

2025 FOURTH ROUND HOUSING PLAN

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

JUNE 11, 2025

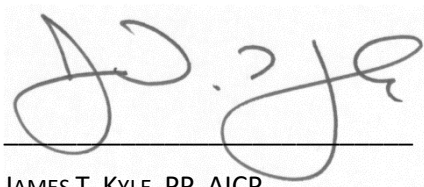
ADOPTED BY THE PLANNING BOARD

JUNE 24TH, 2025

ENDORSED BY THE BOROUGH COUNCIL

JUNE 24TH, 2025

PREPARED BY:



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

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



2 East Broad Street, Second Floor
Hopewell, NJ 08525
jkyle@kylemcmanus.com

Land Use Board

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Andrew Jackson, Vice-Chair

James Davy, Mayor

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Mark Blackwell

Kate O'Neill

Jen Tracy

Amy Kassler-Taub

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James Kyle, PP/AICP, Borough Planner

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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 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 they 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 Housing Plan addresses the Borough of Pennington’s newly assigned 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 relative to that obligation, this plan also addresses the third round obligation determined in accordance with the Jacobsen methodology.

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 supports 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 filing with the New Jersey Affordable Housing Dispute Resolution Program and a request for Compliance Certification. 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 (NJDCG 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 the fair share obligation. Mount Laurel II also gave developers, under appropriate circumstances, 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 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 (P.L. 2024, c.2.). This amendment creates significant changes to the fourth round of affordable housing, and all subsequent rounds. 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 committing 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. 5:80-26.3(d) and (e) 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 the rents and sale prices for affordable units are derived. The table on the following page reflects the 2024 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
<i>Source: 2025 Income Limits prepared by NJHMFA, effective May 16, 2025.</i>					

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.

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 opportunity for the construction of significant additional housing. There are, however, opportunities for redevelopment, although they are somewhat limited.

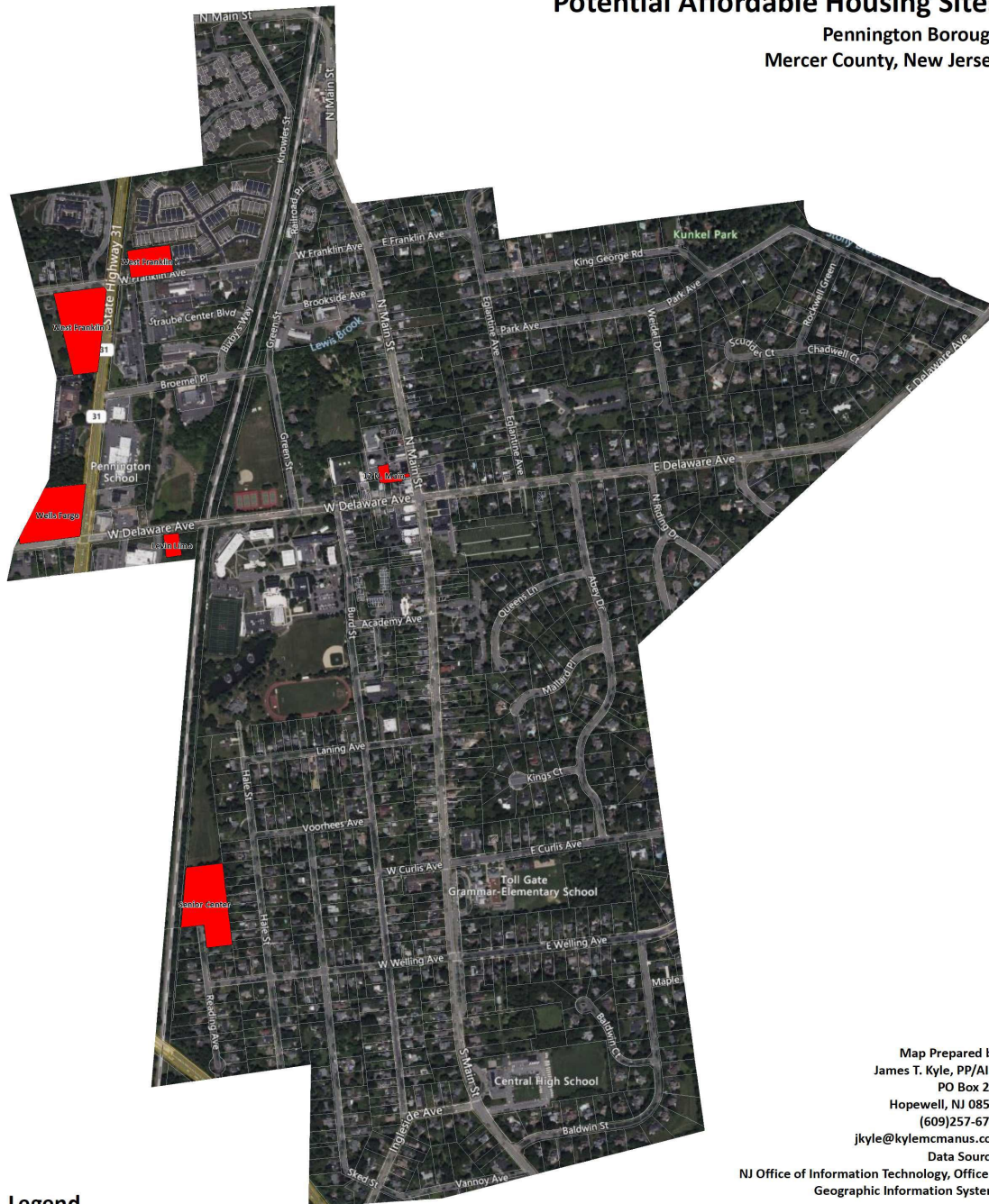
In assessing lands most appropriate for affordable housing, the Borough has focused on areas that can potentially be redeveloped, as shown on the map on the following page. Each of these properties currently have structures and uses on them, but there is opportunity to develop them more efficiently and 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 Wells Fargo property on Route 31 recently 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. The two properties along West Franklin Avenue may be investigated by the Planning Board and the former Levin Limousine property on West Delaware Avenue will be rezoned to permit inclusionary development.

While consideration was given to overlay zoning to permit residential apartments above existing ground floor commercial, many existing shopping centers along Route 31 are constrained by their current layout and the ability to provide additional parking. Given how they were developed and the additional right of way that NJDOT acquired through this area, there are no portions of these commercial properties that could accommodate the additional parking needed for apartments. The Borough also considered the

potential for redevelopment of the former Borough landfill, however study by the LSRP revealed contamination issues that could not be successfully addressed to permit residential development. Other potential redevelopment sites are located in regulated flood hazard areas, limiting residential development potential.

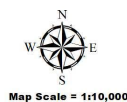
Potential Affordable Housing Sites

Pennington Borough
Mercer County, New Jersey



Legend

■ Potential Redevelopment Sites



Map Prepared by:
James T. Kyle, PP/AICP
PO Box 236
Hopewell, NJ 08525
(609)257-6706
jkyle@kylemcmanus.com

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



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

See Appendix 1 for this analysis.

