While this rate is double the projected population growth rate, the household growth rate is approximately half the rate forecast for Mercer County, 14.03%, and the overall planning area, 14.38%.

Total employment in Pennington is expected to increase to 2,966 workers by 2050, an 18.12% increase over 2020. This is double the increase of 8.44% that is projected for Mercer County and greater than the

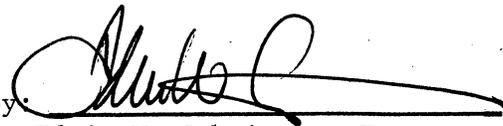
10.05% figure for the planning area. Employment growth of this magnitude will put added pressure on the housing supply, with workers searching for housing near their place of work.

Table 37: Long-term Population, Household and Employment Forecasts

Metric	Pennington	Mercer County	DVRPC
2020 Population	2,802	387,340	5,893,110
2050 Population	2,885	423,029	6,351,894
<i>%, Population Change, 2020-2050</i>	<i>2.96%</i>	<i>9.21%</i>	<i>7.79%</i>
2020 Household	1,028	139,361	2,269,002
2050 Household	1,104	158,907	2,595,287
<i>%, Household Change 2020-2050</i>	<i>7.39%</i>	<i>14.03%</i>	<i>14.38%</i>
2020 Employment	2,511	285,579	3,546,295
2050 Employment	2,966	309,669	3,902,846
<i>%, Employment Change, 2020-2050</i>	<i>18.12%</i>	<i>8.44%</i>	<i>10.05%</i>
<i>Source: 2050 Version 2.0 Population and Employment Forecasts (2050 Version 2.0, v2.0), adopted by the DVRPC Board on October 24, 2024</i>			

Appendix 2

1005
#16
1305
153
Reb

Prepared by: 
Edwin W. Schmierer, Esq.

Deed Restriction
To Accessory Apartment Rental Property
With Covenants Restricting Rentals, Conveyances and Improvements
And Requiring Notice of Foreclosure and Bankruptcy

THIS DEED RESTRICTION, is entered into as of this 1th day of JUNE, 2012, by and between:

Craig Lewis and Antonia Lewis, husband and wife, having an address at 20 East Welling Avenue, Pennington, New Jersey ("Owner"), and

Borough of Pennington, having an address at 30 North Main Street, Pennington, New Jersey ("Borough"),

WITNESSETH

Article I. Consideration. In consideration of the subsidies received by the Owner from the Borough for the development of an accessory apartment rental unit ("Accessory Apartment") located on certain real property owned in fee simple by the Owner, described below, the Owner hereby agrees to abide by the covenants, terms and conditions set forth in this Deed Restriction with respect to the land and improvements specifically described below.

Article II. Description of Property. The property that is the subject of this Deed Restriction consists of all of the land and a portion of the improvements thereon, that is located in the Borough of Pennington, County of Mercer and State of New Jersey, designated as Lot 23 in Block 1002 on the Pennington Borough Tax Map, and known by the street address 20 East Welling Avenue, Pennington, New Jersey. The Property is described in Exhibit A attached hereto and made a part hereof, and the Accessory Apartment is shown on Exhibit B, attached hereto and made a part hereof.

Article III. Affordable Housing Covenants. The following covenants (ACovenants@) shall run with the land for a period of ten (10) years, beginning on the date of the initial occupancy of the Accessory Apartment as stated in the initial Lease for the rental of the Accessory Apartment by an income-eligible household, and ending after the expiration of the ten (10) year period ("Control Period").

- A. Sale, rental and use of the Accessory Apartment is governed by regulations known as the Uniform Housing Affordability Controls, which are found in New Jersey Administrative Code at Title 5, Chapter 80, Subchapter 26 (N.J.A.C. 5:80-26.1, et seq) ("Uniform Controls").
- B. The Accessory Apartment shall be used solely for the purpose of providing an affordable housing rental dwelling unit for low-income qualified households, as defined by applicable State and local laws and regulations governing affordable housing as the same may now exists or be amended and supplemented from time to

INST # 2012029637 D BK 6150 PG 1307 06/22/2012 01:55:19 PM
PAULA SOLLAMI COVELLO COUNTY CLERK, MERCER COUNTY NEW JERSEY



time, and no commitment for any such dwelling unit shall be given or implied, without exception, to any person who has not been certified for that unit in writing by the Borough or its administrative agent. For as long as the Property remains within the Control Period, sale of the Property shall be expressly subject to this Deed Restriction. Deeds of conveyance for the Property must have this Deed Restriction appended thereto, and no sale of the Property shall be lawful, unless approved in advance and in writing by the Borough or its administrative agent.

- C. No improvements may be made to the Accessory Apartment that would affect the bedroom configuration of the dwelling unit, and any improvements to the Accessory Apartment must be approved in advance and in writing by the Borough or its administrative agent.
- D. The Owner shall notify the Borough of any foreclosure actions filed with respect to the Property within five (5) business days of service upon Owner.
- E. The Owner shall notify the Borough within three (3) business days of the filing of any petition for protection from creditors or reorganization filed by or on behalf of the Owner.
- F. At the expiration of the Control Period the Accessory Apartment shall cease to exist unless Owner continues to use the Accessory Apartment as an affordable housing rental dwelling unit for low-income qualified households.

Article IV. Foreclosure. This Deed Restriction shall not be terminated in the event of a Judgment of Foreclosure on the Property that includes the Accessory Apartment. An Execution of Foreclosure Sale shall not result in a release of the Accessory Apartment from the provisions and restrictions of this Deed Restriction.

Article V. Remedies for Breach of Affordable Housing Covenants. A breach of the Covenants will cause irreparable harm to the Borough and to the public, in light of the public policies set forth in the New Jersey Fair Housing Act, the Uniform Housing Affordability Control rules found at N.J.A.C. 5:80-26, and the obligation for the provision of low and moderate-income housing.

- A. In the event of a threatened breach of any of the Covenants by the Owner, or any successor in interest or other owner of the Property, the Borough shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance.
- B. Upon the occurrence of a breach of any Covenants by the Owner, or any successor in interest or other owner of the Property, the Borough shall have all remedies provided at law or equity including but not limited to forfeiture, foreclosure, acceleration of all sums due under any mortgage, recouping of any funds from a sale in violation of the Covenants, diverting of rent proceeds from illegal rentals, injunctive relief to prevent further violation of said Covenants, entry on the premises, those provided under Title 5, Chapter 80, Subchapter 26 of the New Jersey Administrative Code and specific performance.

IN WITNESS WHEREOF, the Borough and the Owner have executed this Deed Restriction in triplicate as of the date first above written.

Witness/Attest:

BOROUGH OF PENNINGTON, a municipal corporation of the State of New Jersey

Elizabeth Sterling
Elizabeth Sterling, Clerk

Anthony Persichilli
By: Anthony Persichilli, Mayor

Mary W. Mustetta

Craig Lewis
Craig Lewis, Owner

Mary W. Mustetta

Antonia Lewis
Antonia Lewis, Owner

ACKNOWLEDGMENTS

STATE OF NEW JERSEY)
COUNTY OF MERCER)SS.

I CERTIFY that on JUNE 7, 2012,

Elizabeth Sterling, personally came before me, and this person acknowledged under oath, to my satisfaction, that:

(a) this person is the Clerk of THE BOROUGH OF PENNINGTON, a municipal corporation of the State of New Jersey, the corporation named in this deed;

(b) this person is the attesting witness to the signing of this document by the proper corporate officer who is Anthony Persichilli, Mayor;

(c) this document was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of its governing body;

(d) this person knows the proper seal for the corporation which was affixed to this deed;

(e) this person signed this proof to attest to the trust of these facts.

Elizabeth Sterling
Elizabeth Sterling, Clerk

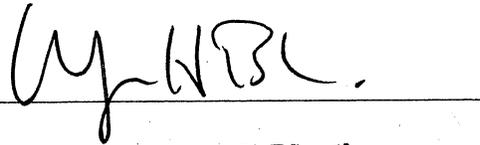
Signed and sworn to before me on JUNE 7, 2012.

Wayne H Blauth
Notary Public

Wayne H Blauth
Notary Public
State of New Jersey
My Commission Expires 04-14-2014

STATE OF NEW JERSEY)
COUNTY OF MERCER)SS.

I CERTIFY that on JUNE 8, 2012, Craig Lewis and Antonia Lewis, husband and wife, personally came before me and acknowledged under oath, to my satisfaction, that this person: (a) is named in and personally signed this document; and (b) signed, sealed and delivered this document as his act and deed.



Wayne H Blauth
Notary Public
State of New Jersey
My Commission Expires 04-14-2014

Land Surveyors

777 Alexander Road

P.O. Box 3227

Princeton, New Jersey 08543-3227

EXHIBIT A

Order No. 35958-400-11
Pennington Borough Tax Map
Sheet 8
Block 28.05
Lot 18

DESCRIPTION OF LOT 18 IN BLOCK
28.05 AS SHOWN ON SHEET 8 OF THE
PENNINGTON BOROUGH TAX MAP
SITUATE LYING AND BEING IN THE
BOROUGH OF PENNINGTON, COUNTY
OF MERCER, STATE OF NEW JERSEY.
October 6, 2004

BEGINNING at a **POINT** in the southerly right-of-way line of East Welling Avenue a 70 foot wide right-of-way, said point being S 88 degrees 50 minute 00 seconds E from the intersection of the easterly right-of-way line of South Main Street a 100 foot wide right-of-way with the said southerly right-of-way line of East Welling Avenue and from said **BEGINNING POINT** running, thence;

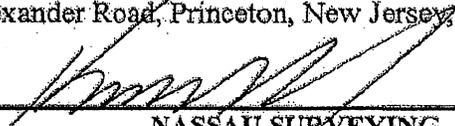
- (1) Along the said southerly right-of-way line of East Welling Avenue, S 88 degrees 50 minutes 00 seconds E, 80.00 feet to a point corner to Lot 19.01 Block 28.05 lands N/F Donald E. Blankenbush, thence;
- (2) Along the westerly line of said lands, S 03 degrees 35 minutes 00 seconds W, 200.00 feet to a point corner to Lot 64 Block 28.05 lands N/F John A. & Linda M. Oliver, thence;
- (3) Along the northerly line of said lands and continuing along the northerly line of Lot 63 Block 28.05 lands N/F Jacques G. Ruch, N 88 degrees 50 minutes 00 seconds W, 80.00 feet to a point corner to Lot 17 Block 28.05 lands N/F Norah F. Ducharme, thence;
- (4) Along the easterly line of said lands, N 03 degrees 35 minutes 00 seconds E, 200.00 feet to the **POINT** and **PLACE** of **BEGINNING**.

Containing 15,986 square feet or 0.37 acres of land more or less.

The above described premises being subject to and/or together with any easements and/or declarations of record.

The above described premises as being shown on a plan entitled, "Plan of Survey of Lot 18, Block No. 28.05 of property for Craig and Antonia Lewis, situate in Pennington Borough, Mercer County, New Jersey, Scale 1"=20', dated October 5, 2004" prepared by Van Note-Harvey Associates, P.C., Land Surveyors, 777 Alexander Road, Princeton, New Jersey, 08540.

According to a legal description by Nassau Surveying, a Division of Van Note-Harvey Associates, P.C., Land Surveyors, 777 Alexander Road, Princeton, New Jersey, 08540.


NASSAU SURVEYING
DIVISION OF VAN NOTE-HARVEY ASSOCIATES, P.C.
KENNETH R. RAIKE
NEW JERSEY PROFESSIONAL LAND SURVEYOR #36753

Appendix 3

§ 215-78.2 H-MU Highway Mixed Use Zone

- A) Purpose. The purpose of this zone is to steadily transform the area covered by the previous commercial-only Business Highway (B-H) and Office Business (O-B) zones into a mixed-use zone that integrates a variety of housing and commercial uses. It is envisaged that the housing will be in high density, attached, multi-story buildings providing opportunities for deed-restricted affordable housing to help meet the Borough's fourth round obligation and non-restricted housing that is affordable to new residents wishing to join the Pennington community. It replaces the Route 31 Corridor Business Overlay zone which attempted to diversify the area it covered from large lots (65,000 sq.ft.) to smaller lots (10,000 sq.ft.) and permit uses that would create a pedestrian-oriented shopping environment consistent with the character of the surrounding community. The Overlay zone did not include housing.
- B) Building configurations permitted.
- 1) Mixed commercial and attached residences, with a maximum height of 45 feet.
 - a) No more than 3 stories
 - b) Retail and other public-facing businesses allowed only on the first (ground) floor, subject to the permitted primary, secondary, conditional, and prohibited uses in sections below.
 - c) Executive or administrative, general business and professional offices allowed on first and second floors.
 - d) No more than 24 residences per floor.
 - 2) Attached residences, including those with ground floor indoor parking
 - a) No more than 3 stories, in addition to the parking floor, with a maximum height of 45 feet.
 - b) No business or commercial uses allowed.
 - c) Not permitted to front directly on State Route 31.
 - 3) Commercial and business use only
 - a) Existing commercial and business-use buildings in the zone as of the date of approval of this ordinance may continue as they are, or be modified in the future, subject to the permitted primary, secondary, conditional, and prohibited uses in sections C, D, E and F below.
 - b) Where substantial modifications to sites are contemplated, the owner of the site is encouraged to create residential, or mixed residential and commercial buildings, on the site to help the Borough move towards a more diversified and affordable supply of housing.
- C) Design and other regulations for all buildings
- 1) All lands and uses in the H-MU Zone shall comply with the regulations set forth in the Schedule of Area, Yard and Building Regulations.
 - 2) More than one building shall be permitted on a lot, provided that the total floor area ratio and total lot coverage of the combined uses/buildings on the lot do not exceed the maximums specified for the zoning district for a use/building on an individual lot.

- 3) All portions of all buildings on one lot shall be compatibly designed with a common architectural motif, whether constructed all at one time or in stages over a period of time. The architectural design and material surface and color of all building walls on all sides of all buildings shall be suitably finished for aesthetic purposes and shall be compatible in design and scale with the surface materials existing within the neighborhood.
- 4) Subject to section B above, certain buildings may contain more than one principal permitted use, provided that the total floor area ratio and total building and lot coverages of the combined uses do not exceed the maximums specified for the zoning district, that each use occupies a minimum gross floor area of 500 square feet and that the combined off-street parking requirements for all uses are met.
- 5) All buildings shall be separated by a minimum of 30 feet where any part of such separation is to be used for parking or vehicular circulation.
- 6) Unless otherwise specifically approved by the Board as part of a site plan application, no merchandise, product, equipment or similar material or objects shall be displayed or stored outside, except where otherwise permitted by this chapter or the code of the Borough of Pennington. Where merchandise, products, equipment or similar material or objects are approved by the Board to be displayed or stored outside, the materials shall be suitably screened to be obscured from view from any adjacent residential uses and must be situated within the property lines of the principal use.
- 7) All portions of a lot not covered by buildings or structures (e.g., parking lots, parking spaces, loading areas, access aisles, driveways, sidewalks, walkways, curbs, trash enclosures, etc.) shall be suitably landscaped with grass, shrubs and trees and shall be maintained in good condition. In any case, no less than 35% of the area of any lot shall be so landscaped, and the landscaped area may include approved detention and/or retention basins.
- 8) Landscaping. Any front or side yard with a parking area visible from the street shall be screened with a row of shrubs at least two feet high when mature. Street trees shall be planted along any street frontage 30 to 40 feet on center, and foundation plantings shall be included along the building facade. A landscaped or grass strip at least five feet wide shall be provided along the front and side yard property lines
- 9) On-site circulation. Driveways with appropriate cross easements providing access between adjacent lots shall be permitted and provided where feasible. On-site circulation systems and parking areas shall be designed to accommodate the interconnection between adjacent lots.
- 10) Pedestrian access. Adequate and safe pedestrian access between uses or separate buildings in the development or on adjacent lots shall be provided, and the design of the development shall promote nonvehicular, pedestrian-friendly access, inclusive of bicycle racks, benches or other such amenities. Sidewalks shall be provided along street frontages and throughout the development.
- 11) Sign requirements. All signage shall be in accordance with the requirements specified in Article III, Sign Regulations, and specifically § 215-44 of this chapter.
- 12) Fences, walls and retaining walls shall be in accordance with the provisions of § 215-24.
- 13) Roof-mounted solar panels are allowed and are encouraged.
- 14) Geothermal heating is allowed and is encouraged.

- D) Permitted business and commercial primary uses. In buildings or on sites where business or commercial or use is permitted, the primary uses allowed shall be as follows:
- 1) Retail business and personal service establishments which are clearly of a community service character, such as retail shops, studios for the arts or fitness, barber shops and beauty salons.
 - 2) Restaurants, including those of a quick serve nature without a drive through window.
 - 3) Executive or administrative, general business and professional offices.
 - 4) Animal hospitals.
 - 5) Hardware stores.
 - 6) Wholesale business establishments other than cannabis wholesalers.
 - 7) Technical training centers provided all instruction is conducted indoors.
 - 8) Educational uses, other than schools and institutions of higher learning
 - 9) Child-care centers licensed by the Department of Human Services pursuant to P.L. 1983, c. 492 (N.J.S.A. 30:5B-1 et seq.).
 - 10) Municipal services, emergency response services and Post Office
 - 11) Other business uses which in the opinion of the Planning Board acting as a Board of Adjustment are similar in scale and service nature to those permitted above.
- E) Permitted secondary and accessory uses. For buildings and sites where business or commercial use is permitted, the secondary uses allowed shall be as follows:
- 1) Municipal parks, playgrounds and buildings deemed appropriate and necessary by the Borough Council of the Borough of Pennington.
 - 2) Garage and storage buildings which are necessary to store any vehicles, equipment or materials on the premises in conjunction with a permitted use.
 - 3) Off-street parking for the use of employees, customers and visitors.
 - 4) Sidewalk sales by adjacent retail merchandise stores when authorized by a permit issued by the Borough Clerk.
 - 5) Signs as permitted by Article III, Sign Regulations, and specifically § 215-44.
 - 6) Make ready infrastructure and electric vehicle charging stations.
 - 7) Outdoor dining associated with a permitted restaurant use.
 - 8) Solar panels mounted to the roof of a building.
 - 9) Enclosures for the storage and collection of trash and recyclable materials.
 - 10) Outdoor recreation areas associated with permitted residential uses.
 - 11) Dog parks.
- F) Conditional business and commercial uses. The conditional uses allowed shall be as follows and shall be subject to the provisions of the indicated ordinances in Borough Code Chapter 215 Article VIII.
- 1) Public utility uses as a conditional use under N.J.S.A. 40:55D-67 (§ 215-80)
 - 2) Cannabis retailers, medical cannabis dispensaries and cannabis delivery services (§ 215-81)
 - 3) Schools and institutions of higher learning (§ 215-82)
 - 4) Scientific or research laboratories (§ 215-90)
 - 5) Health care facilities (§ 215-91)
 - 6) Banks (§ 215-95).
 - 7) Banks and financial institutions with drive-through facilities.

- a) The drive-through facility shall be located to the rear of the building.
 - b) For queuing purposes, room for at least two automobiles per drive-through window shall be provided.
- G) Prohibited uses. Any use not hereby specifically permitted is prohibited unless approved by the Planning Board acting as a Board of Adjustment. The following uses are hereby specifically prohibited:
- 1) Cannabis cultivators, cannabis manufacturers, cannabis wholesalers, cannabis distributors, medical cannabis cultivators, medical cannabis manufacturers and clinical registrants.
 - 2) Drive through facilities associated with a quick serve restaurant.
 - 3) No retail sales use may operate after 11:00 p.m. at night, and all site lights and signage shall be turned off at the close of business, except for a minimal amount of low-intensity security lighting specifically approved by the Planning Board.
- H) Permitted Residential Uses.
- 1) Objectives. The provisions of this subsection are intended to encourage the planning and construction of multifamily dwelling units within the H-MU Zone that meet the special needs of suburban families and at the same time protect and promote the health, safety and general welfare of the public and the Borough of Pennington.
 - 2) Qualifications. In order to qualify for consideration under the terms of this subsection, the site for any multifamily development shall be composed of a single tract of land, consisting of one or more contiguous lots. The physical conditions of the site, including soil type, ground water level, drainage and topography, shall be such as not to create hazards to the property or to the occupants, and the site shall not be subject to the possibility of subsidence or the reasonable probability of flooding or serious erosion.
 - 3) General requirements.
 - a) Access to site. Any multifamily dwelling unit site shall abut or have permanent access to an approved or existing public street. Private streets within any development shall be permitted but shall be protected by a permanent easement and shall provide for safe and suitable vehicular circulation in the development at all times. Dead-end or cul-de-sac streets shall conform to the requirements of the Residential Site Improvement Standards.
 - b) Access to buildings. Convenient vehicular access to all buildings on the attached dwelling unit development site shall be provided for emergency equipment, furniture moving vans, fuel trucks where required, garbage collection, general deliveries of goods and snow removal. Pedestrian access to the rear of all buildings fronting on a public street shall be provided.
 - c) Access to dwelling units. A safe and convenient means for pedestrian access to all dwelling units shall be provided in such manner as not to require passage through any other dwelling unit.
 - d) Services and facilities. The development of the site shall be designed so that it does not infringe upon adjoining properties. Utilities and other similar facilities shall be provided for the development without dependence upon the availability of such services on adjoining properties. All attached dwelling unit developments shall be connected to and serviced by public systems for the provision of water and disposal

- of sanitary and storm sewage. Such public systems shall have been determined adequate to serve the proposed development by competent authority designated by the Borough Council.
- e) Occupancy of dwelling units. No dwelling unit shall be occupied until all other dwelling units in the same building are completed and ready for occupancy, having all utility connections completed, pedestrian and vehicular accessways improved and parking areas paved and drained as designed and a certificate of occupancy having been issued.
 - f) Compliance with other ordinances and regulations. The development shall conform to the recommendations of the Borough Master Plan regarding the creation of new streets, the widening of existing streets, drainage rights-of-way and conservation areas. Where subdivision of lands is required or desired by the developer of the attached dwelling unit development, in accordance with the provisions of Chapter 181, Subdivision of Land, the receipt of subdivision approval prior to proceedings under this chapter shall not in any way be construed to imply approval of the proposed attached dwelling unit development. Where the review and/or approval of the various elements or features of the proposed attached dwelling unit development is required to be received from any municipal, county or state agency or official, other than the Planning Board and Zoning Officer, such review and/or approval shall be obtained prior to proceedings hereinunder.
- 4) Design requirements. At a minimum, all multifamily dwelling unit developments shall comply with the following design requirements and standards:
- a) Site area. Site areas shall not be less than 20,000 square feet of usable land.
 - b) Floor area. Total floor area shall not exceed an amount equal to 80% of site area.
 - c) Coverage. Building area and related impervious surface coverage (parking areas, roads, walks, etc.) shall not exceed an amount equal to 60% of the site area.
 - d) Recreation area. Outdoor recreation space shall be provided in all developments of 30 or more units. Such outdoor recreation space shall not be less in area than an amount equal to 5% of the gross floor area of the development.
 - e) Parking spaces required. The Planning Board shall determine the number of off-street parking spaces required based on dwelling unit mix and size and related factors. Maximum requirement shall not exceed one and one half spaces per unit nor shall be less than one space per unit. The developer may elect, subject to the approval of the body conducting the site plan review, to improve only a portion of the area which has been designated for parking on the plan.
 - f) Buildings. Buildings shall not exceed 3 stories or 45 feet in height. Buildings shall not contain dwelling units above the third story nor below grade. Buildings shall be designed so that an offset of at least two feet shall occur every 50 feet of building wall.
 - g) Dwelling unit mix and density. Each development shall contain a mixture of dwelling unit types in a ratio approved by the Planning Board. Maximum gross residential density shall not exceed twenty four (24) units per acre.
 - h) Building setbacks. Building setbacks shall provide adequate distance between buildings on the site and the abutting properties. However, no such setback need exceed a distance of 50 feet.