AFFORDABLE HOUSING OBLIGATION & SATISFACTION

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 housing rehabilitation program, which will be funded by the Borough's affordable housing trust fund. Community Grants, Planning and Housing is Pennington's housing administrator, and they will provide a 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 Jacobsen decision. 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 this, consisting of 8 existing units at the Capital Health-Heritage site. A vacant land adjustment is sought for 126 units of the third round obligation.

Since the Borough did not prepare a vacant land analysis for the third round, it relies on the 8 units that are built and occupied as the RDP for this compliance period.

Satisfaction of the 134 Unit Third Round Obligation			
Program	Units	Bonus Credits	Total Credits
Capital Health – Heritage	8	0	8
Accessory Apartment	1	0	1
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.

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 on the following page are based on the 9 unit RDP, not the 134 unit obligation.

Minimum Rental Obligation = 3 units

$.25 \text{ (obligation)} = \text{Minimum \# rental units}$ or $.25 (9) = 2.25$ round up to 3 units

This is not satisfied as only the accessory apartment qualifies as a rental unit.

Maximum Senior Units = 2 units

$.25 \text{ (obligation)} = \text{Maximum \# age-restricted units}$ or $.25 (9) = 2.25$ round down to 2 units

None of the credits proposed are age-restricted.

Minimum Family Unit Obligation = 5 units

$.50 \text{ (obligation)} = \text{Minimum \# family units}$ or $.50 (9) = 4.5$ round up to 5 units

This obligation is satisfied with the Heritage project, which are all family units.

Minimum Family Rental Obligation= 3 units

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

This obligation could not be satisfied as only for-sale units were constructed in Heritage.

Minimum Very Low Income Unit Obligation = 2 units

$.13 \text{ (units created or approved on or after July 1, 2008)} = \text{Minimum \# very low income units}$ 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.

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. The rehabilitation manual is provided in Appendix 4, but will be updated 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 3, 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%

Existing Land Use				
Property Type	# Properties	% of Total Properties	Total Acreage	% Total Acreage
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%

As shown in the table in Appendix 3, the Borough's Realistic Development Potential (RDP) is 3 units, which was arrived at by applying a presumed density of 12 units per acre and a 20% setback requirement. None of the parcels identified are impacted by wetlands, streams, flood hazard areas or steep slopes. With a fourth round obligation of 58 units and RDP of 3 units, the resulting Unmet Need is 55 units. The table below details satisfaction of RDP.

Satisfaction of the 3-unit Fourth Round RDP			
Program	Units	Bonus Credits	Total Credits
West Franklin 1	3	0	3
RDP			3

West Franklin 1 – Block 201, Lots 2 and 9

This property, located on the west side of Route 31 and the south side of West Franklin Avenue, totals 3.3 acres and is currently occupied by two single family dwellings. The Borough has been discussing development options with the current owner and will rezone the property to permit multifamily apartments not to exceed a total of 90 units. This would result in 14 affordable units being constructed, 3 of which are applied to RDP. A draft zoning ordinance is included in Appendix 4.

Mechanisms to Address Unmet Need

The Borough's Unmet Need of 55 units will be addressed with the compliance mechanisms below, all of which will redevelop sites with existing active uses. Since these properties are all currently developed and occupied, they are identified as Unmet Need mechanisms rather than as generating RDP. Similarly, extension of expiring controls is deemed an Unmet Need mechanism as the units already exist. Each mechanism is described in detail, and appropriate draft ordinances are provided in the Appendices as noted.

Partial Satisfaction of the 55-unit Fourth Round Unmet Need			
Program	Units	Bonus Credits	Total Credits
West Franklin 1	11	5	16
West Franklin 2	4	2	6
Wells Fargo	6	3*	9
Levin Limousine	2	0	2
12 North Main	3	0	3
Senior Center	5	0	5
Extension of Expiring Controls	6	0	6
Totals	37	10	47
Unmet Need Remaining			8

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

West Franklin 1 – Block 201, Lots 2 and 9

This property, located on the west side of Route 31 and the south side of West Franklin Avenue, totals 3.3 acres and is currently occupied by two single family dwellings. The Borough has been discussing development options with the current owner and will rezone the property to permit multifamily apartments not to exceed a total of 90 units. This would result in a total of 14 affordable units being constructed, 11 of which are applied to Unmet Need. Since the property is located within a half mile of the NJ Transit bus stop at Broemel Place and Route 31 (260' southeast of the site, across Route 31), each unit is eligible for 0.5 bonus credits, which provides 5 bonus credits. A draft zoning ordinance is included in Appendix 5.

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

This property, 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 Borough has been discussing development options with the contract purchaser and will rezone the property to permit multifamily apartments not to exceed a total of 24 units. This would result in a total of 4 affordable units being constructed, all of which will be applied to Unmet Need. Since the property is located within a half mile of the NJ Transit bus stop at Broemel Place and Route 31 (800' south of the site), each unit is eligible for 0.5 bonus credits, which provides 2 bonus credits. A draft zoning ordinance is included in Appendix 4 and the concept plan.

Wells Fargo Redevelopment – Block 201, Lots 6 and 7

This property, located on the west side of Route 31 and the north side of West Delaware Avenue, totals 2.77 acres and is currently occupied by commercial office space and a former Wells Fargo Bank branch. The Borough has designated the properties an area in need of redevelopment and has prepared a draft redevelopment plan that is currently under consideration by the redevelopment subcommittee. Although the final number of units has not been agreed to at this point, a minimum of 40 multifamily rental apartments will be built, resulting in no less than 6 affordable units. There is potential for more than 40 units and there is also the potential to increase the affordable housing setaside through negotiation of a redevelopment agreement and possible PILOT. Since the site is within ½ mile of the NJ Transit bus stop at Broemel Place, each unit is eligible for 0.5 bonus credits, and 3 such credits are applied to Unmet Need. A draft redevelopment plan is included in Appendix 6.

Levin Limousine – Block 502, Lot 2

Totaling 0.35 acres, this property, located on the south side of West Delaware Avenue just east of Route 31, was formerly occupied by Levin Limousine. The contract purchaser plans to demolish the existing former commercial building and construct at least 10 apartments. This will yield 2 affordable rental units. A draft zoning ordinance is included in Appendix 7.

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. 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 3 affordable units.

The Borough Planning Board is currently conducting a preliminary investigation of the property, which may yield an area in need of redevelopment designation by Borough Council. Through the redevelopment plan process, including negotiation of a redevelopment agreement and a possible PILOT, the Borough will seek to increase the setaside resulting in further reduction of Unmet Need. A draft zoning ordinance is

included in Appendix 8, but the intent is to adopt a redevelopment plan for the property prior to March of 2026.

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 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 for inclusionary development.

With a total of 3.13 acres and assuming a minimum density of 10 units per acre, the site could yield 31 units and between 5 and 7 affordable units depending on whether they are rentals or for-sale.