- i) Streets, roads, curbs, parking areas and sidewalks. All streets, roads, curbs, parking areas and sidewalks shall be constructed in accordance with Borough specifications furnished by the Borough Engineer.
 - j) Plantings. The character and appeal of the site shall be enhanced by retaining and protecting existing trees and other natural features of the site whenever possible and through the addition of new planting materials for privacy, shade, beauty of buildings and grounds, and to screen objectionable features. Plant materials to be provided shall be in scale with the composition of the buildings, the site and its various uses and surroundings. Plant materials shall be arranged to harmonize in size, shape, color, texture and winter characteristics with the buildings and development of the grounds. Plant location and spacing shall be determined by ultimate mature growth. Plant materials shall be indigenous to the area or be readily adaptable to the local climate and soil conditions. Plant materials shall not be excessively weedy in habit or growth characteristics nor be unduly subject to noxious pests or plant diseases.
 - k) Outdoor lighting. Attractive lighting fixtures for walks, steps, parking areas, streets and other facilities shall be provided at locations to assure the safe and convenient use of such facilities. Fixtures shall be placed and designed in keeping with the character of the development and be adequately shielded to reduce glare and eliminate light trespass onto adjacent properties.
 - l) Electric and telephone lines. All electric power and telephone transmission lines shall be installed underground at a depth and at such location as will minimize risk of interruption of services.
 - m) Screening. Fences, walls, shrubbery or other appropriate screening devices shall be installed around garbage and trash storage areas, parking areas, service areas and at such other locations deemed desirable or necessary by the Planning Board.
 - n) Laundry facilities. Each residential unit shall have its own laundry facilities.
- I) Off-street parking and loading requirements
- 1) Parking areas shall be located within side and rear yards, provided they are not within 15 feet of the boundary of a residence zone or street line. Driveways shall be limited to two for each 200 feet of frontage on a public street. Where multifamily dwelling units are added to existing single story buildings, existing parking areas that do not comply with this section shall be permitted to remain.
 - 2) No parking, loading area, driveway or other structure (except for approved accessways, signs and fencing) shall be permitted within 5 feet of any property line and within 10 feet of any street line or residential zoning district, and such perimeter area shall be planted and maintained in lawn areas or ground cover and landscaped with shrubbery, except that:
 - a) No parking, loading area, driveway or other structure (except for approved accessways, signs and fencing) shall be permitted in the front yard area between the principal building.
 - b) The Planning Board may approve off-street parking in front yard areas between principal buildings and State Highway Route 31 where the existing development on the subject property (e.g., an existing building set back an excessive distance from the abutting street right-of-way) creates a practical difficulty in locating the required off-street parking in rear and/or side yard areas, provided that:

- (i) A minimum parking setback of 5 feet to any street line shall be provided, where feasible, and shall be planted and maintained in lawn area or ground cover and shall be landscaped with trees and shrubbery as approved by the Board; and
 - (ii) When approving the location of off-street parking in front yard areas, the Planning Board must find that parking may be located within the front yard area without adversely affecting neighboring properties.
 - c) Driveways with appropriate cross-easements providing access between adjacent lots shall be permitted and provided, where feasible; on-site circulation systems and parking areas shall be designed to accommodate the interconnection between adjacent lots.
- 3) Each individual use shall provide parking spaces according to the following minimum provisions. Where a permitted use includes different specific activities with different specific parking requirements, the total number of required parking spaces shall be obtained by computing individually the parking requirements for each different activity and adding the resulting numbers together:
- a) Retail business uses: one space for each 300 square feet of sales floor area.
 - b) Personal and business service establishments: one space for each 300 square feet of floor area.
 - c) Professional and business offices, laboratories and technical training centers: one space for each 250 square feet of floor area or part thereof.
 - d) Restaurants: one space for each four seats, plus one space for each two employees.
 - e) Wholesale business establishments: one space for each 500 square feet of building area.
 - f) Offices, laboratories and technical training centers shall provide parking at the ratio of one parking space per 250 square feet of gross floor area or part thereof
 - g) Child-care centers shall provide parking at a ratio of one parking space per employee, plus one additional parking space for every eight children.
 - h) Where a permitted use of land includes different specific activities with different specific parking requirements, the total number of required parking spaces shall be obtained by computing individually the parking requirements for each different activity and adding the resulting numbers together
- 4) Parking areas for individual uses shall be designed to be interconnected with adjacent properties and shall utilize common entrance(s) and exit(s), where feasible, to minimize access points to the street.
- 5) Shared parking. Nothing in the above requirements shall be construed to prevent the employment of shared parking, which may be implemented in one of two manners:
- (i) On-site shared parking. For parcels containing a multiple-occupant building or two or more buildings with different permitted uses, on-site shared parking may be implemented.
 - (a) A shared parking allowance of 50% shall be permitted for combining weekday uses with evening/weekend uses in the same building or in separate buildings on the same parcel. Office and retail uses are considered to be weekday uses, while residential and restaurant uses are considered to be evening/weekend uses.
 - (b) Fifty percent of the parking requirement of the evening/weekend use of the building may be met through parking already provided for the weekday use.

For example, a building contains office space that requires 20 parking spaces and residential units that require eight parking spaces. The residential parking is permitted to be reduced by 50% or four parking spaces. Therefore, the development would only be required to construct 24 parking spaces instead of 28.

- (ii) Off-site shared parking. For parcels that cannot accommodate all or a portion of their required parking spaces, the differential parking requirement may be shifted to an adjacent property determined by the Zoning Officer to have parking in excess of zoning requirements or parking that is demonstrated to be unused during normal hours of operation. This would require the submission of a memorandum of agreement between the two property owners, which demonstrates the shifting of parking spaces from one site to an adjacent site.
- J) Off-street loading requirements and provision for garbage pickup.
- 1) Each principal building or group of buildings shall provide at minimum one off-street loading space on site at the side or rear of the building or within the building. Any loading area shall have adequate ingress and egress from a public street and adequate space for maneuvering. There shall be no loading or unloading from the street or front yard area. Such space shall not infringe upon area required for off-street parking
 - 2) There shall be at least one trash and garbage pickup location on site within convenient access to and from the building being served, including provisions for the separation and collection of recyclable materials in accordance with the recycling requirements of Mercer County and in accordance with the following:
 - a) The trash and garbage pickup location shall be provided either within the building being served or in a pickup location outside the building;
 - b) If located within the building, the doorway may serve both the loading and trash/garbage functions, and if located outside the building, it may be located adjacent to or within the general loading area(s), provided the container in no way interferes with or restricts loading and unloading functions;
 - c) If located outside the building, the trash and garbage pickup location shall include a fully enclosed trash and garbage container located in a manner to be obscured from view from parking areas, streets and adjacent residential uses or zoning districts by a fence, wall, planting or combination of all three. Enclosures shall be constructed of masonry material consistent with the architectural design of the buildings.

Appendix 4

§ 215-78. MU Mixed Use Zone

- A) Purpose. The purpose of this zone is to provide opportunities for small-scale mixed-use developments in locations other than the Route 31 corridor. It is envisaged that the housing will be in high density, attached, multi-story buildings providing opportunities for deed-restricted affordable housing to help meet the Borough's fourth round obligation and non-restricted housing that is affordable to new residents wishing to join the Pennington community.
- B) Building configurations permitted.
- 1) Mixed commercial and multifamily dwellings, with a maximum height of 45 feet.
 - a) No more than 3 stories
 - b) Retail and other public-facing businesses allowed only on the first (ground) floor, subject to the permitted primary, secondary, conditional, and prohibited uses in sections below.
 - c) No more than 8 residences per floor.
 - 2) Multifamily dwellings
 - a) No more than 3 stories with a maximum height of 45 feet.
 - b) No business or commercial uses allowed.
- C) Design and other regulations for all buildings
- 1) All lands and uses in the MU Zone shall comply with the regulations set forth in the Schedule of Area, Yard and Building Regulations.
 - 2) More than one building shall be permitted on a lot, provided that the total floor area ratio and total lot coverage of the combined uses/buildings on the lot do not exceed the maximums specified for the zoning district for a use/building on an individual lot.
 - 3) All portions of all buildings on one lot shall be compatibly designed with a common architectural motif, whether constructed all at one time or in stages over a period of time. The architectural design and material surface and color of all building walls on all sides of all buildings shall be suitably finished for aesthetic purposes and shall be compatible in design and scale with the surface materials existing within the neighborhood.
 - 4) Subject to section B above, certain buildings may contain more than one principal permitted use, provided that the total floor area ratio and total building and lot coverages of the combined uses do not exceed the maximums specified for the zoning district, that each use occupies a minimum gross floor area of 500 square feet and that the combined off-street parking requirements for all uses are met.
 - 5) All buildings shall be separated by a minimum of 30 feet where any part of such separation is to be used for parking or vehicular circulation.
 - 6) Unless otherwise specifically approved by the Board as part of a site plan application, no merchandise, product, equipment or similar material or objects shall be displayed or stored outside, except where otherwise permitted by this chapter or the code of the Borough of Pennington. Where merchandise, products, equipment or similar material or objects are approved by the Board to be displayed or stored outside, the materials shall be

- suitably screened to be obscured from view from any adjacent residential uses and must be situated within the property lines of the principal use.
- 7) All portions of a lot not covered by buildings or structures (e.g., parking lots, parking spaces, loading areas, access aisles, driveways, sidewalks, walkways, curbs, trash enclosures, etc.) shall be suitably landscaped with grass, shrubs and trees and shall be maintained in good condition. In any case, no less than 35% of the area of any lot shall be so landscaped, and the landscaped area may include approved detention and/or retention basins.
 - 8) Landscaping. Any front or side yard with a parking area visible from the street shall be screened with a row of shrubs at least two feet high when mature. Street trees shall be planted along any street frontage 30 to 40 feet on center, and foundation plantings shall be included along the building facade. A landscaped or grass strip at least five feet wide shall be provided along the front and side yard property lines
 - 9) On-site circulation. Driveways with appropriate cross easements providing access between adjacent lots shall be permitted and provided where feasible. On-site circulation systems and parking areas shall be designed to accommodate the interconnection between adjacent lots.
 - 10) Pedestrian access. Adequate and safe pedestrian access between uses or separate buildings in the development or on adjacent lots shall be provided, and the design of the development shall promote nonvehicular, pedestrian-friendly access, inclusive of bicycle racks, benches or other such amenities. Sidewalks shall be provided along street frontages and throughout the development.
 - 11) Sign requirements. All signage shall be in accordance with the requirements specified in Article III, Sign Regulations, and specifically § 215-44 of this chapter.
 - 12) Fences, walls and retaining walls shall be in accordance with the provisions of § 215-24.
 - 13) Roof-mounted solar panels are allowed and will be encouraged.
 - 14) Geothermal heating is allowed and will be encouraged.
- D) Permitted business and commercial primary uses. In buildings or on sites where business or commercial or use is permitted, the primary uses allowed shall be as follows:
- 1) Retail business and personal service establishments which are clearly of a community service character, such as retail shops, studios for arts and fitness, barber shops and beauty salons.
 - 2) Restaurants, excluding those of a quick serve nature.
 - 3) Executive or administrative, general business and professional offices.
 - 4) Hardware stores.
 - 5) Child-care centers licensed by the Department of Human Services pursuant to P.L. 1983, c. 492 (N.J.S.A. 30:5B-1 et seq.).
 - 6) Other business uses which in the opinion of the Planning Board acting as a Board of Adjustment are similar in scale and service nature to those permitted above.
- E) Permitted secondary and accessory uses. For buildings within the MU zone, the secondary uses allowed shall be as follows:
- 1) Municipal parks, playgrounds and buildings deemed appropriate and necessary by the Borough Council of the Borough of Pennington.

- 2) Garage and storage buildings which are necessary to store any vehicles, equipment or materials on the premises in conjunction with a permitted use.
 - 3) Off-street parking for the use of employees, customers and visitors.
 - 4) Sidewalk sales by adjacent retail merchandise stores when authorized by a permit issued by the Borough Clerk.
 - 5) Signs as permitted by Article III, Sign Regulations.
 - 6) Make ready infrastructure and electric vehicle charging stations.
 - 7) Enclosures for the collection and storage of trash and recyclable materials.
 - 8) Solar panels mounted to the roof of a building.
 - 9) Outdoor dining associated with a permitted restaurant use.
 - 10) Outdoor recreation areas for permitted residential uses.
 - 11) Dog parks.
- F) Conditional business and commercial uses. The conditional uses allowed shall be as follows and shall be subject to the provisions of the indicated ordinances in Borough Code Chapter 215 Article VIII.
- 1) Public utility uses as a conditional use under N.J.S.A. 40:55D-67 (§ 215-80)
- G) Prohibited uses. Any use not hereby specifically permitted is prohibited unless approved by the Planning Board acting as a Board of Adjustment. The following uses are hereby specifically prohibited:
- 1) Cannabis cultivators, cannabis manufacturers, cannabis wholesalers, cannabis distributors, cannabis retailers, medical cannabis cultivators, medical cannabis manufacturers and clinical registrants.
 - 2) Drive through facilities of any kind.
 - 3) No retail sales use may operate after 11:00 p.m. at night, and all site lights and signage shall be turned off at the close of business, except for a minimal amount of low-intensity security lighting specifically approved by the Planning Board.
- H) Permitted Residential Uses.
- 1) Objectives. The provisions of this subsection are intended to encourage the planning and construction of multifamily dwelling unit development within the MU Zone that meet the special needs of suburban families and at the same time protect and promote the health, safety and general welfare of the public and the Borough of Pennington.
 - 2) Qualifications. In order to qualify for consideration under the terms of this subsection, the site for any multifamily dwelling unit development shall be composed of a single tract of land, consisting of one or more contiguous lots. The physical conditions of the site, including soil type, ground water level, drainage and topography, shall be such as not to create hazards to the property or to the occupants, and the site shall not be subject to the possibility of subsidence or the reasonable probability of flooding or serious erosion.
 - 3) General requirements.
 - a) Access to site. Any multifamily dwelling unit development site shall abut or have permanent access to an approved or existing public street. Private streets within the site of a multifamily dwelling development shall be permitted but shall be protected by a permanent easement and shall provide for safe and suitable vehicular circulation

- in the development at all times. Dead-end or cul-de-sac streets shall include adequate turning space.
- b) Access to buildings. Convenient vehicular access to all buildings on the multifamily dwelling unit development site shall be provided for emergency equipment, furniture moving vans, fuel trucks where required, garbage collection, general deliveries of goods and snow removal. Pedestrian access to the rear of all buildings fronting on a public street shall be provided.
 - c) Access to dwelling units. A safe and convenient means for pedestrian access to all dwelling units shall be provided in such manner as not to require passage through any other dwelling unit.
 - d) Services and facilities. The development of the site shall be designed so that it does not infringe upon adjoining properties. Utilities and other similar facilities shall be provided for the development without dependence upon the availability of such services on adjoining properties. All multifamily dwelling unit developments shall be connected to and serviced by public systems for the provision of water and disposal of sanitary and storm sewage. Such public systems shall have been determined adequate to serve the proposed development by competent authority designated by the Borough Council.
 - e) Occupancy of dwelling units. No dwelling unit shall be occupied until all other dwelling units in the same building are completed and ready for occupancy, having all utility connections completed, pedestrian and vehicular accessways improved and parking areas paved and drained as designed and a certificate of occupancy having been issued.
 - f) Compliance with other ordinances and regulations. The multifamily dwelling unit development shall conform to the recommendations of the Borough Master Plan regarding the creation of new streets, the widening of existing streets, drainage rights-of-way and conservation areas. Where subdivision of lands is required or desired by the developer of the multifamily dwelling unit development, in accordance with the provisions of Chapter 181, Subdivision of Land, the receipt of subdivision approval prior to proceedings under this chapter shall not in any way be construed to imply approval of the proposed multifamily dwelling unit development. Where the review and/or approval of the various elements or features of the proposed multifamily dwelling unit development is required to be received from any municipal, county or state agency or official, other than the Planning Board and Zoning Officer, such review and/or approval shall be obtained prior to proceedings hereinunder.
- 4) Design requirements. At a minimum, all multifamily dwelling unit developments shall comply with the following design requirements and standards:
- a) Site area. Site areas shall not be less than 20,000 square feet of usable land.
 - b) Floor area. Total floor area shall not exceed an amount equal to 80% of site area.
 - c) Coverage. Building area and related impervious surface coverage (parking areas, roads, walks, etc.) shall not exceed an amount equal to 60% of the site area.
 - d) Recreation area. Outdoor recreation space shall be provided in all developments of 30 or more units. Such outdoor recreation space shall not be less in area than an amount equal to 10% of the gross floor area of the development.
 - e) Parking spaces required. The Planning Board shall determine the number of off-street parking spaces required based on dwelling unit mix and size and related factors.

- Maximum requirement shall not exceed on and one half spaces per unit nor shall be less than one space per unit. The developer may elect, subject to the approval of the body conducting the site plan review, to improve only a portion of the area which has been designated for parking on the plan.
- f) Buildings. Buildings shall not exceed 3 stories or 45 feet in height. Buildings shall not contain dwelling units above the third story nor below grade. Buildings shall be designed so that an offset of at least four feet shall occur between building segments containing no more than four dwelling units.
 - g) Dwelling unit mix and density. Each development shall contain a mixture of dwelling unit types in a ratio approved by the Planning Board. Maximum gross residential density shall not exceed twenty four (24) units per acre.
 - h) Building setbacks. Building setbacks shall provide adequate distance between buildings on the site and the abutting properties. However, no such setback shall exceed a distance of 25 feet.
 - i) Streets, roads, curbs, parking areas and sidewalks. All streets, roads, curbs, parking areas and sidewalks shall be constructed in accordance with Borough specifications furnished by the Borough Engineer.
 - j) Plantings. The character and appeal of the site shall be enhanced by retaining and protecting existing trees and other natural features of the site whenever possible and through the addition of new planting materials for privacy, shade, beauty of buildings and grounds, and to screen objectionable features. Plant materials to be provided shall be in scale with the composition of the buildings, the site and its various uses and surroundings. Plant materials shall be arranged to harmonize in size, shape, color, texture and winter characteristics with the buildings and development of the grounds. Plant location and spacing shall be determined by ultimate mature growth. Plant materials shall be indigenous to the area or be readily adaptable to the local climate and soil conditions. Plant materials shall not be excessively weedy in habit or growth characteristics nor be unduly subject to noxious pests or plant diseases.
 - k) Outdoor lighting. Attractive lighting fixtures for walks, steps, parking areas, streets and other facilities shall be provided at locations to assure the safe and convenient use of such facilities. Fixtures shall be placed and designed in keeping with the character of the development and be adequately shaded to screen the windows of dwelling units from the direct rays from the light fixtures.
 - l) Electric and telephone lines. All electric power and telephone transmission lines shall be installed underground at a depth and at such location as will minimize risk of interruption of services.
 - m) Screening. Fences, walls, shrubbery or other appropriate screening devices shall be installed around garbage and trash storage areas, parking areas, service areas and at such other locations deemed desirable or necessary by the Planning Board.
 - n) Laundry facilities. Each residential unit shall have its own laundry facilities.
- I) Off-street parking and loading requirements
- 1) Parking areas may be located within any of the required yard area, provided that they are not within 10 feet of the boundary of a residence zone or street line. Driveways shall be limited to two for each 200 feet of frontage on a public street.

- 2) No parking, loading area, driveway or other structure (except for approved accessways, signs and fencing) shall be permitted within 10 feet of any property line and within 10 feet of any street line or residential zoning district, and such perimeter area shall be planted and maintained in lawn areas or ground cover and landscaped with shrubbery, except that;
 - a) No parking, loading area, driveway or other structure (except for approved accessways, signs and fencing) shall be permitted in the front yard area between the principal building.
 - b) The Planning Board may approve off-street parking in front yard areas between principal buildings and a public street where the existing development on the subject property (e.g., an existing building set back an excessive distance from the abutting street right-of-way) creates a practical difficulty in locating the required off-street parking in rear and/or side yard areas, provided that:
 - (i) A minimum parking setback of 5 feet to any street line shall be provided, where feasible, and shall be planted and maintained in lawn area or ground cover and shall be landscaped with trees and shrubbery as approved by the Board; and
 - (ii) When approving the location of off-street parking in front yard areas, the Planning Board must find that parking may be located within the front yard area without adversely affecting neighboring properties.
 - c) Driveways with appropriate cross-easements providing access between adjacent lots shall be permitted and provided, where feasible; on-site circulation systems and parking areas shall be designed to accommodate the interconnection between adjacent lots.
- 3) Each individual use shall provide parking spaces according to the following minimum provisions. Where a permitted use includes different specific activities with different specific parking requirements, the total number of required parking spaces shall be obtained by computing individually the parking requirements for each different activity and adding the resulting numbers together:
 - a) Retail business uses: one space for each 300 square feet of sales floor area.
 - b) Personal and business service establishments: one space for each 300 square feet of floor area.
 - c) Professional and business offices, laboratories and technical training centers: one space for each 250 square feet of floor area or part thereof.
 - d) Restaurants: one space for each four seats, plus one space for each two employees.
 - e) Child-care centers shall provide parking at a ratio of one parking space per employee, plus one additional parking space for every eight children.
 - f) Where a permitted use of land includes different specific activities with different specific parking requirements, the total number of required parking spaces shall be obtained by computing individually the parking requirements for each different activity and adding the resulting numbers together
- 4) Parking areas for individual uses shall be designed to be interconnected with adjacent properties and shall utilize common entrance(s) and exit(s), where feasible, to minimize access points to the street.
- 5) Shared parking. Nothing in the above requirements shall be construed to prevent the employment of shared parking, which may be implemented in one of two manners:

- (i) On-site shared parking. For parcels containing a multiple-occupant building or two or more buildings with different permitted uses, on-site shared parking may be implemented.
 - (a) A shared parking allowance of 50% shall be permitted for combining weekday uses with evening/weekend uses in the same building or in separate buildings on the same parcel. Office and retail uses are considered to be weekday uses, while residential and restaurant uses are considered to be evening/weekend uses.
 - (b) Fifty percent of the parking requirement of the evening/weekend use of the building may be met through parking already provided for the weekday use. For example, a building contains office space that requires 20 parking spaces and residential units that require eight parking spaces. The residential parking is permitted to be reduced by 50% or four parking spaces. Therefore, the development would only be required to construct 24 parking spaces instead of 28.
 - (ii) Off-site shared parking. For parcels that cannot accommodate all or a portion of their required parking spaces, the differential parking requirement may be shifted to an adjacent property determined by the Zoning Officer to have parking in excess of zoning requirements or parking that is demonstrated to be unused during normal hours of operation. This would require the submission of a memorandum of agreement between the two property owners, which demonstrates the shifting of parking spaces from one site to an adjacent site.
- J) Off-street loading requirements and provision for garbage pickup.
 - 1) Each principal building or group of buildings shall provide at minimum one off-street loading space on site at the side or rear of the building or within the building. Any loading area shall have adequate ingress and egress from a public street and adequate space for maneuvering. There shall be no loading or unloading from the street or front yard area. Such space shall not infringe upon area required for off-street parking
 - 2) There shall be at least one trash and garbage pickup location on site within convenient access of the building being served, including provisions for the separation and collection of recyclable materials in accordance with the recycling requirements of Mercer County and in accordance with the following:
 - a) The trash and garbage pickup location shall be provided either within the building being served or in a pickup location outside the building;
 - b) If located within the building, the doorway may serve both the loading and trash/garbage functions, and if located outside the building, it may be located adjacent to or within the general loading area(s), provided the container in no way interferes with or restricts loading and unloading functions;
 - c) If located outside the building, the trash and garbage pickup location shall include a fully enclosed trash and garbage container located in a manner to be obscured from view from parking areas, streets and adjacent residential uses or zoning districts by a fence, wall, planting or combination of all three. Enclosures shall be constructed of masonry material consistent with the architectural design of the buildings.

Appendix 5

Borough of Pennington

ORDINANCE NO. ____

AN ORDINANCE AMENDING CHAPTER 215 "ZONING", ARTICLE VII "ZONE REGULATIONS" TO INCLUDE NEW SECTION 215-78.6 ENTITLED "AH-4 AFFORDABLE HOUSING ZONE"

WHEREAS, the Borough, as part of its fourth round Housing Element and Fair Share Plan, has identified property appropriate for rezoning to provide the opportunity for the construction of new multifamily dwellings, including a setaside of units affordable to low and moderate income households; and

WHEREAS, the Mayor and Council has endorsed the fourth round plan adopted by the Planning Board and is desirous of implementing the mechanism identified in that fourth round, which requires rezoning of the property.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Pennington, in the County of Mercer and State of New Jersey as follows:

Section I. The following section shall be added to the Code, to read as follows:

Section 215-78.6 "AH-4 Affordable Housing Zone"

- A. Intent. It is the intent of the AH-4 Affordable Housing Zone to provide the opportunity for the construction of new multifamily housing, including a setaside of units affordable to low and moderate income households.
- B. Low and moderate income housing requirements. Where residential dwelling units are proposed, a minimum of 20% of the total number of units proposed shall be deed restricted for occupancy by low and moderate income households. Thirteen percent (13%) of the total affordable housing units proposed shall be deed restricted for very low income households. All units shall comply with the Borough's affordable housing ordinance, Chapter 58, the Fair Housing Act and the Uniform Housing Affordability Controls. Rental affordable housing units shall be deed restricted for a minimum period of 40 years and for-sale affordable housing units shall be deed restricted for a minimum period of 30 years.
- C. Permitted uses on the land and in the buildings.
 - (1) The following are principal permitted uses in the district:
 - (a) Multifamily apartments.
 - (b) More than one principal building.
 - (2) Accessory uses permitted.
 - (a) Off-street parking
 - (b) Signs
 - (c) Fences and walls
 - (d) Outdoor recreation facilities for use by residents.
 - (e) Stormwater management facilities
 - (f) Enclosures for the storage of trash and recycling
 - (g) Utilities including but not limited to transformers
 - (h) Solar panels mounted to the roof of a building
 - (i) Electric vehicle charging infrastructure and electric vehicle charging stations
- D. Bulk standards.
 - (1) The following bulk standards are required for multifamily apartments:

- (a) Minimum tract area: 10,000 square feet
- (b) Minimum front yard setback: 8 feet
- (c) Minimum side yard setback: 15 feet
- (d) Minimum rear yard setback: 15 feet
- (e) Minimum setback of parking from tract boundary: 5 feet
- (f) Maximum permitted building coverage: 40%
- (g) Maximum permitted impervious coverage: 80%
- (h) Maximum permitted building height: 38 feet and 2 ½ stories
- (i) Minimum distance from building to parking spaces: 5 feet

E. Other provisions and requirements.

- (1) Existing residential dwellings located on the tract to be developed are not required to comply with the bulk standards set forth in this section.
- (2) The architecture of any proposed new building shall be compatible with the historic nature of the site and that of the Pennington Crossroads Historic District, in which it is located. Review by the Historic Commission is required.
- (3) There shall be included in any new multifamily housing development an indoor or outdoor area for the collection and storage of residentially generated trash and recyclable materials. Separate containers or storage bins shall be provided for both trash and recyclable materials.
- (4) Off-street parking shall be provided at a rate of 1.5 spaces per residential dwelling unit regardless of the number of bedrooms.

Section II. Severability

If any section, part of any section, or clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the remaining provisions of this ordinance. The governing body of the Borough of Pennington declares that it would have passed the ordinance and each section and subsection thereof, irrespective of the fact that any one or more of the subsections, sentences, clauses or phrases may be declared unconstitutional or invalid.

Section III. Effective Date.

This ordinance shall take effect immediately upon passage and publication according to law.

APPROVED: _____
Mayor

ATTEST: _____
Borough Clerk

Introduced:

Adopted:

Appendix 6

Borough of Pennington

ORDINANCE NO. ____

AN ORDINANCE AMENDING CHAPTER 215 "ZONING", ARTICLE VII "ZONE REGULATIONS" TO INCLUDE NEW SECTION 215-78.5 ENTITLED "AH-3 AFFORDABLE HOUSING ZONE"

WHEREAS, the Borough, as part of its fourth round Housing Element and Fair Share Plan, has identified property appropriate for rezoning to provide the opportunity for the construction of new multifamily dwellings, including a setaside of units affordable to low and moderate income households; and

WHEREAS, the Mayor and Council has endorsed the fourth round plan adopted by the Planning Board and is desirous of implementing the mechanism identified in that fourth round, which requires rezoning of the property.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Pennington, in the County of Mercer and State of New Jersey as follows:

Section I. The following section shall be added to the Code, to read as follows:

Section 215-78.5 "AH-3 Affordable Housing Zone"

- A. Intent. It is the intent of the AH-3 Affordable Housing Zone to provide the opportunity for the construction of new multifamily housing, including a setaside of units affordable to low and moderate income households.
- B. Low and moderate income housing requirements. Where the affordable housing units proposed are for-rent, a minimum of 15% of the total number of units proposed shall be deed restricted for occupancy by low and moderate income households. Where the affordable housing units proposed are for-sale, a minimum of 20% of the total number of units proposed shall be deed restricted for occupancy by low and moderate income households. Thirteen percent (13%) of the total affordable housing units proposed shall be deed restricted for very low income households. All units shall comply with the Borough's affordable housing ordinance, Chapter 58, the Fair Housing Act and the Uniform Housing Affordability Controls. Rental affordable housing units shall be deed restricted for a minimum period of 40 years and for-sale affordable housing units shall be deed restricted for a minimum period of 30 years.
- C. Permitted uses on the land and in the buildings.
 - (1) The following are principal permitted uses in the district:
 - (a) Garden apartments.
 - (2) Accessory uses permitted.
 - (a) Off-street parking
 - (b) Signs
 - (c) Fences and walls
 - (d) Clubhouse and other typical amenities including but not limited to fitness centers, business centers, community rooms and libraries for use by residents
 - (e) Recreation facilities including but not limited to a pool for use by residents, tennis courts, bocce ball courts and dog parks.
 - (f) Stormwater management facilities
 - (g) Enclosures for the storage of trash and recycling
 - (h) Utilities including but not limited to transformers

- (i) Solar panels mounted to the roof of a building
- (j) Electric vehicle charging infrastructure and electric vehicle charging stations

D. Bulk standards.

(1) The following bulk standards are required for garden apartments:

- (a) Minimum tract area: 10,000 square feet
- (b) Minimum front yard setback: 30 feet
- (c) Minimum side yard setback: 3 feet
- (d) Minimum rear yard setback: 50 feet
- (e) Minimum setback of parking from tract boundary: 2 feet
- (f) Maximum permitted building coverage: 40%
- (g) Maximum permitted impervious coverage: 80%
- (h) Maximum permitted building height: 45 feet and 3 stories
- (i) Minimum distance from building to parking spaces: 5 feet

E. Other provisions and requirements.

- (1) There shall be included in any new multifamily housing development an indoor or outdoor area for the collection and storage of residentially generated trash and recyclable materials. Separate containers or storage bins shall be provided for both trash and recyclable materials.
- (2) Off-street parking shall be provided at a rate of 1.5 spaces per residential dwelling unit regardless of the number of bedrooms.

Section II. Severability

If any section, part of any section, or clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the remaining provisions of this ordinance. The governing body of the Borough of Pennington declares that it would have passed the ordinance and each section and subsection thereof, irrespective of the fact that any one or more of the subsections, sentences, clauses or phrases may be declared unconstitutional or invalid.

Section III. Effective Date.

This ordinance shall take effect immediately upon passage and publication according to law.

APPROVED: _____
Mayor

ATTEST: _____
Borough Clerk

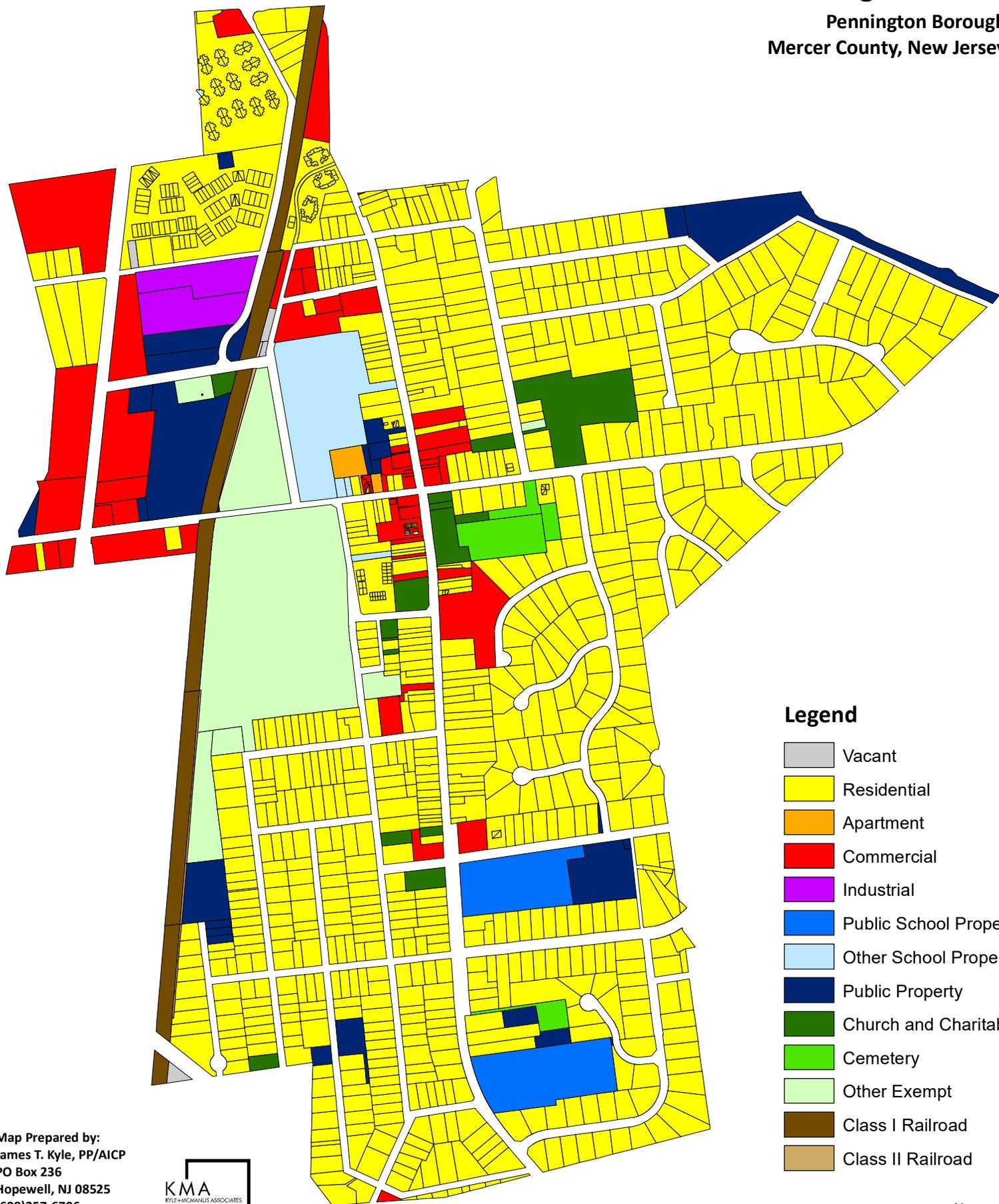
Introduced:

Adopted:

Appendix 7

Existing Land Use

Pennington Borough
Mercer County, New Jersey



Legend

- Vacant
- Residential
- Apartment
- Commercial
- Industrial
- Public School Property
- Other School Property
- Public Property
- Church and Charitable
- Cemetery
- Other Exempt
- Class I Railroad
- Class II Railroad

Map Prepared by:
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jkyle@kylemcmanus.com



Data Sources:
NJ Office of Information Technology, Office of
Geographic Information Systems



Map Scale = 1:10,000

Vacant and Publicly Owned Parcels

Pennington Borough
Mercer County, New Jersey



Legend

- Vacant
- Publicly Owned



Map Scale = 1:10,000

Map Prepared by:
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jkyle@kylemcmanus.com

Data Sources:
NJ Office of Information Technology, Office of
Geographic Information Systems



Borough of Pennington
Vacant Land Analysis

Map ID	Block	Lot	Prop. Class	Acres	Comments	Developable Acres	RDP
0	404	1	15C	6.95	Listed on ROSI; Kunkel Park	0	0
1	701	5	15C	2.55	Hopewell Valley Senior Center	0	0
2	201	7	15C	0.43	County-owned; stormwater for Library	0	0
3	905	8	15C	1.07	Listed on ROSI; Sked St. Park	0	0
4	1002	45	15C	0.52	Listed on ROSI	0	0
5	205	36	15C	0.16	Borough hall/library/public parking	0	0
6	206	4	15C	0.58	Vacant/Borough-owned/Developable	0.58	1.39
7	205	16	15C	0.58	Borough hall/library/public parking	0	0
8	302	16	15C	0.58	Listed on ROSI; Kunkel Park	0	0
9	901	2	1	0.27	Too small to develop 5 units	0	0
10	701	7	15C	0.20	Hopewell Valley Senior Center	0	0
11	701	6	15C	0.20	Hopewell Valley Senior Center	0	0
12	701	8	15C	0.20	Hopewell Valley Senior Center	0	0
13	206	12	15C	0.21	Public drinking supply well	0	0
14	904	14	15C	0.35	Well house; public water system	0	0
15	205	37	15C	0.37	Borough hall/library/public parking	0	0
16	102	8	1	0.21	Too small to develop 5 units	0	0
17	203	3	1	0.25	Too small to develop 5 units	0	0
18	206	11	15C	0.01	Too small to develop 5 units	0	0
19	1003	16	15C	0.06	Well house; public water system	0	0
20	205	38	15C	0.13	Water tank	0	0
21	203	5	1	0.04	Too small to develop 5 units	0	0
22	203	4	1	0.08	Too small to develop 5 units	0	0
23	102	2	15C	0.23	Public drinking supply well	0	0
24	206	5	15C	7.81	Former landfill; contaminated	0	0
25	801	12	15C	0.08	Sliver of right-of-way; too small to develop 5 units	0	0
26	202	5	15C	1.26	Post office	0	0
27	203	6	15C	0.49	Vacant/Borough-owned/Developable	0.49	1.18
28	202	4	15C	1.66	Post office	0	0
29	1002	42	15C	0.01	Sliver of right-of-way; too small to develop 5 units	0	0
30	1003	15.02	15C	3.42	Listed on ROSI	0	0
31	1002	12.02	15C	0.57	Listed on ROSI	0	0
							2.57

Notes:

1. RDP calculated based on 12 units per acre and a 20% setback.
2. Any parcel less than 0.42 acres is too small to support development of 5 units at 12 units per acre.

Appendix 8

Borough of Pennington

ORDINANCE NO. ____

AN ORDINANCE AMENDING CHAPTER 215 "ZONING", ARTICLE VII "ZONE REGULATIONS" TO INCLUDE NEW SECTION 215-78.7 ENTITLED "AH-5 AFFORDABLE HOUSING ZONE"

WHEREAS, the Borough, as part of its fourth round Housing Element and Fair Share Plan, has identified property appropriate for rezoning to provide the opportunity for the construction of new multifamily dwellings, including a setaside of units affordable to low and moderate income households; and

WHEREAS, the Mayor and Council has endorsed the fourth round plan adopted by the Planning Board and is desirous of implementing the mechanism identified in that fourth round, which requires rezoning of the property.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Pennington, in the County of Mercer and State of New Jersey as follows:

Section I. The following section shall be added to the Code, to read as follows:

Section 215-78.7 "AH-5 Affordable Housing Zone"

- A. Intent. It is the intent of the AH-5 Affordable Housing Zone to provide the opportunity for the construction of new multifamily housing, including a setaside of units affordable to low and moderate income households, through adaptive reuse of an existing office building.
- B. Low and moderate income housing requirements. Where residential dwelling units are proposed, a minimum of 20% of the total number of units proposed shall be deed restricted for occupancy by low and moderate income households. Thirteen percent (13%) of the total affordable housing units proposed shall be restricted for very low income households. All units shall comply with the Borough's affordable housing ordinance, Chapter 58, the Fair Housing Act and the Uniform Housing Affordability Controls. Rental affordable housing units shall be deed restricted for a minimum period of 40 years and for-sale affordable housing units shall be deed restricted for a minimum period of 30 years.
- C. Permitted uses on the land and in the buildings.
 - (1) The following are principal permitted uses in the district:
 - (a) Multifamily apartments.
 - (2) Accessory uses permitted.
 - (a) Off-street parking
 - (b) Signs
 - (c) Fences and walls
 - (d) Interior amenities including but not limited to fitness centers, business centers, community rooms and libraries for use by residents
 - (e) Outdoor recreation facilities for use by residents.
 - (f) Stormwater management facilities
 - (g) Enclosures for the storage of trash and recycling
 - (h) Utilities including but not limited to transformers
 - (i) Solar panels mounted to the roof of a building
 - (j) Electric vehicle charging infrastructure and electric vehicle charging stations
- D. Bulk standards.