Extension of Expiring Controls – Pennington Point

With units initially deed restricted in 1995 for a period of 30 years, the 6 units in Pennington Point will be eligible for extension of expiring controls in 2025. The Borough will provide a minimum subsidy of \$20,000 for each unit for a total of \$120,000 as outlined in the spending plan in Appendix 9. Once the rules surrounding extension of expiring controls are finalized this year, Community Grants, Planning and Housing, the Borough's Administrative Agent, will prepare a program manual and work with the Borough to implement this program.

Additional Mechanisms to Address Unmet Need

Aside from adopting ordinances or redevelopment plans to address the 55 unit Unmet Need, the Borough will adopt a mandatory setaside ordinance, which is provided in Appendix 69. This will permit the Planning Board or Zoning Board to capture affordable housing units when for-sale projects of 5 or more units are proposed and when rental projects of 7 or more units are proposed. A payment-in-lieu option is provided for fractional units of four tenths or less. A draft mandatory setaside ordinance is provided in Appendix .

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 40 units addressing RDP and Unmet Need but will be applied as required should additional development be realized in any of the Unmet Need mechanisms discussed or should affordable housing units be captured through the mandatory setaside ordinance.

Maximum Bonus = 10 credits

- Maximum bonus credits = 25% (obligation) | 25% (40) = 10 credits

Minimum Rental Units = 10 units

- Minimum rental units = 25% (of units meeting the obligation) | 25% (40) = 10 units

All of the units except the age-restricted units where expiring controls are proposed to be extended are rental units.

Maximum Senior Units = 12 units

- Maximum age-restricted units = 30% (units meeting the obligation) | 30% (40) = 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 = 20 units

- Minimum family units = 50% (units meeting the obligation) | 50% (40) = 20 units

The majority of the units proposed are family units, satisfying this requirement.

Minimum Family Rental Units = 10 units

- Minimum family rental = 50% (rental obligation) | 50% (20) = 10 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= 5 units

- Minimum very low income units = 13% (fourth round units created or approved on or after July 1, 2008) | 13% (34) = 4.42, rounded up to 5 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 34, and applying 13% to the individual projects results in the creation of at least 5 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% (5) = 0.65 units rounded up to 1 unit

As noted, all but one proposed mechanism will include family units, and a minimum of 4 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 3) and the affordability assistance program manual is provided in Appendix 11.

CONSISTENCY WITH THE STATE DEVELOPMENT AND REDEVELOPMENT PLAN

While the New Jersey State Development and Redevelopment Plan is currently being amended, the cross-acceptance process has not concluded and the 2001 Plan is still in effect. This consistency analysis is based on the 2001 Plan, although amendments proposed with the new Plan don't substantially alter policy and the Borough proposed no mapping changes.

Pennington Borough is classified as Planning Areas 3, Fringe Planning Area. General housing policies in the 2001 Plan include locating more dense housing within walking distance of schools, services, transit, civic and employment opportunities, preservation of existing, sound affordable housing, promoting public/private partnerships for housing development and redevelopment, providing for nonprofit and special needs housing, utilizing development fees for affordable housing and promoting mixed-income neighborhoods. The Borough's approach to affordable housing is consistent with these general policies.

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*. As of the adoption of this Housing Plan, the latter is in the process of being amended, therefore the existing ordinance will be relied upon until such time as those regulations are finalized. Ordinances adopted by March of 2026 will reflect appropriate requirements. The Borough's 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. 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.

AFFORDABLE HOUSING TRUST FUND

Pennington has a development fee ordinance, which is included in Appendix 14. The Borough has prepared a new Spending Plan, provided in Appendix 9, which discusses anticipated revenues, collection of revenues, and the use of revenues, and it has been prepared in accordance with currently applicable rules. It should be noted, however, that 5:99, the Fair Housing Act Rules, which set forth requirements related to spending plans, are not yet finalized. All collected revenues will be placed in the Borough's Affordable Housing Trust fund and will be dispensed 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. The spending plan prepared reflects these requirements, but once amendments to 5:99 are finalized, the Borough reserves the right to amend its spending plan related to affordability assistance requirements, which are proposed to change.

Appendix 1

Appendix 2

FILE COPY

AGREEMENT

THIS AGREEMENT is made and dated this 8th day of June, 2012 by and between the Borough of Pennington, in Mercer County, a municipal corporation of the State of New Jersey, having an address at 30 North Main Street, Pennington, New Jersey ("Borough") and Craig and Antonia Lewis, having an address at 20 East Welling Avenue, Pennington, New Jersey ("Developer").

WHEREAS, pursuant to *N.J.A.C. 5:96-2.1*, the Borough filed its updated Housing Element and Fair Share Plan with the New Jersey Council on Affordable Housing ("COAH") setting forth the Borough's commitment to provide affordable housing through the year 2018; and,

WHEREAS, pursuant to *N.J.A.C. 5:96-3.1* the Borough also petitioned COAH for continued substantive certification of its Affordable Housing Program; and,

WHEREAS, as permitted by COAH rules and regulations, Section 215-97 of the Pennington Borough Code ("Code") establishes an Accessory Apartment Program as part of the Pennington Borough Affordable Housing Program, providing for the creation of accessory apartments that are affordable to low-income households; and,

WHEREAS, the Developer is the fee simple owner of certain real property located at 20 East Welling Avenue, Pennington, New Jersey, designated as Lot 23 in Block 1002 on the Pennington Borough Municipal Tax Map ("Property"); and,

WHEREAS, the Property is currently improved with a single family dwelling and a garage, which includes a second floor space that is being converted into an efficiency apartment with a kitchen, bathroom and living room area (a total of approximately 750 square feet); and,

WHEREAS, the Developer has expressed an interest to the Borough in qualifying the proposed second floor apartment as an accessory apartment affordable to a low-income household ("Accessory Apartment"); and,

WHEREAS, the Accessory Apartment will be rented to an income-eligible low-income household, in accordance with all applicable COAH rules and regulations and the Borough's accessory apartment ordinance, as the same may be hereafter amended; and,

WHEREAS, the Borough wishes to facilitate the creation of said Accessory Apartment by contributing up to \$25,000.00 of Affordable Housing Trust Fund monies toward construction, improvement, repair, and subsequent rental as permitted by COAH rules and regulations, conditioned upon the Developer's compliance with all applicable COAH rules and regulations and with the provisions of the Borough's accessory apartment ordinance, as the same may be amended, including but not limited to, the recording of required deed restrictions; and,

WHEREAS, the Borough and Developer wish to pursue having the Property qualify as an accessory apartment,

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Borough and Developer agree as follows:

1. The Borough and Developer agree that based upon the Developer's proposed plan, as set forth in the Project Description, attached hereto as **Exhibit A** and made a part hereof, the apartment on the second floor of the existing garage will qualify as an accessory apartment under the existing Borough accessory apartment ordinance referenced above and all COAH rules and regulations applicable to accessory apartments, and any future amendments thereto.
2. The Borough may have the Accessory Apartment inspected by its Construction Code Official prior to payment of any rents and occupancy of the unit. If the Code Official finds any condition of the Accessory Apartment that does not meet the standards set forth in the International Property Maintenance Code, the Borough shall notify the Developer of the same in writing. The Developer shall be obligated to repair/remediate said condition(s) so that the same shall comply with the standards of the aforementioned Code. All repairs/remediation shall be completed by a licensed contractor within thirty (30) calendar days of Developer's receipt of notice of the same.
3. Developer further agrees that the Accessory Apartment shall meet the requirements and conditions of the current Borough accessory apartment ordinance and of all COAH rules and regulations applicable to accessory apartments, and any future amendments thereto.
4. The Borough will develop the affordable housing criteria and affirmative marketing plan for the Accessory Apartment to be developed on the Property, both to be consistent with the provisions of the Borough accessory apartment ordinance and COAH rules and regulations, and any future amendments thereto, in order to provide for the qualification and selection of an income eligible household to rent the Developer's accessory apartment. The Borough reserves the right to contract with an administrative agent to qualify potential tenants and market the apartment.
5. The Borough and Developer shall execute a deed restriction that will be recorded in the Property's chain of title. The deed restriction will ensure that the Accessory Apartment will be utilized as a rental dwelling for low-income qualified households for a period of ten (10) years from the date of the Accessory Apartment's initial occupancy. At the expiration of the ten (10) years the Accessory Apartment shall cease to exist unless Developer continues to use the Accessory Apartment as an affordable housing rental dwelling unit for low-income qualified households.

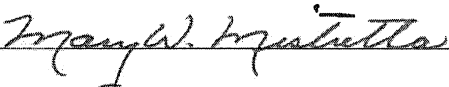
6. Provided that the Developer satisfies all requirements of the Borough accessory apartment ordinance and COAH requirements, as the same may be hereafter amended, for the qualification of accessory apartments, including, but not limited to, the recording of required deed restrictions, and provided the Accessory Apartment meets the requirements of the International Property Maintenance Code at the time of initial occupancy, the Borough agrees that the Developer shall qualify for and receive a subsidy payment in the amount of twenty-five thousand dollars (\$25,000.00) to assist with the construction of the Accessory Apartment and its subsequent rental. The subsidy payment shall be made in two equal installments with the first installment being made on July 2, 2012, and the second installment being made upon the Accessory Apartment's initial occupancy.
7. Should Developer continue to use the Accessory Apartment as an affordable housing rental dwelling unit for low-income qualified households after the ten (10) year period described in paragraph 5, above, then Developer shall be eligible to receive additional subsidies from the Borough should funding be available. Nothing in this paragraph shall bind the Borough to actually provide an additional subsidy.
8. The parties hereto agree to make a good faith effort to have said accessory apartment unit created and occupied by an income eligible household within six (6) months of the date of this Agreement.

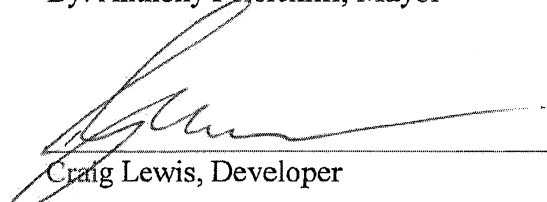
WITNESS/ATTEST:

The Borough of Pennington, a municipal corporation of the State of New Jersey


Elizabeth Sterling, Clerk


By: Anthony Persichilli, Mayor


Mary W. Mistrutta


Craig Lewis, Developer


Mary W. Mistrutta


Antonia Lewis, Developer

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EXHIBIT A
BOROUGH OF PENNINGTON
30 NORTH MAIN STREET
PENNINGTON, NJ 08534

Telephone - 609-737-0276

Fax - 609-737-9780

APPLICATION TO CREATE AN AFFORDABLE ACCESSORY APARTMENT

APPLICANT(S) Craig Lewis
 ADDRESS 20 East Welling Ave Pennington NJ 08534
 BLOCK 28.05 LOT 18 ZONE R-80
 PHONE 609-658-8842 EMAIL Info@LHInspection.com
 EXISTING APARTMENT _____ NEW APARTMENT New

Does lot fully conform to the minimum lot area and minimum lot width requirements specified for the subject zoning district in the schedule entitled "Schedule of Area, Yard and Building Regulations" as referenced within § 215-66 and found in § 215-97 of the Code of the Borough of Pennington? Yes. If yes attach Zoning Officer's approval.

Does lot have only one single-family detached dwelling? Yes

Where will the affordable accessory apartment be located:

Within an existing dwelling unit _____

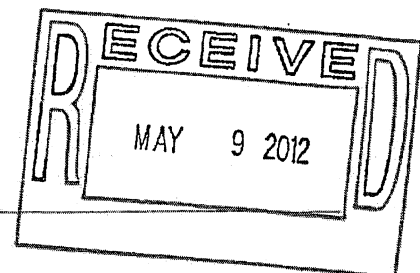
Within an existing structure on the lot over existing garage

An addition to an existing dwelling unit or accessory building _____

Will the apartment be a self-contained dwelling unit with a kitchen, full bathroom, sleeping quarters and a private entrance? Yes

How many rooms are proposed? 2
 (The unit shall consist of no less than two rooms, one of which shall be a full bathroom.)

What is the gross floor area of the accessory apartment 750
 (floor area shall be at least 350 square feet, but shall not exceed 800 square feet)



APPLICATION

Page 2

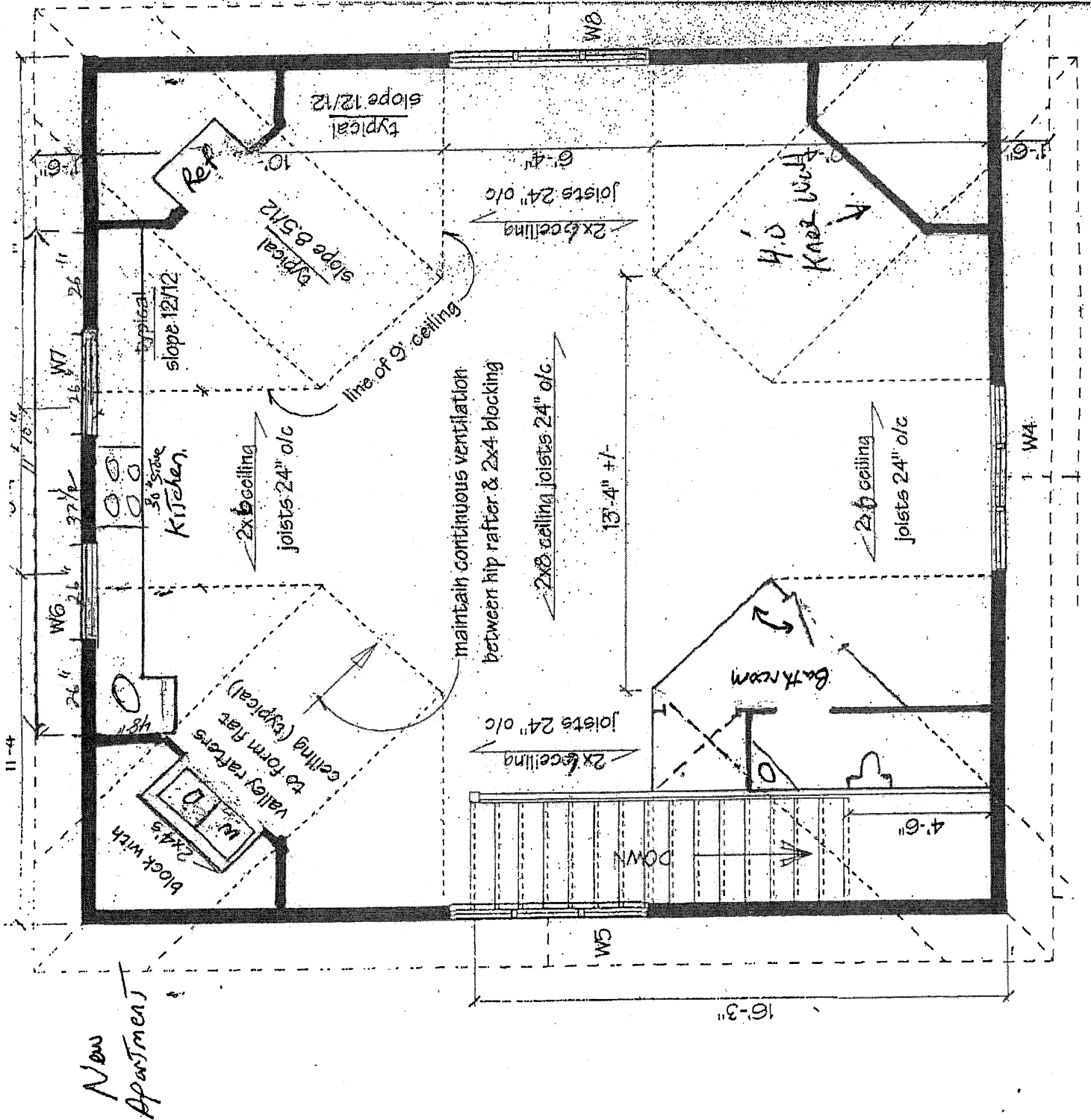
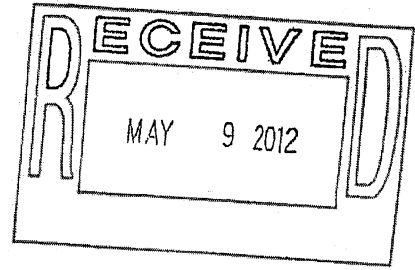
Is potable water supply and sewage disposal systems for the affordable accessory apartment adequate? Yes

Is there at least one off-street parking space for the accessory apartment in addition to the parking spaces required for the principal dwelling on the lot? Yes.
(No affordable accessory apartment shall reduce the number of required off-street parking spaces on a lot.)

The following documents should be attached:

- ☒ Approval of Zoning Officer
- ☒ A sketch of floor plan(s) showing the location, size and relationship of both the affordable accessory apartment and the primary dwelling within the building or in another structure.
- ☒ Rough elevations showing the modification of any exterior building façade to which changes are proposed.
- ☒ A site development sketch showing the location of the existing dwelling and other existing buildings; all property lines; proposed addition if any, along with the minimum building setback lines; the required parking spaces for both dwelling units; and any natural or man-made conditions which might affect construction.





**BOROUGH OF PENNINGTON
ZONING PERMIT APPLICATION**

FEE: _____
DATE PD: _____
APPL #: _____

Owner: Craig + Antonia Lewis Date: 4/19/12
Property Location: 20 East Wellings Ave Pennington Block: 28.05 Lot: 18
Lot Size: Area: 16,100 Width: 80 Depth: 200
Present Zoning Classification: R-50
Explain work to be done or proposed use: ADD COAH APARTMENT ABOVE
EXISTING GARAGE

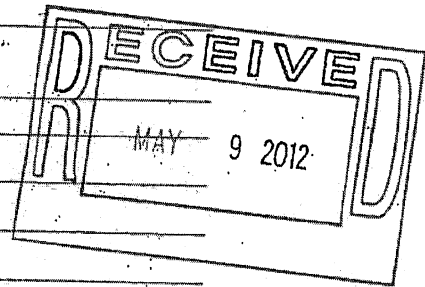
FOR NON-RESIDENTIAL:

Change of Use: _____ Change of Occupancy: _____
(If answer is yes to either question, please fill out the next page)

FOR NEW CONSTRUCTION OR ADDITIONS:

(For Office Use)
Zone Requirements

	PRESENT	PROPOSED	
Front Setback	<u>14.0</u>	<u>Same</u>	
Rear Yard Setback	<u>45'</u>		
Distance From:			
Left Property Line	<u>6'</u>		
Right Property Line	<u>46'</u>		
Building Height	<u>20'</u>		
% of Lot Coverage	<u>36%</u>		
Height-Side Yard Ratio			
Floor Area Ratio	<u>50%</u>	<u>Same</u>	
Gross Floor Area			
Additional Comments	<u>Apartment gross area 750 sq'</u>		



Please include with your application a plot plan showing what is existing and what is proposed

I hereby certify that the above information and the attached plot plan are true and correct.

Print Name of Applicant: Craig Lewis

Signature of Applicant: [Signature]