- (1) The following bulk standards are required for multifamily apartments:
 - (a) Minimum tract area: 10,000 square feet
 - (b) Minimum front yard setback: 0 feet
 - (c) Minimum side yard setback: 0 feet
 - (d) Minimum rear yard setback: 0 feet
 - (e) Minimum setback of parking from tract boundary: 0 feet
 - (f) Maximum permitted building coverage: 80%
 - (g) Maximum permitted impervious coverage: 92%
 - (h) Maximum permitted building height: 45 feet and 3 stories
 - (i) Maximum building length: 150 feet
 - (j) Minimum distance from building to parking spaces: 0 feet
- E. Other provisions and requirements.
 - (1) There shall be included in any new multifamily housing development an indoor or outdoor area for the collection and storage of residentially generated trash and recyclable materials. Separate containers or storage bins shall be provided for both trash and recyclable materials.
 - (2) Off-street parking shall be provided at a rate of 1.5 spaces per residential dwelling unit regardless of the number of bedrooms.

Section II. Severability

If any section, part of any section, or clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the remaining provisions of this ordinance. The governing body of the Borough of Pennington declares that it would have passed the ordinance and each section and subsection thereof, irrespective of the fact that any one or more of the subsections, sentences, clauses or phrases may be declared unconstitutional or invalid.

Section III. Effective Date.

This ordinance shall take effect immediately upon passage and publication according to law.

APPROVED: _____
Mayor

ATTEST: _____
Borough Clerk

Introduced:

Adopted:

Appendix 9

Borough of Pennington

ORDINANCE NO. ____

AN ORDINANCE AMENDING CHAPTER 215 “ZONING”, ARTICLE II “GENERAL REGULATIONS” TO INCLUDE NEW SECTION 215-9.1 ENTITLED “MANDATORY SETASIDE OF AFFORDABLE HOUSING UNITS”

WHEREAS, the Borough, as part of its fourth round Housing Element and Fair Share Plan, has applied a vacant land adjustment to a portion of both its third and fourth round affordable housing obligations; and

WHEREAS, the Mayor and Council has endorsed the fourth round plan adopted by the Planning Board and is desirous of implementing a mechanism to capture affordable housing units in projects that are not planned at this time but may be proposed in the future.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Pennington, in the County of Mercer and State of New Jersey as follows:

Section I. The following section shall be added to the Code, to read as follows:

Section 215-9.1 “Mandatory Setaside of Affordable Housing Units”

- A. All residential development, including the residential portion of a mixed-use project, which consists of five (5) or more new residential units shall be required to setaside a minimum of 20% of the residential units be set aside for very low, low, and moderate income households, as set forth below. Where the calculation of required the setaside results in a fraction of 0.49 or less, it may be rounded down to the next whole number; fractions of 0.50 or more shall be rounded up to the next whole number.
- B. This requirement shall not apply to residential expansions, additions, renovations, replacement, or any other type of residential development that does not result in a net increase in the number of dwellings of five (5) or more. This requirement shall not apply to sites or zoning districts identified in the Fair Share Plan where standards for the set-aside of affordable housing units have already been established.
- C. All affordable housing units shall comply with the Borough’s Affordable Housing Ordinance, Chapter 58, as well as the NJ Fair Housing Act (N.J.S.A. 52:27D-301 et seq.), and the Uniform Housing Affordability Control Rules (N.J.A.C. 5:80-26.1 et seq.). This shall include but is not limited to:
 - (1) The requirement that at least thirteen percent (13%) of the affordable units within each bedroom distribution shall be required to be for very low income households earning thirty percent (30%) or less of median income;
 - (2) Appropriate distribution of 1-, 2-, and 3-bedroom units;
 - (3) Recording of appropriate affordability controls of not less than forty (40) years for rental units and not less than thirty (30) years for sale units, and
 - (4) Minimum unit sizes by square footage for affordable housing units.

- (5) The affordable units shall be affirmatively marketed in accordance with UHAC and applicable law. The affirmative marketing shall include the community and regional organizations identified by the Township, and it shall also include posting of all affordable units on the New Jersey Housing Resource Center website in accordance with applicable law.

- D. The affordable units shall be integrated with the market-rate units, and the affordable units shall not be concentrated in separate building(s) or in separate area(s) or floor(s) from the market-rate units. In buildings with multiple dwelling units of similar tenure, this shall mean that affordable units shall be generally distributed within each building with market-rate units. The residents of the affordable units shall have full and equal access to all amenities, common areas, and recreation areas and facilities as the residents of the market-rate units. The affordable units shall be the same type of housing unit as the market rate units, meaning that a market rate building available to families shall not be developed to provide age-restricted housing units.

- E. Construction of the affordable units in inclusionary developments shall be phased in compliance with N.J.A.C. 5:93-5.6(d).

- F. Subdivision and/or site plan approval shall not be granted by the reviewing board unless the developer complies with the requirements to provide very low-, low-, and moderate-income housing pursuant to the provisions of this section. A property shall not be permitted to be subdivided so as to avoid meeting this requirement. The board may impose any reasonable conditions to ensure such compliance.

- G. This requirement does not create any entitlement for a property owner or applicant for a zoning amendment, variance, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation, or for approval of any particular proposed project.

- H. Any developer subject to the requirements of this section and who provides an affordable housing setaside shall not be subject to payment of residential development fees.

Section II. *Severability*

If any section, part of any section, or clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the remaining provisions of this ordinance. The governing body of the Borough of Pennington declares that it would have passed the ordinance and each section and subsection thereof, irrespective of the fact that any one or more of the subsections, sentences, clauses or phrases may be declared unconstitutional or invalid.

Appendix 10

Borough of Pennington

Mercer County, NJ

Spending Plan

January 2, 2026

James T. Kyle, PP, AICP
New Jersey Professional Planning License No. 5667
Kyle McManus Associates
PO Box 236, Hopewell, NJ 08525

The original copy has been signed and sealed in accordance with N.J.A.C. 13:41-1.3

INTRODUCTION

The Borough of Pennington has prepared a Housing Element and Fair Share plan that addresses its regional fair share of the affordable housing need in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), the Fair Housing Act (N.J.S.A. 52:27D-301) and the regulations of the Council on Affordable Housing (COAH) (N.J.A.C. 5:97-1 et seq. and N.J.A.C. 5:96-1 et seq.).

Pennington has collected development fees since its first development fee ordinance was approved by COAH in the second round. As of May 30, 2025, the Borough has a balance of \$491,665.65 in its affordable housing trust fund account.

1. REVENUES FOR CERTIFICATION PERIOD

To calculate a projection of revenue anticipated during the remainder period the Fourth Round, Pennington considered the following:

(a) Development fees:

1. Residential and nonresidential projects which have had development fees imposed upon them at the time of preliminary or final development approvals;
2. All projects currently before the Land Use Board for development approvals that may apply for building permits and certificates of occupancy; and
3. Anticipated future development.

(b) Projected interest:

Interest on the projected revenue in the municipal affordable housing trust fund at the current annual percentage yield earned of 0.76% .

Source of Funds	Table I Projected Revenues - Affordable Housing Trust Fund - 2025 through 2035											
	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	Total
(a) Development Fees												
1. Development Pending Approval												\$0
2. Development Projected	\$3,737	\$2,514	\$2,237	\$1,929	\$1,618	\$1,305	\$1,195	\$1,084	\$972	\$860	\$746	\$18,198
(b) Interest												
Total	\$3,737	\$2,514	\$2,237	\$1,929	\$1,618	\$1,305	\$1,195	\$1,084	\$972	\$860	\$746	\$18,198

2. ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by the Borough of Pennington:

(a) Collection of development fee revenues:

Collection of development fee revenues shall be consistent with Mantua’s development fee ordinance for both residential and non-residential developments in accordance with COAH’s rules, P.L.2008, c.46, sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.7) and P.L. 2009, c. 90 (C. 40:55D-8.1 through 8.7).

(b) Distribution of development fee revenues:

The Mayor and Council will review all requests/proposals for funding from the Borough’s Housing Trust Fund to determine consistency with the approved Housing Element / Fair Share Plan and approved Spending Plan. All distributions from the Housing Trust Fund shall be authorized by a Resolution adopted by the governing body.

3. DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS

(a) **Rehabilitation program (N.J.A.C. 5:93-5.2)**

Rehabilitation program: Pennington intends to satisfy its rehabilitation obligation through a rehabilitation program. The Borough will dedicate a minimum of \$25,000 per unit from the Trust Fund to subsidize the rehabilitation program for a total of \$100,000.

(b) **Affordability Assistance (N.J.A.C. 5:93-8.16(c))**

- Affordability assistance: \$116,959(includes the “very low” assistance requirement of \$35,088). As shown in Table II below.

Table II Minimum Affordability Assistance - 2025-2035	
Actual Development Fees Through 6/5/2025	\$491,666
Development Fees Projected Through 6/30/2035	\$0
Interest Projected 2025-2035	\$18,198
Total	\$509,864
Less money collected for specific mechanisms	\$120,000
Total	\$389,864
30% Affordability Assistance	\$116,959
Projected Minimum Very-Low Income Affordability Assistance	\$35,088

The Borough will dedicate a total of \$116,959 from the affordable housing trust fund to render units more affordable, including a minimum of \$35,088 to render units more affordable to households earning 30 percent or less of median income by region, with the following affordability assistance programs:

- i. Down payment assistance
- ii. Payment of closing costs
- iii. Payment of lender fees
- iv. Security deposit assistance
- v. First month’s rent assistance
- vi. Payment of homeowner’s association fees

The Borough will work with its administrative agent to prepare an affordability assistance manual for the fourth round.

(c) **Administrative Expenses (N.J.A.C. 5:97-8.9)**

Table III Administrative Expenses Maximum - 2025-2035	
Actual Development Fees Through 6/5/2025	\$491,666
20% Maximum	\$98,333

As shown in the expenditure schedule in Table IV, the Borough does not anticipate administrative costs exceeding \$33,000, which is well below the 20% maximum of \$99,333 identified in Table III.

4. EXPENDITURE SCHEDULE

Pennington intends to use affordable housing trust fund revenues to support its housing rehabilitation program, extension of expiring controls and to render units more affordable through offering of affordability assistance. The Borough proposes to allocate its Housing Trust Funds to the mechanisms in Table IV on the following page, within the required time period subsequent to the Court’s approval of this Spending Plan.

The projected revenues from interest (Table I) combined with the present balance of \$491,665.65 in the Borough’s Housing Trust Fund will, if development projections are reasonably accurate, provide an estimated total of \$509,864 over the course of the fourth round period through June 2035. Table IV, on the following page, presents an estimated schedule for expenditure of the projected revenues.

Program	Table IV Expenditure Schedule - Affordable Housing Trust Fund - 2025 through 2035												
	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	Total	
Affordability Assistance	\$15,796	\$15,796	\$15,796	\$15,796	\$15,796	\$15,796	\$15,796	\$15,796	\$15,796	\$15,796	\$15,796	\$15,796	\$173,756
Rehabilitation Program		\$25,000	\$25,000	\$25,000	\$25,000								\$100,000
Extension of Expiring Controls	\$120,000												\$120,000
Administrative Expenses	\$25,000	\$2,000	\$2,000	\$2,000	\$2,000								\$33,000
Total	\$160,796	\$42,796	\$42,796	\$42,796	\$42,796	\$15,796	\$426,756						

Appendix 11

FOR-SALE UNIT AFFORDABILITY ASSISTANCE PROGRAM
AND RENTAL UNIT AFFORDABILITY ASSISTANCE PROGRAM

BOROUGH OF PENNINGTON

FOR-SALE UNIT AFFORDABILITY ASSISTANCE PROGRAM

Down Payment Loan Program

The Borough may offer a Down Payment Assistance Loan program to qualified purchasers of households earning 80% or less of median income of the housing region. To be eligible for the loan, the qualified Buyer must be able to supply 3% of the down payment with the Buyer's own funds, plus additional closing costs that exceed the amount of the loan. No gifts or other loans may be used to fund the 3% down payment amount, but may be used to fund additional closing costs. The loan amount may be made up to ten percent (10%) of the purchase price.

The Borough must approve the Buyer 's qualifications and need for the loan. The loan has no prepayment penalty. It is due and payable when the Buyer resells, borrows against the property or refinances the First Purchase Money Mortgage. The loan may be subordinated only to the First Purchase Money Mortgage. When calculating the borrowing capacity of the homeowner and the equity in the property, this loan must be included. The Buyer must sign a mortgage and mortgage note to the Borough.

Payment of Closing Costs

Eligible Buyers may receive payment of closing costs, i.e., title work and policy, reasonable attorney's fees for closing of title, preparation of survey, homeowners insurance, recording fees and other necessary closing expenses to third parties, not to exceed one thousand five hundred dollars (\$1,500.) per unit. This assistance shall be in the form of a grant. Total buyer assistance grants, which include Payment of Closing Costs and Payment of Lender Fees, shall not exceed three thousand dollars (\$3,000) per unit. Utility deposits, i.e., gas and electric, paid to utility companies are to be returned to the Borough Affordable Housing Trust Fund upon resale of the unit. The buyer will execute documents required to secure payment to Pennington Borough.

Payment of Lender Fees

Eligible Buyers may receive payment of lender fees, i.e., mortgage points, application fees, appraisal fees, bank attorney review fees, and necessary mortgage closing expenses, not to exceed one thousand five hundred dollars (\$1,500.) per unit. This assistance shall be in the form of a grant. Total buyer assistance grants, which include Payment of Closing Costs and Payment of Lender Fees, shall not exceed three thousand dollars (\$3000) per unit.

Administration of Pennington's Affordability Assistance Programs will be managed by the Borough's Administrative Agent. The availability of the program shall be advertised continually on the Borough's website. The following administrative process is applied to the For-Sale Unit Affordability Assistance Program:

1. The Buyer contacts the Administrative Agent to confirm that he/she wants to receive Down Payment Assistance.
2. The Buyer must present proof to the Administrative Agent that he/she is qualified for Affordable Housing in the Borough of Pennington.
3. Buyer must produce an exact copy of a signed Real Estate Contract for an affordable housing unit in the Town, which indicates clearly the full amount of the purchase price. Buyer must provide the Administrative Agent with the full name, address, phone number, and fax number of the Buyer's Attorney or Settlement Agent so that the Attorney or Settlement Agent can review and approve any and all documents required for the loan.
4. The Administrative Agent contacts the Realtor or Developer for confirmation of the sale of the unit, and the name of the Attorney handling the sale for the Developer at closing.
5. The amount of the Down Payment Assistance loan is verified (not to exceed ten percent of the Purchase Price) so that a Mortgage Note, Mortgage, and Repayment Agreement can be prepared by the Administrative Agent.
6. The amount of the Down Payment Assistance must be disclosed to the Lender, so that the Lender can accurately prepare the First Mortgage documents. The Buyer must give a copy of the First Mortgage Commitment to the Administrative Agent upon receipt of same, so that the Lender can receive full information about the Down Payment Assistance Loan, which shall constitute a Second Mortgage on the premises. The Lender must approve the secondary financing. The Borough's Affordable Housing Attorney will contact the Lender once the Affordable Housing Attorney has a copy of the First Mortgage Commitment.
7. The Borough Finance Department will generate the necessary forms and obtain Town Council approval for it to issue an Affordable Housing Trust Fund check payable to the Seller's Attorney or Settlement Agent, so that the Down Payment Assistance check can be deposited into the Seller's Attorney Trust Account or Settlement Agent Trust Account pending Closing of Title. The letter and check to the Seller's Attorney or Settlement Agent shall state that the deposit money must be returned to the Borough if the closing is canceled, or if the sale is declared null and void. If

there is a Closing of Title, the Down Payment Assistance money shall be released to the Seller. This money shall be shown on the Closing Statement as a deposit, with credit given at closing to the Buyer. The Buyer must fully execute the Mortgage Note, Mortgage, and Repayment Agreement at the Closing of Title before any money is released.

8. The Seller's Attorney or Settlement Agent shall verify that the Mortgage Note, Mortgage, and Repayment Agreement have been properly executed, and shall file the original Mortgage with the County Clerk to protect the Borough of Pennington Second Mortgage on the property and return the Filed Mortgage to Affordable Housing Attorney along with the original Mortgage Note and Repayment Agreement.

RENTAL UNIT AFFORDABILITY ASSISTANCE PROGRAM

Rental Assistance

Pennington BOrough may offer a Rental Assistance Program that is managed by the Administrative Agent. Eligible recipients of the program are renters who qualify for a very-low, low- or moderate-income rental unit. The following assistance is available to very-low, low- and moderate-income households:

1. Payment of "moving expenses" based upon verified receipts, in an amount not to exceed one thousand five hundred dollars (\$1,500.) per household.
2. Rental security deposit -Deposits paid to landlord to be returned to the Town's Affordable Housing Trust Fund upon termination of tenancy.
3. First-month rent – first month's rent paid to the landlord.

Administration of Pennington's Rental Unit Affordability Assistance Programs will be by the Administrative Agent. The availability of the program shall be advertised continually on the Borough's website. After an applicant is income qualified by the Administrative Agent pursuant to the Uniform Housing Affordability Controls, the applicant will complete and provide an affordability assistance application to the Administrative Agent.

For qualified and approved payment of moving expense, rental security deposit assistance and first month rent assistance, the Administrative Agent will follow the Town purchasing and requisition process for generating a check that is made out to the applicant. Once the check is produced, the Administrative Agent provides it to the applicant.

The affordability assistance recipient will sign a contract with Pennington Borough which states, at a minimum: the amount of funds granted, interest information, procedures, duration and conditions of affordability assistance, and repayment information if required.

The availability of any Affordability Assistance Programs must be noticed to all tenants of affordable units within Pennington and provided to all administrative agents of affordable units within the Town and advertised on the Town's website.

An income eligible occupant or applicant for an affordable unit within the Borough may not be denied participation in the Affordability Assistance Program(s) unless funding is no longer available.

Appendix 12

Chapter 58. Affordable Housing

§ 58-1. Purpose and applicability.

- A. The purpose of this section is to provide for and regulate affordable housing in the Borough of Pennington to address the Borough's constitutional obligation to provide for its fair share of low- and moderate-income housing as directed by the Administrative Director of the Courts and as stipulated by P.L.2024, c. 2 and N.J.S.A. 52:27D-301 *et seq.* (the amended Fair Housing Act). N.J.A.C. 5:99-1 *et seq.*, as amended and supplemented, establishes procedures to be used by municipalities in addressing and implementing the requirements set forth in the Amended Fair Housing Act. P.L. 2024, c.2, which also established the Affordable Housing Dispute Resolution Program ("Dispute Resolution Program"), and which also provides a new process for municipalities to come into constitutional compliance with their affordable housing obligations. This chapter is intended to assure compliance with the foregoing provisions and with the regulations of the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 *et seq.*, as amended and supplemented, including provisions for unit affordability controls as well as eligibility for very low-, low- and moderate-income households. This chapter shall apply except where inconsistent with applicable law.

§ 58-2. Definitions.

- A. The definitions in the Uniform Housing Affordability Controls (UHAC) at N.J.A.C 5:80-26.2 shall be applicable where a term is not defined. In the event of a discrepancy between a definition in this section and UHAC, the current UHAC definition shall be applicable. The following terms, when used in this section, shall have the meanings given in this subsection:

ACT — The Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 *et seq.*), as amended through P.L. 2024, c.2.

ADAPTABLE — Constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

ADMINISTRATIVE AGENT — The individual or entity designated by the Borough and approved by the Division as pursuant to N.J.A.C. 5:99-7, responsible for the administration of affordable units in accordance with this section, and as set forth within N.J.S.A. 52:27D-321 and UHAC (N.J.A.C. 5:80-26.1 *et seq.*).

AFFIRMATIVE MARKETING — A regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.16.

AFFORDABILITY AVERAGE — The average percentage of regional median income at which restricted units in an affordable housing development are affordable to low- and moderate-income households.

AFFORDABLE — A sales price or rent level that is within the means of a low- or moderate-income household as defined within N.J.S.A. 52:27D-301 *et seq.* and, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.7, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.13, as may be amended and supplemented.

AFFORDABLE HOUSING DEVELOPMENT — A development included in or approved pursuant to the Housing Element and Fair Share Plan or otherwise intended to address the Borough's fair share obligation, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100% affordable development.

AFFORDABLE HOUSING PROGRAM(S) — Any method of creating or preserving actual housing units available to low- and moderate-income households or creating a realistic opportunity for the

construction of such units, and any mechanism in a Municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

AFFORDABLE HOUSING MONITORING SYSTEM or AHMS — The Department of Community Affairs (DCA) or Department's cloud-based software application, which shall be the central repository for municipalities to use for reporting detailed information regarding affordable housing developments, affordable housing unit completions, and the collection and expenditures of funds deposited into the municipal affordable housing trust fund.

AFFORDABLE UNIT — A housing unit proposed or created pursuant to the Act and approved for crediting by the court and/or funded through an affordable housing trust fund.

AGE-RESTRICTED UNIT — A housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population where the adult member of the family who is the head of the household for the purposes of determining income eligibility and rent is a minimum age of either 62 years, or 55 years and meets the provisions of 42 U.S.C. §§ 3601 through 3619, except that due to death, a surviving spouse of less than 55 years of age is permitted to continue to reside in the unit. **AGENCY** — The New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1 et seq.).

ALTERNATIVE LIVING ARRANGEMENTS — A structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangements include, but are not limited to: transitional facilities for the homeless; Class A, B, C, D and E boarding homes as regulated by the State of New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

ASSISTED LIVING RESIDENCE — A facility that is licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

BARRIER-FREE ESCROW — The holding of funds collected to adapt affordable unit entrances to be accessible in accordance with N.J.S.A. 52:27D-311a et seq. Such funds shall be held in a municipal affordable housing trust fund pursuant to N.J.A.C. 5:99-2.6.

BOROUGH — The Borough of Pennington, in Monmouth County, New Jersey.

CERTIFIED HOUSEHOLD — A household that has been certified by an administrative agent as a very-low-income household, low-income household or moderate-income household.

CHOICE — The no-longer-active Choices in Homeownership Incentives for Everyone Program, as it was authorized by the Agency.

COAH OR THE COUNCIL — The Council on Affordable Housing, as previously established by the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) or the Superior Court of the State of New Jersey pursuant to the New Jersey Supreme Court case known as "Mount Laurel IV.", abolished effective March 20, 2024 pursuant to Section 3 at through P.L.2024, c.2 (N.J.S.A. 52:27D-304.1).

COMPLIANCE CERTIFICATION — The certification issued to a municipality by the Dispute Resolution Program or by a county-level housing judge pursuant to section 3 at P.L. 2024, c. 2, that protects the municipality from exclusionary zoning litigation, including builder's remedy lawsuits, during the current round of present and prospective need and through July 1 of the year the next affordable housing round begins.

COMPLIANT MUNICIPALITY — A municipality that is in the process of seeking compliance certification pursuant to the directives issued by the Administrative Office of the Courts, has obtained compliance certification, or who has filed for, or has obtained, a Judgment of

Compliance, Order for Repose, or other court approval pursuant to the Act.

CONSTRUCTION — New construction and additions, but does not include alterations, reconstruction, renovations, conversion, relocation, or repairs, as those terms are defined in the State Uniform Construction Code promulgated pursuant to the State Uniform Construction Code Act, P.L. 1975, c. 217 (N.J.S.A. 52:27D-119 et seq.).

CONTINUUM OF CARE or CoC — One of the 16 local planning bodies in New Jersey that coordinate service providers and other interested parties to prevent and end homelessness, as authorized by subtitle C of title IV of the McKinney-Vento Homeless Assistance Act of 1987, 42 U.S.C. §§ 11431 through 11435.

COUNTY-LEVEL HOUSING JUDGE — A judge appointed pursuant to section 5 of P.L. 2024, c.2 (N.J.S.A. 52:27D-313.2), to resolve disputes over the compliance of municipal fair share affordable housing obligations and municipal fair share plans and housing elements with the Act.

DCA or DEPARTMENT— The State of New Jersey Department of Community Affairs.

DEFICIENT HOUSING UNIT — A housing unit with health and safety code violations that requires the repair or replacement of a major system. A "major system" includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load-bearing structural systems.

DEVELOPER — Any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land included in a proposed development, including the holder of an option to contract to purchase, or other person having an enforceable proprietary interest in such land.

DEVELOPMENT — The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to N.J.S.A. 40:55D-1 et seq.

DEVELOPMENT APPLICATION — The application form and all accompanying documents required by ordinance for approval of a subdivision plat, a site plan, planned development, conditional use, zoning variance, or direction of the issuance of a permit pursuant to N.J.S.A. 40:55D-34 or 40:55D-36.

DISPUTE RESOLUTION PROGRAM - The Affordable Housing Dispute Resolution Program, established pursuant to section 5 of P.L. 2024, c.2 (N.J.S.A. 52:27D-313.2). The Dispute Resolution Program is established within the Judiciary of the State, for the purpose of resolving disputes associated with the Fair Housing Act with respect to municipalities seeking to obtain a certification of compliance of their adopted Housing Element & Fair Share Plan.

DIVISION — The Division of Local Planning Services in DCA.

EMERGENT OPPORTUNITY — A circumstance that has arisen whereby affordable housing will be able to be produced through a delivery mechanism not originally contemplated by or included in a fair share plan that has been the subject of a compliance certification.

EQUALIZED ASSESSED VALUE OR EAV — The assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 at P.L. 1973, c. 123 (N.J.S.A. 54:1-35a, 54:1-35b, and 54:1-35c). Estimates at the time of building permit may be obtained by the tax assessor using construction cost estimates. Final EAV shall be determined at project completion by the municipal assessor.

EXCLUSIONARY ZONING LITIGATION — Litigation challenging the fair share plan, housing element, ordinances, or resolutions that implement the fair share plan or housing element of a municipality based on alleged noncompliance with the Act or the Mount Laurel doctrine, which litigation shall include, but shall not be limited to, litigation seeking a builder's remedy.

- EXTENSION OF EXPIRING CONTROLS** — Extending the deed restriction period on units where the controls will expire in the current round of a housing obligation, so that the total years of a deed restriction is at least 60 years.
- FAIR SHARE OBLIGATION or AFFORDABLE HOUSING OBLIGATION** — The total of the present need and prospective need as determined by the Affordable Housing Dispute Resolution Program, or a court of competent jurisdiction.
- FAIR SHARE PLAN** — The plan that describes the mechanisms, strategies and the funding sources, if any, by which the Borough proposes to address its affordable housing obligation as established in the Housing Element, including the draft ordinances necessary to implement that plan, and addresses the requirements of P.L.1985, c.222 (N.J.S.A. 52:27D-301 et seq.).
- HOUSING ELEMENT** — The portion of the Borough's Master Plan, required by the Municipal Land Use Law ("MLUL"), N.J.S.A. 40:55D-28b(3) and the Act, that includes the information required by N.J.S.A. 52:27D-301 et seq., and establishes the Borough's fair share obligation.
- HOUSEHOLD INCOME** — A household's gross annual income calculated in a manner consistent with the determination of annual income pursuant to section 8 of the United States Housing Act of 1937 (Section 8), not in accordance with the determination of gross income for Federal income tax liability.
- HOUSING PROJECT** — A project, or distinct portion of a project, which is designed and intended to provide decent, safe, and sanitary dwellings, apartments, or other living accommodations for persons of low- and moderate-income; such work or undertaking may include buildings, land, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, educational, welfare, or other purposes. The term "housing project" may also be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements, and all other work in connection therewith.
- HOUSING REGION** — A geographic area established pursuant to N.J.S.A. 52:27D-304.2b
- INCLUSIONARY DEVELOPMENT** — A development containing both affordable units and market-rate units, in which a substantial percentage of the housing units are provided for a reasonable income range of low- and moderate- income households. This term includes, but is not limited to: new construction, the conversion of a nonresidential structure to residential use, and the creation of new affordable units through the gut rehabilitation or reconstruction of a vacant residential structure.
- JUDGMENT OF COMPLIANCE OR JUDGMENT FOR REPOSE** — A determination issued by the Superior Court approving a municipality's fair share plan to satisfy its affordable housing obligation for a particular 10-year round.
- LOW-INCOME HOUSEHOLD** — A household with a household income equal to 50% or less of the regional median income.
- LOW-INCOME UNIT** — A restricted unit that is affordable to a low-income household.
- MAJOR SYSTEM** — The primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building, which include, but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement or load-bearing structural systems.
- MARKET-RATE UNITS** — Housing not restricted to low- and moderate-income households that may sell or rent at any price.
- MODERATE-INCOME HOUSEHOLD** — A household with a household income in excess of 50% but less than or equal to 80% of the regional median income.
- MODERATE-INCOME UNIT** — A restricted unit that is affordable to a moderate-income household.

- MONI** — The no-longer-active Market Oriented Neighborhood Investment Program, as it was authorized by the Agency.
- MULTIFAMILY UNIT** — A structure containing five or more dwelling units.
- MUNICIPAL HOUSING LIAISON or MHL** — An appointed municipal employee who is, pursuant to N.J.A.C. 5:99-6, responsible for oversight and/or administration of the affordable units created within the municipality, and oversight of the authorization of individuals being provided access to the AHMS.
- MUNICIPAL HOUSING TRUST FUND** — A separate, interest-bearing, account held by a municipality for the deposit of development fees, payments in lieu of constructing affordable units on sites zoned for affordable housing, barrier-free escrow funds, recapture funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines, unexpended RCA funds remaining from a completed RCA project, application fees, and any other funds collected by the municipality in connection with its affordable housing programs, which shall be used to address municipal low- and moderate-income housing obligations within the time frames established by the Legislature and as governed at N.J.A.C. 5:99-2.
- NEW CONSTRUCTION** — The creation of a new housing unit under regulation by a code enforcement official regardless of the means by which the unit is created. Newly constructed units are evidenced by the issuance of a certificate of occupancy and may include new residences created through additions and alterations, adaptive reuse, subdivision, or conversion of existing space, and moving a structure from one location to another.
- NONEXEMPT SALE** — Any sale or transfer of ownership of a restricted unit to one's self or to another individual other than the transfer of ownership between spouses or civil union partners; the transfer of ownership between former spouses or civil union partners ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a Class A beneficiary; and the transfer of ownership by court order.
- ORDER FOR REPOSE** — The protection a municipality has from a builder's remedy lawsuit for a period of time from the entry of a judgment of compliance by the Superior Court. A judgment of compliance often results in an order for repose.
- PAYMENT IN LIEU OF CONSTRUCTING AFFORDABLE UNITS** — The payment of funds to the municipality by a developer when affordable units are not produced on a site zoned for an inclusionary development.
- PRESENT NEED** — The number of substandard existing deficient housing units in the municipality currently occupied by low- and moderate-income households, which is calculated pursuant to N.J.S.A. 52:27D-329.1 et seq. Also known as the "rehabilitation obligation."
- PRICE DIFFERENTIAL** — The difference between the controlled sale price of a restricted unit and the contract price at the exit sale of the unit, determined as of the date of a proposed contract of sale for the unit. If there is no proposed contract of sale, the price differential is the difference between the controlled sale price of a restricted unit and the appraised value of the unit as if it were not subject to UHAC, determined as of the date of the appraisal. If the controlled sale price exceeds the contract price or, in the absence of a contract price, the appraised value, the price differential is zero dollars.
- PRIOR ROUND UNIT** — A housing unit that addresses a municipality's fair share obligation from a round prior to the fourth round of affordable housing obligations, including any unit that: (1) received substantive certification from COAH; (2) is part of a third-round settlement agreement or judgment of compliance approved by a court of competent jurisdiction, inclusive of units created pursuant to a zoning designation adopted as part of the settlement agreement or judgment of compliance to create a realistic opportunity for development; (3) is subject to a grant agreement or other contract with either the State or a political subdivision thereof entered into prior to July 1,

2025, pursuant to either item (1) or (2) above; or (4) otherwise addresses a municipality's fair share obligation from a round prior to the fourth round of affordable housing obligations. A unit created after the enactment of P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1) on March 20, 2024, is not a prior round unit unless: (1) it is created pursuant to a prior round development plan or zoning designation that received COAH or court approval on or before the cutoff date of June 30, 2025, or the date that the municipality adopts the implementing ordinances and resolutions for the fourth round of affordable housing obligations, whichever occurs sooner; and (2) its siting and creation are consistent with the form of the prior round development plan or zoning designation in effect as of the cutoff date, without any amendment or variance.

RANDOM SELECTION PROCESS — A lottery process by which currently income-eligible households are selected, at random, for placement in affordable housing units such that no preference is given to one applicant over another, except in the case of a veterans' preference where such an agreement exists; for purposes of matching household income and size with an appropriately priced and sized affordable unit; or another purpose allowed pursuant to N.J.A.C. 5:80-26.7(k)3. This definition excludes any practices that would allow affordable housing units to be leased or sold on a first-come, first-served basis.

REGIONAL ASSET LIMIT — The maximum housing value in each housing region affordable to a four-person household with an income at 80% of the regional median as defined by duly adopted regional income limits published annually by the Affordable Housing Professionals of New Jersey or an entity approved by the court.

REGIONAL CONTRIBUTION AGREEMENT or RCA — A contractual agreement, pursuant to the Act, into which two municipalities voluntarily entered into prior to July 18, 2008, to transfer a portion of a municipality's affordable housing obligation to another municipality within its housing region.

REGIONAL MEDIAN INCOME — The median income by household size for an applicable housing region, as calculated annually in accordance with N.J.A.C. 5:80-26.3.

REHABILITATION — The repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

RENT — The gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

RESTRICTED UNIT — A dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as amended and supplemented, but does not include a market-rate unit that was financed pursuant to UHORP, MONI, or CHOICE.

UHAC — The Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 et seq., as amended and supplemented.

UHORP — The Agency's Urban Homeownership Recovery Program, as it was authorized by the Agency Board.

VERY-LOW-INCOME HOUSEHOLD — A household with a household income less than or equal to 30% of the regional median income.

VERY-LOW-INCOME UNIT — A restricted unit that is affordable to a very-low-income household.

VETERAN — A veteran as defined at N.J.S.A. 54:4-8.10.

VETERANS' PREFERENCE — The agreement between a municipality and a developer or residential development owner that allows for low- to moderate-income veterans to be given preference for up to 50 percent of rental units in relevant projects, as provided for at N.J.S.A. 52:27D-311.j.

WEATHERIZATION — Building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for rehabilitation.

95/5 RESTRICTION — A deed restriction governing a restricted ownership unit that is part of a housing element that received substantive certification from COAH pursuant to N.J.A.C. 5:93, as it was in effect at the time of the receipt of substantive certification, before October 1, 2001, or any other deed restriction governing a restricted ownership unit with a seller repayment option requiring 95 percent of the price differential to be paid to the municipality or an instrument of the municipality at the first non-exempt sale following the expiration of the deed restriction.

§ 58-3. Applicability.

- A. The provisions of this section shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created within the Borough of Pennington pursuant to the Borough's most recently adopted Housing Element and Fair Share Plan.
- B. The regulations of the Uniform Housing Affordability Controls (UHAC) at N.J.A.C 5:80-26.1 et seq. shall be applicable to such affordable housing units. In the event of a discrepancy between a regulation in this Chapter and UHAC, the applicable UHAC regulation shall be applicable.

§ 58-4. Monitoring and Reporting Requirements.

- A. On or before February 15th of every year, the Borough will electronically enter data into the AHMS system of the Department of Community Affairs of a detailed accounting of all development fees and any other payments into its trust fund that have been collected including residential and non-residential development fees, along with the current balance in the municipality's affordable housing trust fund as well as trust funds expended, including purposes and amounts of such expenditures, in the previous year from January 1st to December 31st.
- B. On or before February 15th of every year, the Borough will electronically enter data into the AHMS system of the Department of Community Affairs of up-to-date municipal information concerning the number of affordable housing units actually constructed, construction starts, certificates of occupancy granted, and the start and expiration dates of deed restrictions. With respect to units actually constructed, the information shall specify the characteristics of the housing, including housing type, tenure, affordability level, number of bedrooms, date, and expiration of affordability controls, and whether occupancy is reserved for families, senior citizens, or other special populations. The Borough shall also include a report on any expression of interest, applications, or pre-applications made under the overlay zones.
- C. For the midpoint realistic opportunity review as of July 1, 2030, pursuant to N.J.S.A. 52:27D-313, the Borough or other interested party may file an action through the Program seeking a realistic opportunity review and shall provide for notice to the public, including a realistic opportunity review of any inclusionary development site as set forth in the adopted HEFSP that has not received preliminary site plan approval prior to the midpoint of the 10-year round. Any such filing shall be through eCourts or any similar system set forth by the Program with notice to any party that has appeared in this matter.

§ 58-5. Monitoring and Reporting Requirements.

- A. The regulations for the Borough's affordable housing overlay zones are set forth in Chapter 215, Article VII of the Borough Code.
- B. The regulations in this Chapter shall apply to the overlay zones in Chapter 215, Article VII of the Borough Code unless said overlay zones specifically state otherwise.

§ 58-6. Alternative Living Arrangements.

- A. The administration of an alternative living arrangement shall be in compliance with N.J.A.C. 5:99, and UHAC, with the following exceptions:
 - (1) Affirmative marketing (N.J.A.C. 5:80-26.16). Unless stated otherwise, supportive housing units,

including group homes, must comply with the affirmative marketing requirements of their respective sponsoring programs, where applicable; provided, however, that the units or bedrooms may be affirmatively marketed by the provider in accordance with an alternative plan approved by the Division.

- (2) Affordability average and bedroom distribution (N.J.A.C. 5:80-26.4), with the exception of supportive housing units whose sponsoring program determines the unit arrangement, where applicable.

B. With the exception of units established with capital funding through a twenty-year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least thirty-year controls on affordability in accordance with UHAC, unless an alternative commitment is approved by the Dispute Resolution Program or the Division.

- (1) The service provider for the alternative living arrangement shall act as the administrative agent for the purposes of administering the affirmative marketing and affordability requirements for the alternative living arrangement.

§ 58-7. Phasing Schedule for Inclusionary Development.

A. Inclusionary developments shall adhere to the project phasing requirements as set forth in UHAC, N.J.A.C. 5:80-26.1 *et seq*, as amended and supplemented.

§ 58-8. New Construction.

A. The required income and bedroom distributions of affordable housing units, as well as additional applicable standards, shall be as set forth in UHAC, N.J.A.C. 5:80-26.1 *et seq*, as amended and supplemented.

B. Low/moderate split and bedroom distribution of affordable housing units:

- (1) The fair share obligation shall be divided equally between low- and moderate-income units; except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit. At least 13% of all restricted rental units shall be very-low-income units (affordable to a household earning 30% or less of regional median income). The very-low-income units shall be counted as part of the required number of low-income units within the development.
- (2) At least 25% of the obligation shall be met through rental units, including at least half in rental units available to families.
- (3) A maximum of 30% of the Borough's Fourth Round obligation (not inclusive of bonus credits) may be met with age-restricted units. At least half of all affordable units in the Borough's plan shall be available to families.
- (4) Unless otherwise approved pursuant to 7. below, in each affordable development, the following income distribution requirements must be satisfied by all of the restricted units in the development as well as by, considered in isolation, the restricted units that are age-restricted, the restricted units that are supportive housing, and the restricted units that are neither age-restricted nor supportive housing:
 - (a) At least 50 percent of all restricted units are low-income or very-low-income units;
 - (b) At least 50 percent of all restricted efficiency or one-bedroom units, rounded up or down to the nearest whole number in either direction, are low-income units or very-low-income units;
 - (c) At least 50 percent of all restricted two-bedroom units, rounded up or down to the

- nearest whole number in either direction, are low-income units or very-low-income units;
- (d) At least 50 percent of all restricted three-bedroom units are low-income units or very-low-income units;
 - (e) At least 50 percent of all restricted units with four or more bedrooms, rounded up or down to the nearest whole number in either direction, are low-income units or very-low-income units; and
 - (f) Any very-low-income units are distributed between each bedroom count as proportionally as possible, to the nearest whole unit, to the total number of restricted units within each bedroom count. For example, if half of the restricted units are two-bedroom units, then half of the very-low-income units should be two-bedroom units.
- (5) Unless otherwise approved pursuant to 7. below, in each affordable development, restricted units that are not age-restricted or supportive housing must be structured in conjunction with realistic market demands such that:
- (a) At a minimum, the number of bedrooms within the restricted units equals twice the number of restricted units;
 - (b) Two-bedroom and/or three-bedroom units compose at least 50 percent of all restricted units;
 - (c) No more than 20 percent of all restricted units, rounded up or down to the nearest whole number in either direction, are efficiency or one-bedroom units;
 - (d) At least 30 percent of all restricted units, rounded up or down to the nearest whole number in either direction, are two-bedroom units;
 - (e) At least 20 percent of all restricted units, rounded up or down to the nearest whole number in either direction, are three-bedroom units; and
 - (f) The remainder of the restricted units, if any, are allocated at the discretion of the developer in accordance with the Borough's Housing Element and Fair Share Plan.
- (6) Unless otherwise approved pursuant to 7. below, in each affordable development, restricted units that are age-restricted or supportive housing, except those supportive housing units whose sponsoring program determines the unit arrangement, must be structured such that, at a minimum, the number of bedrooms within the restricted units equals the number of restricted units. For example, the standard may be met by creating a two-bedroom unit for each efficiency unit. In affordable developments with 20 or more restricted units that are age-restricted or supportive housing, two-bedroom units must compose at least five percent of those restricted units.
- (7) The requirements of 4., 5., and 6. above must be satisfied by all restricted units in the Borough, considered in the aggregate. The individual requirements of 4., 5., and 6. above may be waived or altered for a specific affordable development with written approval from the Division if such waiver or alteration would not result in a material deviation from the municipal housing element and fair share plan. Any waiver or alteration that would result in a material deviation from the municipal housing element and fair share plan must receive written approval from a county-level housing judge.

C. Accessibility requirements:

- (1) The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7, and the following:

- (2) All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
- (a) An adaptable toilet and bathing facility on the first floor; and
 - (b) An adaptable kitchen on the first floor; and
 - (c) An interior accessible route of travel on the first floor; and
 - (d) An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
 - (e) If not all of the foregoing requirements in Subsection b2(a) through (d) can be satisfied, then an interior accessible route of travel must be provided between stories within an individual unit; but if all of the terms of Subsection b2(a) through (d) above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and
 - (f) An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that Pennington has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:
 - [1] Where a unit has been constructed with an adaptable entrance, upon the request of a person with disabilities who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
 - [2] To this end, the builder of restricted units shall deposit funds within the Borough of Pennington's Affordable Housing Trust Fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.
 - [3] The funds deposited under Subsection b2(f)(2) above shall be used by the Borough of Pennington for the sole purpose of making the adaptable entrance of an affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
 - [4] The developer of the restricted units shall submit a design plan and cost estimate to the Construction Official of the Borough of Pennington for the conversion of adaptable to accessible entrances.
 - [5] Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meets the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough's Affordable Housing Trust Fund in care of the Borough Chief Financial Officer, who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately earmarked.
 - [6] Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is "site impracticable" to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7.