Phone Number: 609-658-8842

Subject to COAH Approval

For Office Use

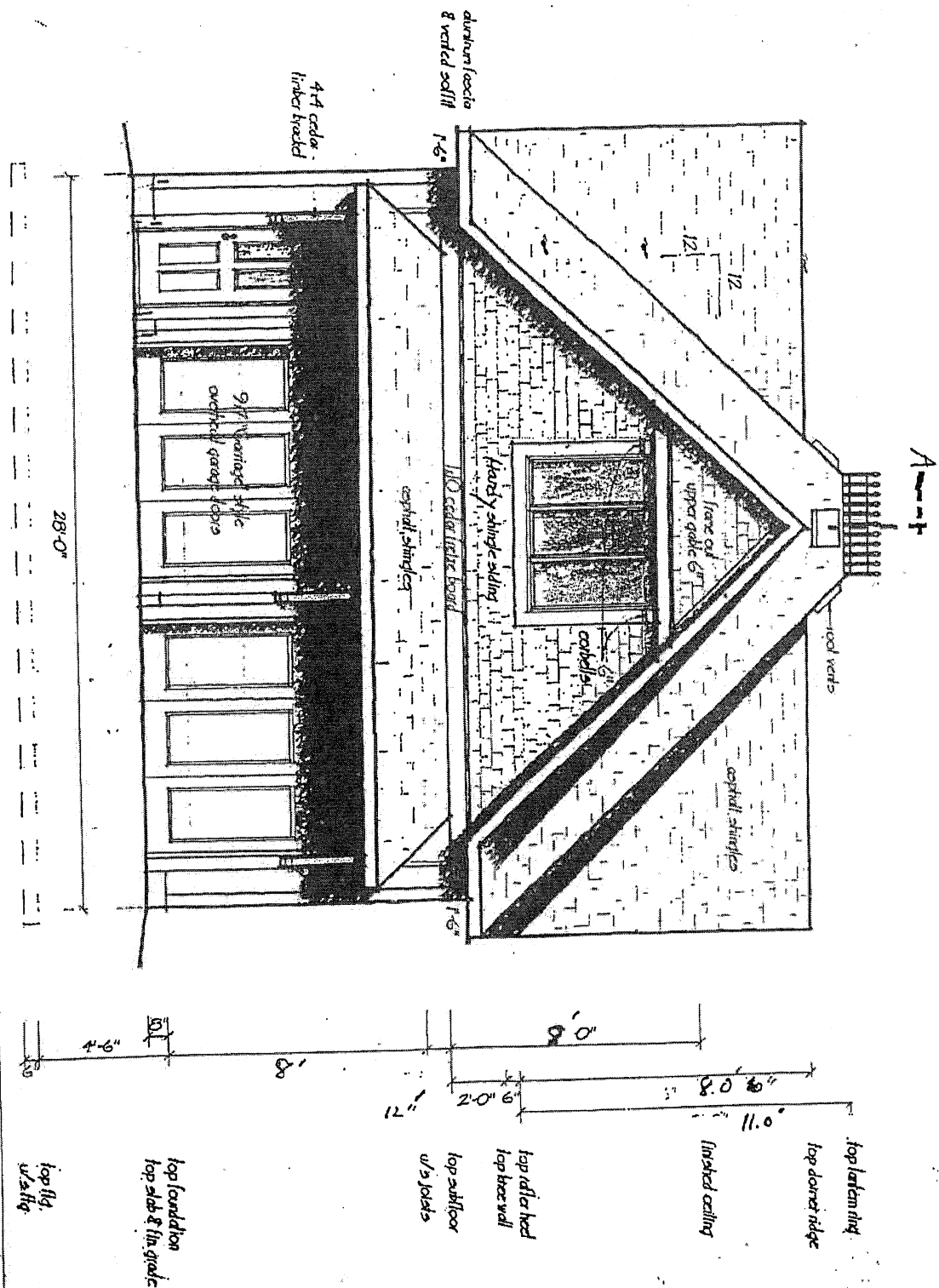
Zoning Approved: [Signature]