D. Design:

- (1) In inclusionary developments, low- and moderate-income units shall be integrated with the

market units, except that age-restricted and supportive housing units may be physically clustered if the clustering facilitates the provision of on-site medical services or on-site social services as per N.J.A.C. 5:80-26.5.

- (2) The occupancy standards set forth at N.J.A.C. 5:80-26.5 shall be applicable regarding the design of proposed affordable housing developments.

E. Maximum rents and sales prices:

- (1) In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC, utilizing the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD.
- (2) The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60% of regional median income; however, municipalities may permit a maximum rent affordable to households earning no more than 70 percent of regional median income for moderate-income units within affordable developments where very-low-income units compose at least 13 percent of the restricted units. In such developments, the number of units with rent affordable to households earning 70 percent of regional median income may not exceed the number of very-low-income units in excess of 13 percent of the restricted units. The average rent for restricted rental units shall be affordable to households earning no more than 52% of regional median income.
- (3) The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for very-low-income, low-income and moderate-income units, provided that at least 13% of all restricted rental units shall be affordable to very-low-income households (earning 30% or less of the regional median household income), with at least half of such units made available for very-low-income families with children. Such very-low-income units shall be counted toward the minimum 50% low-income requirement to be made available for occupancy by low-income households to address the Borough's prospective need obligation. Nothing in this subsection precludes the Borough from requiring affordable developments to have at least 13 percent of restricted units be affordable to and reserved for very-low-income households.
- (4) The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70% of regional median income, and each affordable development must achieve an affordability average of 55% for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different sales prices for each bedroom type, and low-income ownership units must be available for at least two different sales prices for each bedroom type.
- (5) In determining the initial sales prices and rent levels for compliance with the affordability average requirements for restricted units other than assisted living facilities and age-restricted developments, the following standards shall be used:
 - (a) A studio or efficiency unit shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one-and-one-half-person household;
 - (c) A two-bedroom unit shall be affordable to a three-person household;
 - (d) A three-bedroom unit shall be affordable to a four-and-one-half-person household; and
 - (e) A four-bedroom unit shall be affordable to a six-person household.
- (6) In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted developments, the following standards shall be used:

- (a) A studio or efficiency unit shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one-and-one-half-person household; and
 - (c) A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
- (7) The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95% of the purchase price and the Freddie Mac 30-Year Fixed Rate-Mortgage rate of interest), taxes, homeowner and private mortgage insurance and realistic condominium or homeowner association fees, do not exceed 30% of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.4, as may be amended and supplemented.
- (8) The administrative agent shall set the initial rent for a restricted rental unit. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30% of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.4, as may be amended and supplemented. For assisted living units, the combined cost of rent, food, and services may not exceed 80 percent of the eligible monthly income of the appropriate household size as determined pursuant to N.J.A.C. 5:80-26.4.
- (9) The maximum resale price for a restricted ownership unit, if the resale occurs prior to the one-year anniversary of the date on which title to the unit was first transferred to a certified household, is the initial purchase price. If the resale occurs on or after such anniversary date, the maximum resale price is the most recent non-exempt purchase price increased to reflect the cumulative annual percentage increases to the regional median income, effective as of the same date as the regional median income calculated pursuant to N.J.A.C. 5:80-26.3. At the anniversary date of the tenancy of the certified household occupying a restricted rental unit, following proper notice provided to the occupant household pursuant to N.J.S.A. 2A:18-61.1.f, the rent may be increased to an amount commensurate with the annual percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U), specifically U.S. Bureau of Labor Statistics Series CUUR0100SAH, titled "Housing in Northeast urban, all urban consumers, not seasonally adjusted." The maximum allowable rent increase for the year will be effective as of the same date as the regional median income limits determined pursuant to N.J.A.C. 5:80-26.3. This rent increase may not exceed five percent in any one year and notice thereof must be filed with the administrative agent. Rents for units constructed pursuant to low-income housing tax credit regulations shall be indexed pursuant to the regulations governing low-income housing tax credits.

§ 58-9. Utilities.

- A. Affordable units shall utilize the same type of cooling and heating sources as market units within an inclusionary development.
- B. Tenant-paid utilities included in the utility allowance shall be set forth in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program. For units constructed with State funding, an alternate utility allowance approved by DCA or the Agency must be used. For units that receive ENERGYSTAR certification, a utility allowance calculated according to an energy consumption model provided by an energy consultant with an active registration with the New Jersey Board of Public Utilities must be used, subject to approval by the administrative agent.

§ 58-10. Occupancy Standards.

- A. The occupancy standards set forth at N.J.A.C. 5:80-26.5 shall be applicable.
- B. In referring certified households to specific restricted units, the administrative agent shall, to the extent feasible and without causing an undue delay in the occupancy of a unit, strive to:
 - (1) Provide at least one occupant for each bedroom, except for age-restricted units;
 - (2) Provide a bedroom for every two adult occupants;
 - (3) With regard to occupants under the age of 18, accommodate the household's requested arrangement, except that such arrangement may not result in more than two occupants under the age of 18 occupying any bedroom; and
 - (4) Avoid placing a one-person household into a unit with more than one bedroom.

§ 58-11. Control Periods for Restricted Ownership Units and Enforcement Mechanisms.

- A. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.6, as may be amended and supplemented and each restricted ownership unit shall remain subject to the requirements of this chapter for a deed-restricted control period. The minimum duration of the control period is:
 - (1) Thirty years for any ownership unit created on or after December 20, 2024.
 - (2) Thirty years for any ownership unit receiving an extension of affordability controls on or after December 20, 2024, unless the original term of affordability exceeds 30 years, in which case, the minimum control period for the extension is the number of years, not less than 20 years, that in combination with the original term results in 60 years of affordability.
 - (3) Governed by the grant of substantive certification, judgment of compliance, grant agreement, or other contract for any prior round ownership unit, including all units governed by 95/5 restrictions, sold before December 20, 2024.
 - (4) Governed by the form of UHAC in effect as of December 20, 2024, for any unit sold between December 20, 2004 and December 20, 2024, that is not the subject of a grant of substantive certification, judgment of compliance, grant agreement, or other contract.
- B. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit, or, if existing affordability controls are being extended, on the effective date of the extension. The date of commencement must be identified in the deed restriction.
- C. For each restricted ownership unit, at initial sale, the administrative agent shall determine a preliminary recapture amount equal to the price differential between the restricted price for the unit, based on the requirements at N.J.A.C. 5:80-26.7, and the nonrestricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value.
- D. The initial purchaser and each successive purchaser during the control period shall execute and deliver to the administrative agent a recapture note, secured by a recapture lien evidenced by a duly recorded mortgage on the unit, obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay a recapture amount at the time of the exit sale. The recapture note and lien must be determined upon exit sale and will be equal to the price differential minus the equity share amount, or another amount determined by an ordinance of the municipal governing body, which must be less than the price differential minus the equity share amount.
- E. The affordability controls set forth in this section and within N.J.A.C. 5:80-26.1 et seq shall remain

in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.

- F. A restricted ownership unit shall be required to obtain a continuing certificate of occupancy or a certified statement from the municipal building inspector stating that the unit meets all code standards upon the first transfer of title following the expiration of the deed-restricted control period provided pursuant to N.J.A.C. 5:80-26.6, as may be amended and supplemented.

§ 58-12. Price Restrictions for Restricted Ownership Units, Homeowner's Association Fees and Resale Prices.

- A. Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.7, as may be amended and supplemented, including:
- (1) The initial purchase price for a restricted ownership unit shall be set by the administrative agent.
 - (2) The administrative agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
 - (3) The master deeds and declarations of covenants and restrictions of affordable developments shall provide no distinction between restricted units and market-rate units in the calculation of the condominium or homeowners' association fees and special assessments to be paid by low- and moderate-income purchasers and those paid by market purchasers. Notwithstanding the foregoing sentence, condominium units subject to a municipal ordinance adopted before December 20, 2004, which ordinance provides for condominium or homeowner association fees and/or assessments different from those provided for in this subsection are governed by the ordinance.
 - (4) The owners of restricted ownership units may apply to the administrative agent to increase the maximum sales price for the unit to reflect eligible capital improvements completed since they purchased the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household, that is the addition of a bedroom and/or bathroom. See Subsection 23-15(a).

§ 58-12. Buyer Income Eligibility.

- A. Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.8, as may be amended and supplemented. Very-low-income ownership units are reserved for households with a household income less than or equal to thirty (30) percent of regional median income. Low-income ownership units shall be reserved for households with a household income less than or equal to 50% of regional median income and moderate-income ownership units shall be reserved for households with a household income less than or equal to 80% of regional median income.
- B. Notwithstanding the foregoing, however, the administrative agent may, upon approval by the Borough Committee, permit moderate-income purchasers to buy low-income units in housing markets where, as determined by the Division, units are reserved for low-income purchasers, but there is an insufficient number of eligible low-income purchasers to permit prompt occupancy of the units. All such low-income units to be sold to moderate-income households shall retain the required pricing and pricing restrictions for low-income units. Similarly, the administrative agent may permit low-income purchasers to buy very-low-income units in housing markets where, as determined by the Division, units are reserved for very-low-income purchasers, but there is an insufficient number of very-low-income purchasers to permit prompt occupancy of the units. Again, all such very-low-income units to be sold to low-income households shall retain the required pricing and pricing restrictions for very-low-income units.
- C. A certified household that purchases a restricted ownership unit must occupy it as the certified

household's principal residence and shall not lease the unit; provided, however, that the administrative agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year.

- D. The administrative agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowners' and private mortgage insurance and realistic condominium or homeowners' association fees, as applicable) does not exceed 35% of the household's eligible monthly income.

§ 58-13. Limitations on Indebtedness Secured by Ownership Units; Subordinations.

- A. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall submit to the administrative agent a notice of intent to incur such indebtedness, (for example, a home equity loan or solar loan), in such form and with such documentary support as determined by the administrative agent, for a determination in writing that the proposed indebtedness complies with the provisions of this section, and the administrative agent shall issue such determination prior to the owner incurring such indebtedness.
- B. With the exception of original purchase money mortgages, during a control period, neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95% of the maximum allowable resale price of the unit, as such price is determined by the administrative agent in accordance with N.J.A.C. 5:80-26.7(c).

§ 58-14. Capital Improvements to Ownership Units.

- A. The owners of restricted ownership units may apply to the administrative agent to recalculate the maximum sales price for the unit to reflect eligible capital improvements made since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household, that is, the addition of a bedroom and/or bathroom. In no event shall the maximum sales price of an improved housing unit exceed the limits of affordability for the larger household.
- B. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, or flooring) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the administrative agent at the time of the signing of the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale, provided the price, which shall be subject to ten-year, straight-line depreciation, has been approved by the administrative agent. Unless otherwise approved by the administrative agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at resale.

§ 58-15. Control Periods for Restricted Rental Units.

- A. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.12, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this section for a deed-restricted control period. The minimum duration of the control period is set forth below. LIHTC units are not governed by the provisions of this section, but rather by the provisions of the State's Qualified Allocation Plan, N.J.A.C. 5:80-33.1 through 33.40.

- (1) Forty years for any rental unit created on or after December 20, 2024;

- (2) Thirty years for any rental unit in a 100 percent affordable property that, on or after December 20, 2024, elects to extinguish its existing deed restriction to enter into a new deed restriction and commence refinancing and/or rehabilitation for the purpose of preservation;
 - (3) Thirty years for any other rental unit that, on or after December 20, 2024, extends its affordability controls for a new term of affordability, unless the original term of affordability exceeds 30 years, in which case, the minimum control period for the extension is the number of years, not less than 20, that in combination with the original term results in 60 years of affordability;
 - (4) Governed by the grant of substantive certification, judgment of compliance, grant agreement, or other contract for any prior round rental unit that was issued its certificate of occupancy before December 20, 2024; and
 - (5) Governed by the form of UHAC in effect as of December 20, 2004, for any prior round rental unit that was issued its certificate of occupancy between December 20, 2004 and December 20, 2024, and that is not the subject of a grant of substantive certification, judgment of compliance, grant agreement, or other contract.
- B. The control period for the restricted rental unit(s) in a development commences on the first date that a unit is issued a certificate of occupancy following the execution of the deed restriction or, if affordability controls are being extended, on the effective date of the extension. The control period for the restricted rental unit(s) in a development continues until the end date identified in the deed restriction, or until the minimum duration has elapsed if a specific end date cannot be determined according to the terms of the deed restriction. After the end of the control period, each restricted rental unit in the development remains subject to the affordability controls of this subchapter until:
- (1) The occupant household vacates the unit, at which point affordability controls terminate; or
 - (2) The occupant household's household income is found to exceed 80 percent of the regional median income for the relevant household size, after which affordability controls terminate at the later of either the next scheduled lease renewal or in 60 days.
- C. Deeds of all real property that include restricted rental units created or extended pursuant to the existing rules shall contain deed restriction language that conforms with the requirements of this subchapter and is substantially in the form set forth at N.J.A.C. 5:80-26 Appendix E. The deed restriction must meet the following requirements:
- (1) Is to be read in accordance with the requirements of this subchapter, such that any term that directly conflicts with or circumvents the requirements of this subchapter, regardless of intention, is unenforceable, of no legal effect, and contrary to the public policy of the State;
 - (2) Is governed by the requirements of this subchapter regardless of the language ultimately utilized in the recorded deed restriction document;
 - (3) Is severable, such that invalidation of any provision due to inconsistency with these regulations will not terminate the deed restriction, but, rather, will result in the deed restriction being read to include the provision of these regulations with which the original language was inconsistent;
 - (4) Has priority over all mortgages on the property; and
 - (5) Must be filed with the records office of the county in which the unit is located by the developer or owner of the restricted rental units, who then must, no later than 30 days after the commencement of the control period, provide to the administrative agent:
 - i. A copy of the filed deed restriction; and
 - ii. Certification by the preparer of the deed restriction that the deed restriction conforms with all requirements of this subchapter, and that the deed restriction language at N.J.A.C. 5:80-26 Appendix E, has been included therein.

- D. Failure to record a deed restriction does not, under any circumstances, excuse a property from the requirements of this subchapter. If a development is sold by a developer prior to recording the deed restriction, the buyer is not excused from adhering to the requirements of this subchapter and any recourse shall be to recover from the seller rather than seeking to extinguish any affordability controls of the development. Prior to the issuance of any building permit for the construction/rehabilitation of restricted rental units, the developer/owner and the Borough shall record a preliminary instrument in the form set forth at N.J.A.C. 5:80-26 Appendix P-2, incorporated herein by reference that specifies, at a minimum, the total number of rental units to be constructed/rehabilitated, the number of restricted rental units to be constructed/rehabilitated, the anticipated numbers of restricted rental units that will be very-low-income, low-income, and moderate-income, the address(es) and parcel(s) of the property, and the anticipated timeline for completion, including projected phasing. The preliminary instrument must provide that it will be replaced by the recording of a full deed restriction prior to the issuance of the certificate of occupancy, at which point the preliminary instrument will be extinguished. The full deed restriction must be recorded prior to receiving a certificate of occupancy.
- E. A restricted rental unit shall remain subject to the affordability controls of this section and N.J.A.C. 5:80-26.1 et seq. despite the occurrence of any of the following events:
- (1) Sublease or assignment of the lease of the unit;
 - (2) Sale or other voluntary transfer of the ownership of the unit; or
 - (3) The entry and enforcement of any judgment of foreclosure or grant of a deed in lieu of foreclosure on the property containing the unit; or
 - (4) The end of the control period, until the occupant household vacates the unit or is found to be income-ineligible (found to exceed 80 percent of the regional median income for the relevant household size, after which affordability controls terminate at the later of either the next scheduled lease renewal or in 60 days).

§ 58-16. Rent Restrictions for Rental Units; Leases.

- A. A written lease shall be required for all restricted rental units (except for units in assisted living residences), and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. Final lease agreements are the responsibility of the landlord and the prospective tenant and all lease provisions must comply with applicable law. The landlord shall provide the administrative agent with sufficient information for preparation of a unit inventory form for entry into the centralized affordable housing unit inventory system. A copy of each lease entered into with a certified household shall be provided to the administrative agent within 10 business days after the execution of each lease.
- B. No additional fees, operating costs, or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the administrative agent.
- C. Application fees (including the charge for any credit check) shall not exceed 5% of the monthly rent of the applicable restricted unit and shall be payable to the administrative agent to be applied to the costs of administering the controls applicable to the unit as set forth in this section and N.J.A.C. 5:80-26.1 et seq.

§ 58-17. Tenant Income Eligibility.

- A. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.14, as may be amended and supplemented, and shall be determined as follows:
- (1) Very-low-income rental units shall be reserved for households with a household income less

than or equal to 30% of regional median income.

- (2) Low-income rental units shall be reserved for households with a household income less than or equal to 50% of regional median income.
- (3) Moderate-income rental units shall be reserved for households with a household income less than or equal to 80% of regional median income.

B. The administrative agent shall certify a household as eligible for a restricted rental unit when the household is a very-low-income household, a low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35% (40% for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.17, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:

- (1) The household currently pays more than 35% (40% for households eligible for age-restricted units) of its household income for rent, and the proposed rent will reduce its housing costs;
- (2) The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
- (3) The household is currently in substandard or overcrowded living conditions;
- (4) The household documents the existence of assets with which the household proposes to supplement the rent payments; or
- (5) The household documents reliable anticipated third-party assistance from an outside source, such as a family member, in a form acceptable to the administrative agent and the owner of the unit.

C. The applicant shall file documentation sufficient to establish the existence of the circumstances in Subsections b1 through b5 above with the administrative agent, who shall counsel the household on budgeting.

§ 58-18. Municipal Housing Liaison.

A. As required by UHAC, this section creates the position of Municipal Housing Liaison. Subject to the approval of the Division, the Borough shall appoint a municipal employee by resolution of the governing body or letter from the chief executive, and shall identify the municipal housing liaison by name and title on the municipal website. The Municipal Housing Liaison is responsible for the creation, preservation and administration of the affordable housing programs, affordable units, monitoring and reporting, and, where applicable, supervising any contracted administrative agent to ensure that they execute the practices, procedures, and standards set forth in this subchapter and within N.J.A.C. 5:80-26.1 et seq. The Municipal Housing Liaison shall successfully complete the Division's Education Program as described at N.J.A.C. 5:99-9 within the timeframes specified by the Division before assuming the duties of Municipal Housing Liaison.

B. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for Pennington, including the following responsibilities, which may not be contracted out to the administrative agent:

- (1) Serving as Pennington's primary point of contact for all inquiries from the state, affordable housing providers, administrative agents and interested households;
- (2) Overseeing the monitoring of and reporting on the status of all proposed and completed affordable housing programs and affordable units in Pennington's Fair Share Plan and ensuring compliance with the requirements of the Amended Fair Housing Act;
- (3) Overseeing and monitoring administrative agents within the Borough's jurisdiction to ensure

compliance with the UHAC;

- (4) Ensuring that an administrative agent is assigned to administer the sales, rentals, re-sales, and re-rentals of all deed-restricted affordable units in the Borough at all times. For units at the end of their deed-restricted control period, an administrative agent shall be available to administer the sale of all properties until such time of the first authorized non-exempt sale after controls on affordability have been in effect on the unit. Verifying, certifying, and providing monitoring and reporting information within the AHMS at such time and in such form as the Division requires. Access to AHMS shall be authorized only by the municipal housing liaison, or their designee, which shall be a municipal employee. Information regarding specific characteristics of municipal affordable housing projects or programs and the resulting unit completions may be entered into AHMS by a contracted entity other than the municipal housing liaison with the written approval of the Borough and pursuant to the oversight of the municipal housing liaison. Monitoring reports shall include the information described at N.J.A.C. 5:99-5.2 and N.J.A.C 5:99-5.3. Monitoring reports for each calendar year shall be in the form of a certification specifying that all information provided in the AHMS is complete, accurate, and current through the most recent calendar year and shall be accompanied by a year-end bank or other financial institution statement that will be used to reconcile municipal reporting. Municipal monitoring information certifications shall be submitted by the municipal housing liaison, or their designee, which shall be a municipal employee, through the AHMS, by February 15 of each year for trust fund activity through December 31 of the previous year;
 - (5) Listing, on the municipal website, contact information for the administrative agent for each completed project with an affordable component within the Borough;
 - (6) Overseeing the coordination of meetings with affordable housing providers, developers, municipal officials, and administrative agents, as needed; and
 - (7) Where applicable, providing to an administrative agent a copy of the adopted municipal operating manual(s), housing element and fair share plan, and ordinances relating to the creation and administration of the Borough's affordable housing programs and/or affordable units.
- C. The municipal housing liaison may also serve as the administrative agent pursuant to N.J.A.C. 5:99-7 for some or all of the affordable units in the Borough, subject to the submission of qualifications to the Division, successful completion of the Division's Education Program as described at N.J.A.C. 5:99-9, and approval by the Division. These duties of the municipal housing liaison shall be outlined in the municipal ordinance establishing the position of the municipal housing liaison. All applicable tasks not performed by the municipal housing liaison, shall be contracted to an administrative agent pursuant to N.J.A.C. 5:99-7.
- D. The Division shall monitor the performance of any approved municipal housing liaison and may revoke said approval, should the Division find that the municipal housing liaison has failed to administer the Borough's affordable housing programs and/or affordable units in accordance with the rules of the Division pursuant to N.J.A.C. 5:99-5.6.