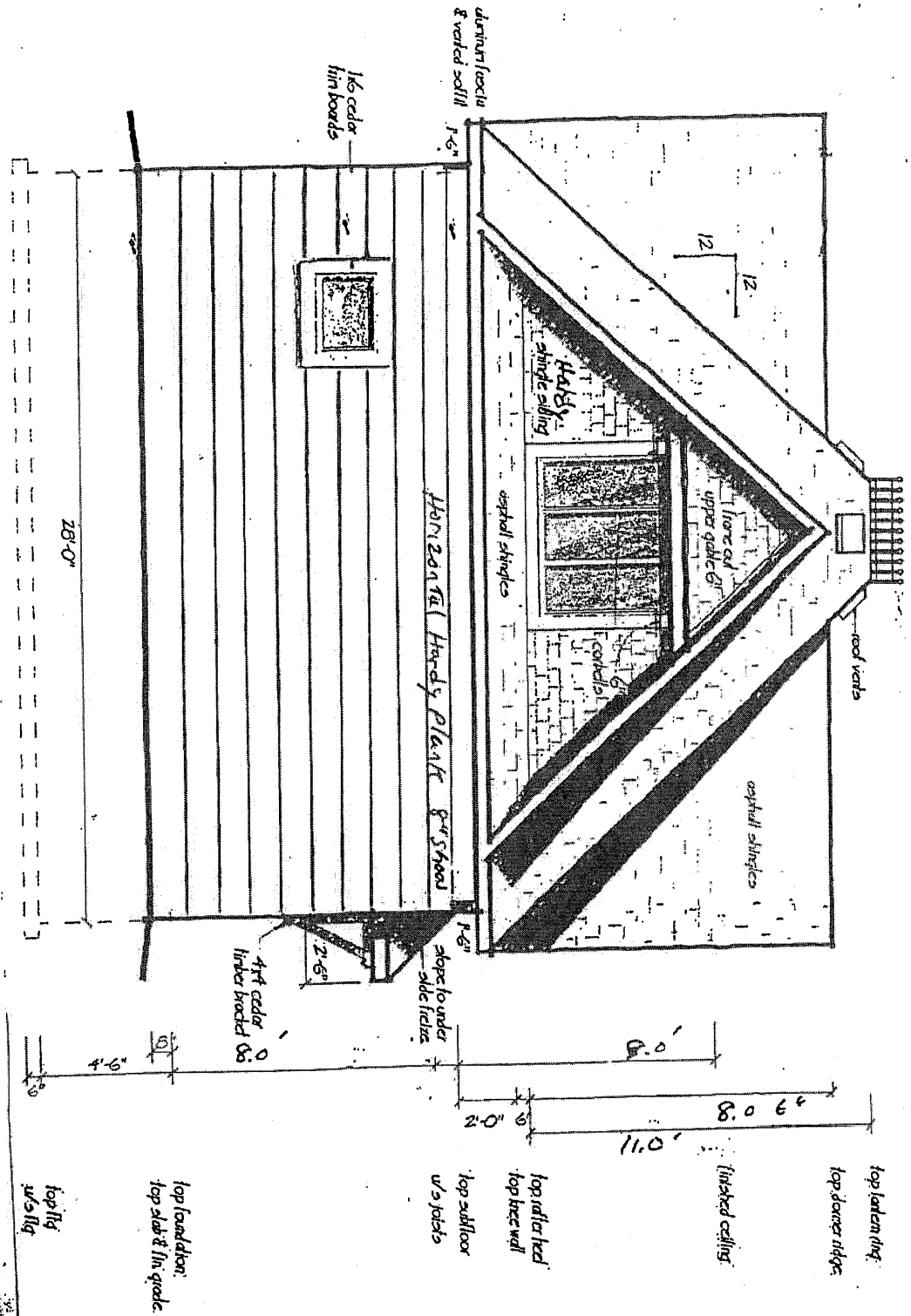
Zoning Denied: _____

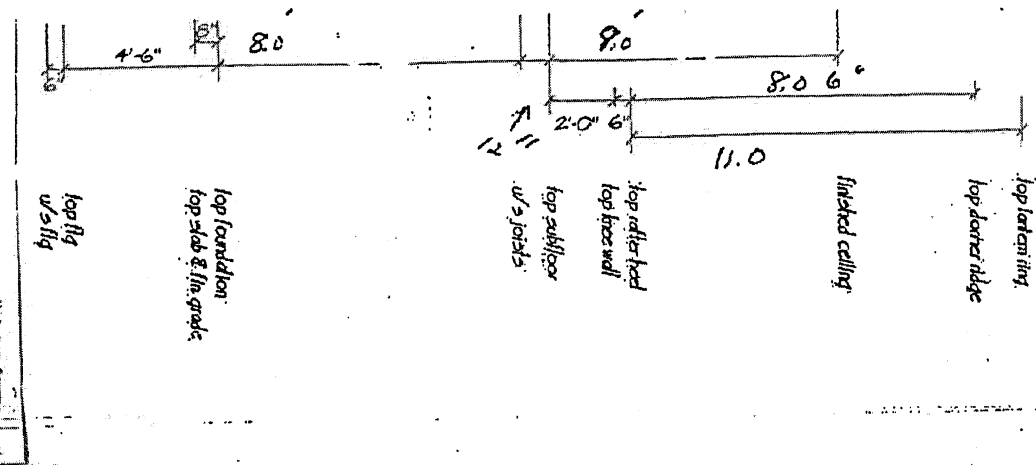
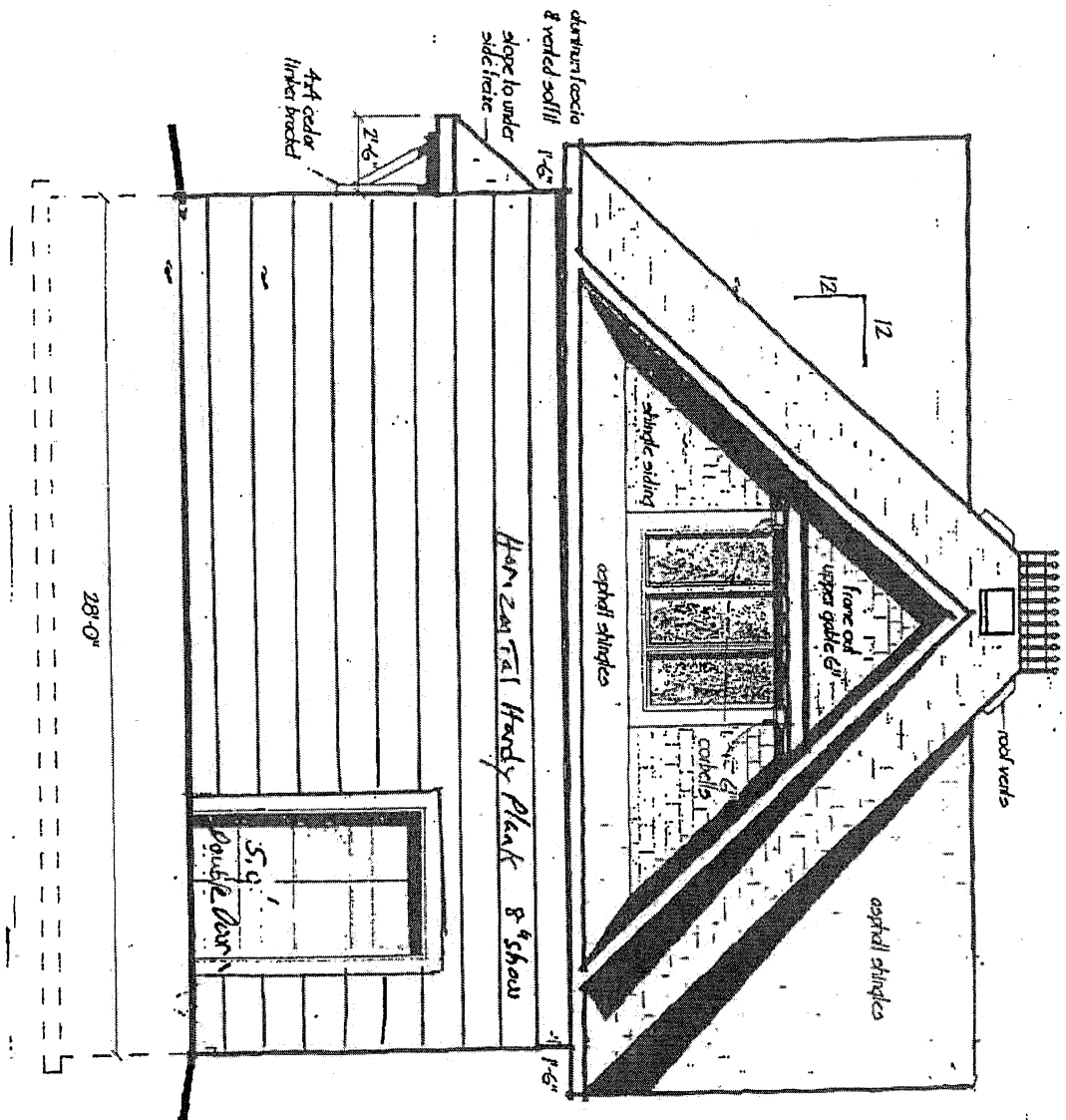
Reason for Denial: _____