§ 58-18. Administrative Agent.

- A. The Borough shall designate or approve, for each affordable housing project or program within its fair share plan, an administrative agent to administer the affordable housing program and/or affordable units in accordance with the requirements of the Amended Fair Housing Act, the Program, this chapter, and the UHAC. The administrative agent may be the municipal housing liaison, the RCA administrator, other municipal employee, or a person or entity selected pursuant to the UHAC. Administrative agents shall be approved through the municipal housing liaison (if the prospective administrative agent is an individual other than the current municipal housing liaison), and designation of administrative agents is also subject to approval by the Division.
- B. Qualified administrative agents shall have been certified as required pursuant to N.J.S.A. 52:27D-

321, shall have evidence of satisfactory completion of the Division's Education Program as described at N.J.A.C. 5:99-9; and shall have submitted all other required information to the Division.

- C. The administrative agent shall perform the duties and responsibilities of an administrative agent as set forth at N.J.A.C. 5:99-7 and set forth in UHAC, and in accordance with the requirements of the Fair Housing Act. The Division and the municipal housing liaison shall monitor the performance of all approved administrative agents for compliance with this chapter. In the event the administrative agent does not administer the Borough's affordable housing program and/or affordable units in accordance with the certificate of compliance, municipal ordinance, or the Division's rules, the Division may revoke its approval and/or require the Borough to retain a different administrative agent. The Division reserves the right to revoke approval of an administrative agent for other compelling circumstances.
- D. The primary responsibility of the administrative agent is to ensure that the restricted units under administration are sold or rented, as applicable, only to very-low, low-, and moderate-income households in accordance with the provisions of the UHAC. The administrative agent is also responsible for the following:
1. Affirmative marketing:
 - (1) Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the Borough of Pennington and the provisions of N.J.A.C. 5:80-26.16; and
 - (2) Designate an experienced staff person to provide counseling or contracting to provide counseling services to low- and moderate- income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
 2. Household certification:
 - (1) Soliciting, scheduling, conducting and following up on applications and/or interviews with interested households;
 - (2) Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a very low-, low- or moderate-income household;
 - (3) Providing written notification to each applicant as to the determination of eligibility or noneligibility;
 - (4) Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendixes J and K of N.J.A.C. 5:80-26.1 et seq.;
 - (5) Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located; and
 - (6) Employing a random selection process as provided in the Affirmative Marketing Plan of the Borough of Pennington when referring households for certification to affordable units. It is noted that supportive housing units, including group homes, must also comply with the selection processes of their respective sponsoring programs, where applicable.
 - (7) Subject to the approval of the municipal housing liaison, administrative agents may grant a waiver of the income qualification requirement for units where a buyer has not been identified for an extended period of time and where the administrative agent has developed a set of criteria to determine that a waiver is necessary due to a lack of qualified applicants. This waiver shall not change the deed restriction in any way on the unit and the next sale shall be conducted according to the applicable rules.

3. Affordability controls:
 - (1) Furnishing to attorneys or closing agents appropriate forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;
 - (2) Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded recapture mortgage and note, as appropriate;
 - (3) Subject to prior written approval from the municipal housing liaison, ensuring that the removal of the deed restrictions and cancellation of the mortgages are effectuated and properly filed with the Monmouth County Register of Deeds or County Clerk's office after the termination of the affordability controls for each restricted unit as set forth in N.J.A.C. 5:80-26.1 et seq;
 - (4) Communicating with lenders regarding foreclosures; and
 - (5) Ensuring the issuance of continuing certificates of occupancy or certifications from municipal building inspectors, pursuant to N.J.A.C. 5:80-26.11.
 - (6) Exercising appropriate authority to discharge and release any or all instruments, as set forth in the UHAC appendices establishing affordability controls;
4. Resales and re-rentals:
 - (1) Instituting and maintaining an effective means of communicating information between owners of affordable units and the administrative agent regarding the availability of their restricted units for resale or re-rental; and
 - (2) Instituting, maintaining, and documenting an effective means of communicating information to very low-, low- and moderate-income households regarding the availability of restricted units for resale or re-rental, inclusive of listings on the New Jersey Housing Resource Center pursuant to N.J.S.A. 52:27D-321.6;.
 - (3) Sending annual mailings to owners as prescribed for in the UHAC at N.J.A.C. 5:80-26.19;
5. Processing requests from unit owners:
 - (1) Reviewing and approving requests for determination from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this section;
 - (2) Reviewing and approving requests to increase the maximum sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air-conditioning systems installed subsequent to the initial sale of the unit;
 - (3) Notifying the Borough of an owner's intent to sell a restricted 95/5 unit, as defined in the UHAC at N.J.A.C. 5:80-26.2 ; and
 - (4) Making determinations on requests by owners of restricted units for hardship waivers.
6. Enforcement:
 - (1) Securing annually from the Borough a list of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;
 - (2) Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the administrative agent;

- (3) Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.19(d)4.
- (4) Establishing a program for diverting unlawful rent payments to the Borough's Affordable Housing Trust Fund; and
- (5) Creating and publishing a written operating manual as set forth at N.J.A.C. 5:99-7.2 in plain English and in such other languages as may be appropriate to serving the respective client base for each affordable housing program, to be approved by the municipal housing liaison. The operating manual, administered by the administrative agent and to be approved by the Borough Council, shall set forth procedures for administering the affordability controls, including procedures for long-term control of restricted units; for enforcing the covenants set forth in the UHAC appendices, consistent with the provisions at N.J.A.C. 5:80-26.19; and for releasing restricted units promptly at the conclusion of applicable control periods. The operating manual shall have a separate and distinct chapter or section setting forth the process for identifying applicant households seeking certification to restricted units, for reviewing applicant household eligibility, and for certifying applicant households in accordance with the household certification and referral requirements set forth at N.J.A.C. 5:80-26.17.

7. Additional responsibilities:

- (1) The administrative agent shall have the authority to take all actions necessary and appropriate, as permitted by law, to carry out its responsibilities as set forth in this chapter, N.J.A.C. 5:99-7, and N.J.A.C. 5:80-26.1 et seq.
- (2) The administrative agent shall prepare annual reports for submission to the Municipal Housing Liaison and the Division by February 15 of each calendar year, including a detailed description of completed units and any other information necessary for the Borough to produce its status report as required pursuant to N.J.S.A. 52:27D-329.4.
- (3) The administrative agent shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing at least annually and more often as needed.

§ 58-19. Affirmative Marketing Requirements.

- A. The Borough of Pennington shall adopt by resolution an Affirmative Marketing Plan, subject to review by the Division, that is compliant with N.J.A.C. 5:80-26.16, as may be amended and supplemented.
- B. The Affirmative Marketing process is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, English-speaking ability, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age (except for "housing for older persons" as defined at N.J.S.A. 10:5.1 et seq. and age-restricted units as permitted by 42 U.S.C. § 3601 et seq.), number of children, source of lawful income, or any other characteristic described in the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 through 5.50, to housing units that are being marketed by a developer, sponsor or owner of affordable housing. Unless stated otherwise, supportive housing units must comply with the affirmative marketing requirements of their respective sponsoring programs, where applicable. The Affirmative Marketing process is intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. In addition, as a result of the Borough's 2026 mediation agreement with FSHC, the Affirmative Marketing Plan shall require the notification to Fair Share Housing Center; New Jersey State Conference of the NAACP; Latino Action Network; STEPS, Ocean, Inc.; the Greater Red Bank, Asbury Park/Neptune, Bayshore, Greater Freehold, Greater Long Branch, and Trenton branches of the NAACP; and the Supportive Housing Association. It is a continuing program that directs marketing activities toward Housing Region 4 and is required to be followed throughout the period of restriction.
- C. The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in Housing Region 4, comprised of Mercer, Monmouth, and Ocean Counties.

- D. The Borough has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Program, including initial sales and rentals and resales and re-rentals. The administrative agent designated by the Borough of Pennington shall implement the Affirmative Marketing Plan to assure the affirmative marketing of all affordable units, including accepting applications and maintaining a list of applicants for each affordable development. The administrative agent shall document and report the affirmative marketing plan for the Borough and the affirmative marketing activities undertaken for each of the units within their purview to the municipal housing liaison, who shall ensure that developers and administrative agents are marketing units in accordance with the provisions in this section. The marketing of restricted units must be consistent with the affirmative marketing plan adopted by the Borough.
- E. In implementing the Affirmative Marketing Plan, the administrative agent shall designate an experienced staff person to provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law. Implementation of the affirmative marketing plan by the administrative agent should also include all other required provisions set forth at N.J.A.C. 5:80-26.16(f).
- F. The Affirmative Marketing Plan shall contain all the components (i.e. housing project information, eligibility/selection criteria, strategies and mediums of advertising, timelines) required as set forth within N.J.A.C. 5:80-26.16, subsections (d) and (e) in particular. In implementing the Affirmative Marketing Plan, the administrative agent shall consider the use of language translations where appropriate.
- G. The affirmative marketing process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy and may begin before construction commences. All affirmative marketing advertising and outreach activities utilized must be employed at the start of the marketing program.
- H. Applications for affordable housing shall be available in several locations, including, at a minimum, the County Administration Building and the County Library for each county within the housing region; the municipal administration building and the municipal library in the Borough; and the developer's office. The Borough shall post the application links and/or notices of affordable housing either directly on the home page of the Borough's official website or on a landing page directly, clearly, and conspicuously linked to from the home page of the Borough's official website. Preapplications shall be emailed or mailed to prospective applicants upon request.
- I. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, which shall be a condition of approval for any such affordable housing application before the Borough's Land Use Board.

§ 58-20. Appeals.

- A. Appeals from all decisions of an administrative agent appointed pursuant to this section and N.J.A.C. 5:80-26.1 et seq. shall be filed in writing with the municipal housing liaison. A decision by the municipal housing liaison may be appealed to the Division. A written decision of the Division Director upholding, modifying, or reversing an administrative agent's decision is a final administrative action.

Appendix 13

Appendix 14

**BOROUGH OF PENNINGTON
MERCER COUNTY, NEW JERSEY**

**RESOLUTION ADOPTING AN AFFIRMATIVE MARKETING PLAN FOR THE
BOROUGH OF PENNINGTON**

WHEREAS, in accordance with applicable Council on Affordable Housing (“COAH”) regulations and the New Jersey Uniform Housing Affordability Controls (“UHAC”) N.J.A.C. 5:80-26, et seq., the Borough of Pennington is required to adopt by resolution an Affirmative Marketing Plan to ensure that all affordable housing units created, including those created by rehabilitation are affirmatively marketed to very low, low and moderate income households, particularly those living and/or working within Housing Region 4, the Housing Region encompassing the Borough of Pennington; and

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and Council of the Borough of Pennington, County of Mercer, State of New Jersey, do hereby adopt the following Affirmative Marketing Plan:

Affirmative Marketing Plan

- A. All affordable housing units in the Borough of Pennington shall be marketed in accordance with the provisions herein unless otherwise provided in N.J.A.C. 5:93-1, et seq. This Affirmative Marketing Plan shall apply to all developments that contain or will contain very low, low or moderate-income units, including those that are part of the Borough’s prior round Fair Share Plan and its current Fair Share Plan, and those that may be constructed in future developments not yet anticipated by the Fair Share Plan.
- B. The Affirmative Marketing Plan shall be implemented by an Administrative Agent designated by and/or under contract to the Borough of Pennington. All the costs of advertising and affirmatively marketing affordable housing units shall be borne by the developers/sellers/owners of the affordable unit(s). The exception to this is that the cost of affirmatively marketing the Accessory Apartment Program may be borne by the Borough, at the Borough’s discretion.
- C. In implementing the Affirmative Marketing Plan, the Administrative Agent, acting on behalf of the Borough, shall undertake all the following strategies:
 1. Review, approve and ensure that the developers/sellers/owners publish at least one advertisement in a newspaper of general circulation within the housing region.
 2. Broadcast of one advertisement by a radio or television station broadcasting throughout the housing region.
 3. At least one additional regional marketing strategy using one of the other sources listed below at Sec. E of this plan.

- D. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer or sponsor of affordable housing. The Affirmative Marketing Plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward Housing Region 4 in which the Borough is located and covers the entire period of deed restriction for each restricted housing unit.
- E. The Affirmative Marketing Plan is a continuing program intended to be followed throughout the entire period of restrictions and shall meet the following requirements:
1. All newspaper articles, announcements and requests for applications for very low, low, and moderate-income units shall appear in the Two River Times, Trenton Times, and Asbury Park Press.
 2. The primary marketing shall take the form of at least one press release and a paid display advertisement in the above newspapers during the first week of the marketing program and subsequently utilizing internet advertisements each month thereafter until all available units have been leased. The developer/owner shall disseminate all public service announcements and pay for display advertisements. The developer/owner shall provide proof of publication to the Administrative Agent. All press releases and advertisements shall be approved in advance by the Borough's Administrative Agent.

Advertisements will also be placed on the following websites:

Pennington Borough -<https://www.penningtonboro.org>

New Jersey Housing Resource Center (NJHRC) - <http://www.njhrc.gov>

CGP&H – <http://www.affordablehomesnewjersey.com>

Advertisements posted to NJHRC will occur on or before the earlier of:

- (1) at least 60 days prior to conducting a lottery of the applicants; or
- (2) within one day following when the owner, developer, property manager, or other administrative entity provides any information regarding how to apply for units to prospective applicants or solicits any applications from potential applicants through any other means.

The posting on NJHRC shall include, at a minimum:

- i. The date that the affordable housing units are expected to be completed,
- ii. The date of the lottery,
- iii. The number of affordable housing units,
- iv. An accounting of how many of the affordable housing units will be available to very low-, low-, and moderate-income households, and
- v. Each bedroom size that will be available.

3. The advertisement shall include a description of the:
 - i. Street address(es) of the units;
 - ii. Directions to the units;
 - iii. Range of prices for the units;
 - iv. Number of bedrooms in the affordable units (bedroom mix);
 - v. Maximum income permitted to qualify for the units;
 - vi. Location of applications;
 - vii. Business hours when interested households may obtain an application;
 - viii. Application fees, if any;
 - ix. Number of units currently available; and
 - x. Anticipated dates of availability.
4. Advertisements will be broadcast on at least one regional cable television or radio station
5. Applications shall be mailed by the Administrative Agent to the prospective applications upon request. However, when on-line preliminary applications are utilized, if prospective applicants do not have internet access, they will be given a phone number to call the Administrative Agent, who will then enter all pre-application information online during the phone call. Locations of applications, brochures, and flyers to affirmatively market the program are listed in attached Appendix II, and will also be made available on the Borough's website. Also, information on how to apply shall be made available at the developer's sales/rental office and shall be mailed or emailed to prospective applicants upon request.
6. The Administrative Agent shall develop, maintain and regularly update a list of community contact person(s) and/or organizations(s) in Monmouth, Ocean, and Mercer Counties that will aid in the affirmative marketing program with particular emphasis on contacts that will reach out to groups that are least likely to apply for housing within the region, including major regional employers. Please see Appendix I for a complete list.
 - i. Quarterly informational flyers shall be sent to each of the following agencies with a request for publication in their journals and for circulation among their members:

Mercer County Board of Realtors
Monmouth/Ocean County Association of Realtors
 - ii. Quarterly informational circulars shall be sent to the administrators of each of the following agencies in the counties of and requests to post same shall be sent to the administrators of each of the following agencies within the counties of Monmouth, Ocean, and Mercer:

Welfare or Social Service Board
Rental Assistance Office (local office of DCA)
Offices on Aging or Division of Senior Services
Housing Authority

Community Action Agencies
Community Development Departments

- iii. Quarterly informational shall be sent to the chief personnel administrators of all the major employers within the region as listed in attached Appendix I in accordance with the Region 4 Affirmative Marketing Plan.
- iv. Quarterly informational and copies of press releases and advertisements of the availability of very low, low and moderate-income housing shall be sent to the following additional community and regional organizations:

Fair Share Housing Center (510 Park Boulevard, Cherry Hill, NJ 08002)

New Jersey State Conference of the NAACP (4326 Harbor Beach Blvd.
#775, Brigantine, NJ 08203)

The Latino Action Network (P.O. Box 943, Freehold, NJ 07728)

STEPS (14 Clifton Ave S, Lakewood, NJ, 08701)

Greater Red Bank Branch of the NAACP (PO Box 2147, Red Bank, NJ, 07701)

Asbury Park/Neptune Branch of the NAACP (PO Box 1143, Asbury Park 07712)

Bayshore Branch of the NAACP (PO Box 865, Matawan, NJ, 07747)

Greater Freehold Branch of the NAACP (PO Box 246, Marlboro Annex, NJ,
07746)

Greater Long Branch branch of the NAACP (38 Memorial Parkway, Long Branch,
NJ, 07740)

Trenton Branch of the NAACP (PO Box 1355, Trenton, NJ, 08608)

Supportive Housing Association (185 Valley Street, South Orange, NJ 07079)

- v. The Administrative Agent will also provide specific direct notice to the following community and regional organizations whenever affordable housing units become available in the Borough, listed in attached Appendix II:

Monmouth County Office on Aging (PO Box 1255, Freehold, NJ, 07728)

Ocean County Office of Senior Services (1027 Hooper Ave., Toms River, NJ,
08754)

Mercer County Office on Aging (Mercer County Administration Building, PO Box 8068, Trenton, NJ, 08650)

Monmouth County Public Housing Agency (PO Box 3000 Freehold NJ, 07728)

Mercer County Library Headquarters (2751 Brunswick Pike, Lawrenceville, NJ, 08648)

Monmouth County Library Headquarters (125 Symmes Drive, Manalapan, NJ, 07726)

Ocean County Library (101 Washington St., Toms River, NJ, 08753)

Pennington Municipal Building (30 North Main Street, Pennington, NJ 08534)

Oceanic Free Library (109 Avenue of Two Rivers, Pennington, NJ, 07760)

7. A random selection method to select occupants of very low, low and moderate-income housing will be used by the Borough's Administrative Agent in conformance with N.J.A.C. 5:80-26.16(1).
8. The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in Housing Region 4 comprised of Mercer, Ocean, and Monmouth Counties.
9. The Administrative Agent shall administer the Affirmative Marketing Plan. The Administrative Agent has the responsibility to income qualify very low, low and moderate income households; to place income eligible households in very low, low and moderate income units upon initial occupancy; to continue to qualify households for re-occupancy of units as they become vacant during the period of affordability controls; to assist with outreach to very low, low and moderate income households; and to enforce the terms of the deed restriction and mortgage loan as per N.J.A.C. 5:80-26.1, et seq.
10. Whenever appropriate, the Administrative Agent shall provide or direct qualified very low, low and moderate-income applicants to counseling services on subjects such as budgeting, credit issues, mortgage qualifications, rental lease requirements and landlord/tenant law and shall develop, maintain and update a list of entities and lenders willing and able to perform such services.
11. All developers/owners of very low, low and moderate-income housing units shall be required to undertake and pay the costs of the marketing of the affordable units in their respective developments, subject to the direction and supervision of the Administrative Agent. The implementation of the Affirmative Marketing Plan for a development that includes affordable housing shall commence at least 120 days before the issuance of either a temporary or permanent certificate of occupancy.

12. The implementation of the Affirmative Marketing Plan shall continue until all very low, low and moderate-income housing units are initially occupied and for as long as affordable units exist that remain deed restricted and for which the occupancy or re-occupancy of units continues to be necessary. Please note that in addition to complying with this Borough-wide Affirmative Marketing Plan the Administrative Agent shall also review and approve a separate Affirmative Marketing Plan for every new affordable development in Pennington that is subject to N.J.A.C. 5:80-26.1 et seq. That document shall be completed by the owner/developer and will be compliant with the Borough's Affirmative Marketing Plan as presented herein, and incorporate development specific details and permitted options, all subject to the Administrative Agent's review and approval. The development specific affirmative marketing plans will use the standard form for Region 4, which is attached hereto as Appendix III.

13. The Administrative Agent shall provide the Municipal Housing Liaison with the information required to comply with monitoring and reporting requirements pursuant to N.J.A.C.5:80-26-1, et seq. and any order granting certification of the Borough's Housing Element and Fair Share Plan.

BE IT FURTHER RESOLVED that the appropriate Borough officials and professionals are authorized to take all actions required to implement the terms of this Resolution.

BE IT FURTHER RESOLVED that this Resolution shall take effect pursuant to law.

APPROVED this ____ day of ____, 2025.

ATTEST:

Administrator

Appendix 15

Chapter 98. Fees.

Article I Affordable Housing Development Fees

§ 58-1. Purpose and applicability.

- A. This chapter establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with regulations set forth in P.L. 2024, c. 2, N.J.S.A. 52:27D-301 et seq., N.J.A.C. 5:99-1 et seq. and as previously established in accordance with P.L. 2008, c. 46, Sections 8 and 32 through 38 (N.J.S.A. 52:27D-329.2) and the Statewide Nonresidential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7). Fees collected pursuant to this chapter shall be used for the sole purpose of providing very-low-, low- and moderate-income housing in accordance with a Court-approved Spending Plan.
- B. Pursuant to P.L.2024, c. 2, the authority relating to rulemaking on the collection of residential and non-residential development fees is appropriately delegated to the Department of Community Affairs, following the abolition of COAH, effective March 20, 2024. As such, municipalities which have obtained or are in the process of seeking compliance certification may retain and expend these development fees.
- C. The purpose of this chapter is to establish standards for the collection, maintenance and expenditure of development fees pursuant to the above. Fees collected pursuant to this chapter shall be used for the sole purpose of providing low- and moderate-income housing.

§ 58-2. Definitions.

- A. The definitions in the Uniform Housing Affordability Controls (UHAC) at N.J.A.C 5:80-26.2 and N.J.A.C. 5:99 shall be applicable where a term is not defined. In the event of a discrepancy between a definition in this section and UHAC and N.J.A.C. 5:99, the current UHAC or N.J.A.C. 5:99 definition shall be applicable. The following terms, as used in this chapter, shall have the following meanings:

ACT — The Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.), as amended through P.L. 2024, c.2.

ADMINISTRATIVE AGENT — The individual or entity designated by the Borough and approved by the Division to administer affordable units in accordance with this chapter, the regulations of the amended Fair Housing Act (P.L.1985, c. (N.J.S.A. 52:27D-301 et seq.)), as designated pursuant to N.J.A.C. 5:99-7, and the Uniform Housing Affordability Controls set forth at N.J.A.C. 5:80-26 et seq.

AFFORDABLE — A sales price or rent level that is within the means of a very low-, low- or moderate-income household as defined within N.J.S.A. 52:27D-301 et seq., and, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.7, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.13, as may be amended and supplemented.

AFFORDABLE HOUSING DEVELOPMENT — A development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100% affordable development.

AFFORDABLE HOUSING PROGRAM(S) — Any method of creating or preserving actual housing units available to low- and moderate-income households or creating a realistic opportunity for the construction of such units, and any mechanism in a municipal fair share plan prepared or implemented to address a municipality's fair share obligation.

AFFORDABLE HOUSING MONITORING SYSTEM or AHMS — The Department of Community Affairs (DCA) or Department's cloud-based software application, which shall be the central repository for municipalities to use for reporting detailed information regarding affordable housing developments, affordable housing unit completions, and the collection and expenditures of funds deposited into the municipal affordable housing trust fund.

AFFORDABLE UNIT — A housing unit proposed or created pursuant to the Fair Housing Act and approved for crediting by the court and/or funded through an affordable housing trust fund.

BOROUGH — The Borough of Pennington, in Monmouth County, New Jersey.

COAH OR THE COUNCIL— The New Jersey Council on Affordable Housing, as previously established by the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.), prior to its abolition effective March 20, 2024 through P.L.2024, c.2.

COMPLIANCE CERTIFICATION — The certification issued to a municipality by a county-level housing judge pursuant to section 3 at P.L. 2024, c. 2, that protects the municipality from exclusionary zoning litigation during the current round of present and prospective need and through July 1 of the year the next affordable housing round begins, which is also known as a "judgment of compliance" resulting in an "order for repose." The term "compliance certification" includes a judgment of repose granted in an action filed pursuant to section 13 at P.L. 1985, c. 222 (N.J.S.A. 52:27D-313).

DCA or DEPARTMENT — The State of New Jersey, Department of Community Affairs.

DEVELOPER — The legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

DEVELOPMENT FEE — Money paid by a developer for the improvement of residential and non-residential property as authorized pursuant to 40:55D-8.1 through 40:55D-8.7 and N.J.A.C. 5:99-3, *Holmdel Builder's Association v. Holmdel Borough*, 121 N.J. 550 (1990) and the Fair Housing Act, as amended, N.J.S.A. 52:27D-301 et seq., and regulated by applicable COAH Rules.

DISPUTE RESOLUTION PROGRAM — The Affordable Housing Dispute Resolution Program, established pursuant to section 5 of P.L. 2024, c.2 (N.J.S.A. 52:27D-313.2). The Dispute Resolution Program is established within the Executive Branch of the State, for the purpose of resolving disputes associated with the Fair Housing Act with respect to municipalities seeking to obtain a certification of compliance of their adopted Housing Element & Fair Share Plan.

DIVISION — The Division of Local Planning Services within the Department of Community Affairs.

EMERGENT OPPORTUNITY — A circumstance that has arisen whereby affordable housing will be able to be produced through a delivery mechanism not originally contemplated by or included in a fair share plan that has been the subject of a compliance certification.

EQUALIZED ASSESSED VALUE or EAV— The assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with Sections 1, 5, and 6 of P.L. 1973, c. 123 (N.J.S.A. 54:1-35a through 54:1-35c). Estimates at the time of issuance of a building permit may be obtained by the Tax Assessor utilizing estimates for construction cost. Final equalized assessed value will be determined at project completion by the Municipal Tax Assessor.

FAIR SHARE OBLIGATION — The total of the present need and prospective need as determined by a court of competent jurisdiction.

GREEN BUILDING STRATEGIES — Those strategies that minimize the impact of development on the environment and enhance the health, safety and well-being of residents by producing durable, low- maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

HOUSING PROJECT — A project, or distinct portion of a project, which is designed and intended to provide decent, safe, and sanitary dwellings, apartments, or other living accommodations for persons of low- and moderate-income; such work or undertaking may include buildings, land, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, educational, welfare, or other purposes. The term "housing project" may also be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements, and all other work in connection therewith.

MIXED USE DEVELOPMENT — Any development that includes both a non-residential development component and a residential development component, and shall include developments for which: (1) there is a common developer for both the residential development component and the non-residential development component, provided that for purposes of this definition, multiple persons and entities may be considered a common developer if there is a contractual relationship among them obligating each entity to develop at least a portion of the residential or non-residential development, or both, or otherwise to contribute resources to the development; and (2) the residential and non-residential developments are located on the same lot or adjoining lots, including, but not limited to, lots separated by a street, a river, or another geographical feature.

MUNICIPAL AFFORDABLE HOUSING TRUST FUND — A separate, interest-bearing account held by a municipality for the deposit of development fees, payments in lieu of constructing affordable units on sites zoned for affordable housing, barrier-free escrow funds, recapture funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines, unexpended RCA funds remaining from a completed RCA project, application fees, and any other funds collected by the municipality in connection with its affordable housing programs, which shall be used to address municipal low- and moderate-income housing obligations within the time frames established by the Legislature and this chapter.

NEW JERSEY AFFORDABLE HOUSING TRUST FUND — An account established

pursuant to N.J.S.A. 52:27D-320.

NON-RESIDENTIAL DEVELOPMENT

1. Any building or structure, or portion thereof, including, but not limited to, any appurtenant improvements, which is designated to a use group other than a residential use group according to the State Uniform Construction Code, N.J.A.C. 5:23, promulgated to effectuate the State Uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq., including any subsequent amendments or revisions thereto;
2. Hotels, motels, vacation timeshares, and child-care facilities; and
3. The entirety of all continuing care facilities within a continuing care retirement community which is subject to the Continuing Care Retirement Community Regulation and Financial Disclosure Act, N.J.S.A. 52:27D-330 et seq.

NON-RESIDENTIAL DEVELOPMENT FEE — The fee authorized to be imposed pursuant to the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 40:55D-8.7.)

PAYMENT IN LIEU OF CONSTRUCTING AFFORDABLE UNITS — The payment of funds to the municipality by a developer when affordable units are not produced on a site zoned for an inclusionary development.

REHABILITATION — The repair, renovation, alteration, or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

RESIDENTIAL DEVELOPMENT FEE — Money paid by a developer for the improvement of residential property as permitted pursuant to N.J.S.A. 52:27D-329.2 and N.J.A.C. 5:99-3.2.

SPENDING PLAN — A plan to predict funds that will be paid into a municipality's affordable housing trust fund and to allocate how those funds will be spent to advance the interest of low and moderate income households subject to limitations required by law.

§ 58-3. Residential Development Fees.

A. Imposition of Fees.

- (1) Within the Borough of Pennington, all residential developers, except for developers of the types of developments specifically exempted below and developers of developments that include affordable housing, shall pay a fee of 1.5% of the equalized assessed value for all new residential development provided no increased density is permitted. Development fees shall also be imposed and collected when an additional dwelling unit is added to an existing residential structure; in such cases, the fee shall be calculated based on the increase in the equalized assessed value of the property due to the additional dwelling unit.
- (2) 1.5% of the increase in equalized assessed value (EAV) due to expansion, full or partial demolition and reconstruction, improvement, and/or alteration of any dwelling unit, which results in a 10% or greater increase in floor area.
- (3) 1.5% of the increase in equalized assessed value (EAV) due to the construction, expansion, full or partial demolition and reconstruction, improvement, and/or alteration of any accessory building other than a shed or gazebo.
- (4) When an increase in residential density is permitted pursuant to a "d" variance

granted under N.J.S.A. 40:55D-70(d)(5), developers shall be required to pay a "bonus" development fee of 6% of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing. If the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

B. Eligible Exactions, Ineligible Exactions and Exemptions for Residential Developments.

- (1) Affordable housing developments and/or developments where the developer has made a payment in lieu of on-site construction of affordable units, if permitted by ordinance or by agreement with the Borough of Pennington, shall be exempt from the payment of development fees.
- (2) Developments that have received preliminary or final site plan approval prior to the adoption of this chapter and any preceding ordinance permitting the collection of development fees shall be exempt from the payment of development fees, unless the developer seeks a substantial change in the original approval. Where site plan approval is not applicable, the issuance of a zoning permit and/or construction permit shall be synonymous with preliminary or final site plan approval for the purpose of determining the right to an exemption. In all cases, the applicable fee percentage shall be determined based upon the Development Fee Ordinance in effect on the date that the construction permit is issued.
- (3) The expansion, full or partial demolition and reconstruction, improvement, and/or alteration of any dwelling unit which results in less than a ten-percent increase in floor area shall be exempt. The expansion, full or partial demolition and reconstruction, improvement, and/or alteration of any dwelling unit which results in greater than a ten-percent increase in floor area shall pay a development fee of 1.5% of the increase in equalized assessed value of the property.
- (4) Any project for improvement of a structure to comply with existing state or local building, fire, health, sanitary or safety code specifications which are solely necessary to assure safe living conditions; or
- (5) Any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places but a development fee shall be charged for any new dwelling constructed as a replacement for a previously existing dwelling on the same lot that was or will be demolished, unless the owner resided in the previous dwelling for a period of one year or more prior to obtaining a demolition permit. Where a development fee is charged for a replacement dwelling, the development fee shall be calculated on the increase in the equalized assessed value of the new structure as compared to the previous structure.
- (6) Structural alterations that do not increase gross floor area of a building or structure or increase the equalized assessed value of a property shall be exempted from paying a development fee.
- (7) Nonprofit organizations constructing residential projects which have received tax-exempt status pursuant to § 501(c)(3) of the Internal Revenue Code, providing current evidence of that status is submitted to the Municipal Clerk, together with a certification that services of the organization are provided at reduced rates to those who establish an inability to pay existing charges, shall be exempted from paying a development fee.

- (8) Federal, state, county and local governments shall be exempted from paying a development fee.
- (9) Homes replaced as a result of a natural disaster, fire or flood shall be exempt from the payment of a development fee. (This exemption applies only for the owner of record at the time of the fire, flood, or natural disaster.)

§ 58-4. Nonresidential Development Fees.

A. Imposition of Fees.

- (1) Within all zoning districts, nonresidential developers, except for developers of the types of developments specifically exempted below, shall pay a fee equal to 2.5% of the equalized assessed value of the land and improvements, for all new nonresidential construction on an unimproved lot or lots.
- (2) Within all zoning districts, nonresidential developers, except for developers of the types of developments specifically exempted below, shall also pay a fee equal to 2.5% of the increase in equalized assessed value resulting from any additions to existing structures to be used for nonresidential purposes.
- (3) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the preexisting land and improvements and the equalized assessed value of the newly improved structure, i.e., land and improvements, and such calculation shall be made at the time a final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the nonresidential development fee shall be zero.

B. Eligible Exactions, Ineligible Exactions and Exemptions for Residential Developments.

- (1) The nonresidential portion of a mixed-use inclusionary or market rate development shall be subject to a 2.5% development fee, unless otherwise exempted below.
- (2) The 2.5% development fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within the existing footprint, reconstruction, renovations and repairs.
- (3) Nonresidential developments shall be exempt from the payment of nonresidential development fees in accordance with the exemptions required pursuant to the Statewide Nonresidential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), as specified in Form N-RDF, "State of New Jersey Nonresidential Development Certification/Exemption." Any exemption claimed by a developer shall be substantiated by that developer.
- (4) A developer of a nonresidential development exempted from the nonresidential development fee pursuant to the Statewide Nonresidential Development Fee Act shall be subject to the fee at such time as the basis for the exemption no longer applies, and shall make the payment of the nonresidential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy for the nonresidential development, whichever is later.
- (5) If a property which was exempted from the collection of a nonresidential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid nonresidential development fees under these circumstances may be

enforceable by the Borough of Pennington as a lien against the real property of the owner.

- (6) Federal, state, county and local governments constructing nonresidential housing shall be exempted from paying a development fee.

§ 58-5. Collection of Fees.

- A. Upon the granting of a preliminary, final or other applicable approval for a development, the approving authority or entity shall notify or direct its staff to notify the Construction Official responsible for the issuance of a construction permit.
- B. For nonresidential developments only, the developer shall also be provided with a copy of Form N-RDF, "State of New Jersey Nonresidential Development Certification/Exemption," to be completed as per the instructions provided. The developer of a nonresidential development shall complete Form N-RDF as per the instructions provided. The Construction Official shall verify the information submitted by the nonresidential developer as per the instructions provided in the Form N-RDF. The Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- C. The Construction Official responsible for the issuance of a construction permit shall notify the Borough Tax Assessor of the issuance of the first construction permit for a development which is subject to a development fee.
- D. Within 21 days of receipt of such notification, the Borough Tax Assessor shall prepare an estimate of the equalized assessed value of the development based on the plans filed.
- E. The Construction Official responsible for the issuance of a final certificate of occupancy shall notify the Borough Tax Assessor of any and all requests for the scheduling of a final inspection on a property which is subject to a development fee.
- F. Within 10 business days of a request for the scheduling of a final inspection, the Borough Tax Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements associated with the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- G. Should the Borough of Pennington fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b. of Section 37 of P.L. 2008, c. 46 (N.J.S.A. 40:55D-8.6).
- H. Unless otherwise provided within these requirements, 50% of the initially calculated development fee shall be collected at the time of issuance of the construction permit. The remaining portion shall be collected at the time of issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the construction permit and that determined at the time of issuance of the certificate of occupancy.

§ 58-6. Appeal of Development Fees.

- A. A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest-bearing escrow account by the Borough of Pennington. Appeals from a determination of the Board may be made to the tax

court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

- B. A developer may challenge nonresidential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by the Borough of Pennington. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1, et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

§ 58-7. Affordable Housing Trust Fund.

- A. There is hereby created a separate, interest-bearing Affordable Housing Trust Fund to be maintained by the Chief Financial Officer of the Borough of Pennington for the purpose of depositing development fees collected from residential and nonresidential developers and proceeds from the sale of units with extinguished controls.
- B. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
- (1) Payments in lieu of on-site construction of a fraction of an affordable unit, where permitted by ordinance or by agreement with the Borough of Pennington
 - (2) Funds contributed by developers to make 10% of the adaptable entrances in a townhouse or other multistory attached dwelling unit development accessible;
 - (3) Rental income from municipally operated units;
 - (4) Repayments from affordable housing program loans;
 - (5) Recapture funds;
 - (6) Proceeds from the sale of affordable units; and
 - (7) Any other funds collected in connection with Pennington's affordable housing program.
- C. In the event of a failure by the Borough of Pennington to comply with trust fund monitoring and reporting requirements or to submit accurate monitoring reports; or a failure to comply with the conditions of the judgment of compliance or a revocation of the judgment of compliance; or a failure to implement the approved Spending Plan and to expend funds within the applicable required time period as set forth in *In re Tp. of Monroe*, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563); or the expenditure of funds on activities not approved by the Court; or for other good cause demonstrating the unapproved use(s) of funds, the Court may authorize the State of New Jersey, Department of Community Affairs, Division of Local Government Services (LGS), to direct the manner in which the funds in the Affordable Housing Trust Fund shall be expended, provided that all such funds shall, to the extent practicable, be utilized for affordable housing programs within the Borough of Pennington, or, if not practicable, then within the County or the Housing Region.
- (1) Any party may bring a motion before the Superior Court presenting evidence of such condition(s), and the Court may, after considering the evidence and providing the municipality a reasonable opportunity to respond and/or to remedy the noncompliant condition(s), and upon a finding of continuing and deliberate noncompliance, determine to authorize LGS to direct the expenditure of funds in the Trust Fund or impose such other remedies as may be reasonable and

appropriate to the circumstances.

- D. Interest accrued in the Affordable Housing Trust Fund shall only be used to fund eligible affordable housing activities approved by the Court.

§ 58-8. Use of Funds.

- A. Funds deposited in the housing trust fund may be used for any eligible activity as set forth in the amended Fair Housing Act (N.J.S.A. 52:27D-301 et seq.), N.J.A.C. 5:99-2, and for any housing activity as approved by the Dispute Resolution Program pursuant to N.J.S.A. 52:27D-329.2.a(4) to address the municipal fair share or by the Division pursuant to N.J.S.A. N.J.A.C. 5:99-4. Such activities include, but are not limited to:
- (1) A rehabilitation program whose purpose is to renovate deficient housing units that are occupied by low- and moderate-income households, in accordance with the New Jersey State Housing Code, N.J.A.C. 5:28, or the requirements of the Rehabilitation Subcode, N.J.A.C. 5:23-6, as applicable, and costs related to the rehabilitation of the unit. Any recaptured funds from a rehabilitation program shall be deposited into the Borough's affordable housing trust fund and subject to the provisions thereof;
 - (2) New construction of affordable housing units and related development costs; in the case of inclusionary developments, eligible costs shall be prorated based on the proportion of affordable housing units included in the development;
 - (3) Creation of a market to affordable program to pay down the cost of unrestricted units and offer them in sound condition, for sale or rent, at affordable prices to low- and moderate-income households to address all or a portion of the affordable housing obligation;
 - (4) Extensions or improvements of roads and infrastructure directly serving affordable housing development sites; in the case of inclusionary developments, costs shall be prorated based on the proportion of affordable housing units included in the development;
 - (5) RCAs, approved prior to July 17, 2008;
 - (6) Acquisition and/or improvement of land to be used for affordable housing;
 - (7) Accessory dwelling units;
 - (8) The extension of expiring controls;
 - (9) The construction of group homes and supportive and special needs housing;
 - (10) Maintenance and repair of affordable housing units;
 - (11) To defray the costs of structured parking; in the case of inclusionary developments, eligible costs shall be prorated based on the proportion of affordable housing units included in the development;
 - (12) Affordability assistance in accordance with N.J.A.C. 5:99-2.5;
 - (13) Repayment of municipal bonds issued to finance low- and moderate-income housing activity;
 - (14) Any other activity as specified in the approved spending plan or as approved by the Division as an emergent affordable housing opportunity; or
 - (15) Any other activity approved by the Division
- B. Until a new spending plan is approved pursuant to the declaratory judgement action filed in accordance with the amended Fair Housing Act, the Borough shall be entitled to expend funds from the housing trust fund in accordance with its Third Round Court Approved Spending Plan or in accordance with the Fair Housing Act as amended in March 2024.
- C. At least 30% of all development fees collected and interest earned shall be used to provide affordability assistance to very-low-, low- and moderate-income households in affordable

units included in the Municipal Fair Share Plan pursuant to N.J.S.A. 52:27D-329.1 and in accordance with N.J.A.C. 5:99-2.5. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30% or less of regional median income by region.

- (1) Affordability assistance programs include, but are not limited to, downpayment assistance, security deposit assistance, low-interest loans, and rental assistance.
 - (2) Affordability assistance to households earning 30% or less of regional median income may include offering a subsidy to developers of inclusionary or 100 percent affordable housing developments or buying down the cost of low- or moderate-income units in the Municipal Fair Share Plan to make them affordable to households earning 30% or less of regional median income, including special needs and supportive housing opportunities.
- D. Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement. The Borough may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance or any program or activity for which the Borough expends development fee proceeds, in accordance with N.J.S.A. 52:27D-301 *et seq.* and N.J.A.C. 5:99-1 *et seq.*
- E. No more than 20% of the revenues collected from development fees each year shall be expended on administration in accordance with N.J.A.C. 5:99-2.4. Administrative expenses may include costs reasonably related to the determination of the fair share obligation and the development of a municipal housing element and fair share plan and may include fees necessary to develop or implement affordable housing programs, an affirmative marketing program, and/or expenses that are reasonably necessary for compliance with the processes of the Program, including, but not limited to, the costs to the Borough of resolving a challenge pursuant to the Program. Administrative expenses may also include costs associated with functions carried out in compliance with UHAC, including activities related to the marketing program and waitlist management, administering the placement of occupants in housing units, income qualification of households, monitoring the turnover of sale and rental units, preserving existing affordable housing, and compliance with the Division's monitoring requirements. The proportion of a municipal employee's salary related to the MHL or RCA administrator functions and fees for required educational programs, may be paid as an administrative expense from the municipal affordable housing trust fund.

§ 58-9. Monitoring.

- A. Pennington shall comply with the monitoring and reporting requirements set forth in N.J.S.A. 52:27D-329.2 and N.J.S.A. 52:27D-329.4, and as set forth at N.J.A.C. 5:99-5.

§ 58-10. Ongoing Collection of Fees.

- A. The ability for the Borough of Pennington to impose, collect and expend development fees shall expire with the expiration of the repose period covered by its Compliance Certification unless the Borough of Pennington has first filed an adopted Housing Element and Fair Share Plan with the Court or with a designated state administrative agency, has petitioned for an Amended Compliance Certification from the Court.
- B. If the Borough of Pennington fails to renew its ability to impose and collect development fees

prior to the expiration of its Compliance Certification, it may be subject to forfeiture of any or all funds remaining within its Affordable Housing Trust Fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to N.J.S.A. 52:27D-320.