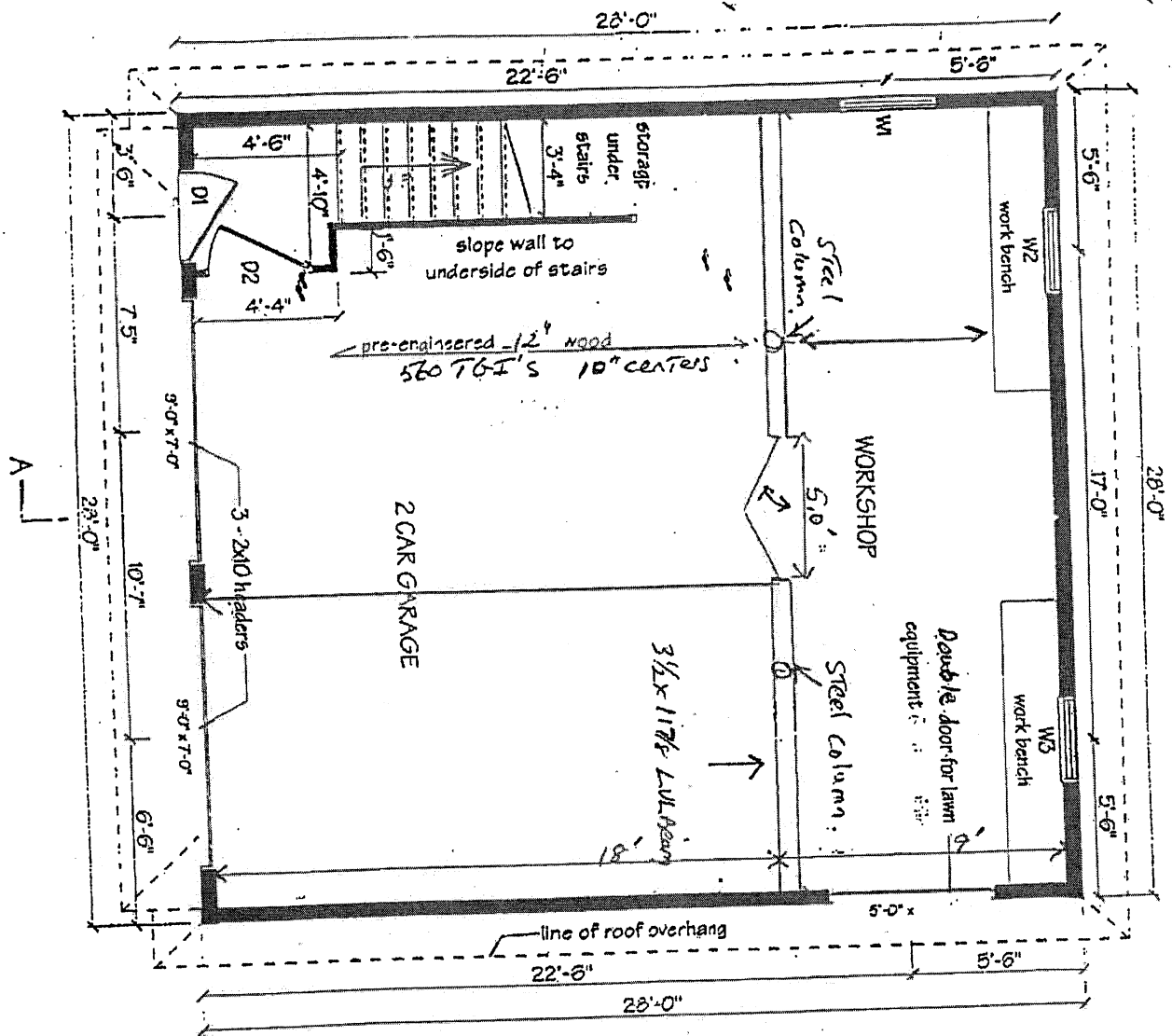
Zoning Officer: [Signature]

Date: 4/19/12



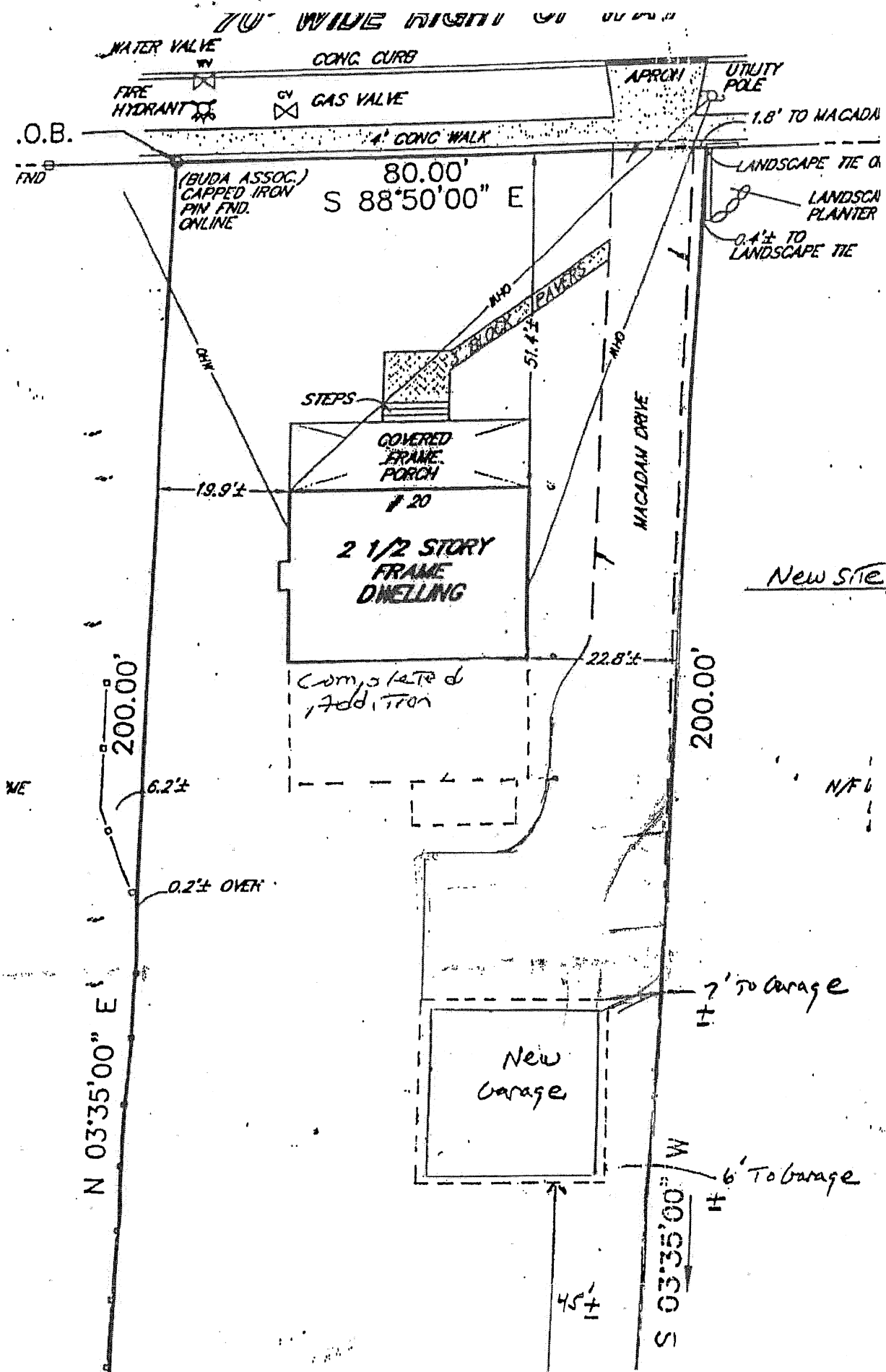






NOTES:
 1. All exterior wall widths nominal 6"
 2. All interior wall widths nominal 4"
 except as noted otherwise

15120001 new



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

INSTR # 2012029637 D BK 6150 PG 1307 06/22/2012 01:55:19 PM
PAULA SOLLANTI 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

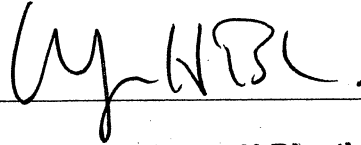
Signed and sworn to before me
on JUNE 7, 2012.

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.

A handwritten signature in black ink, appearing to read "Wayne H Blauth", written over a horizontal line.

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.

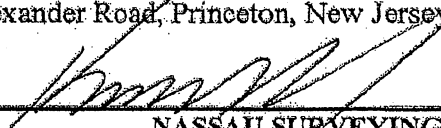
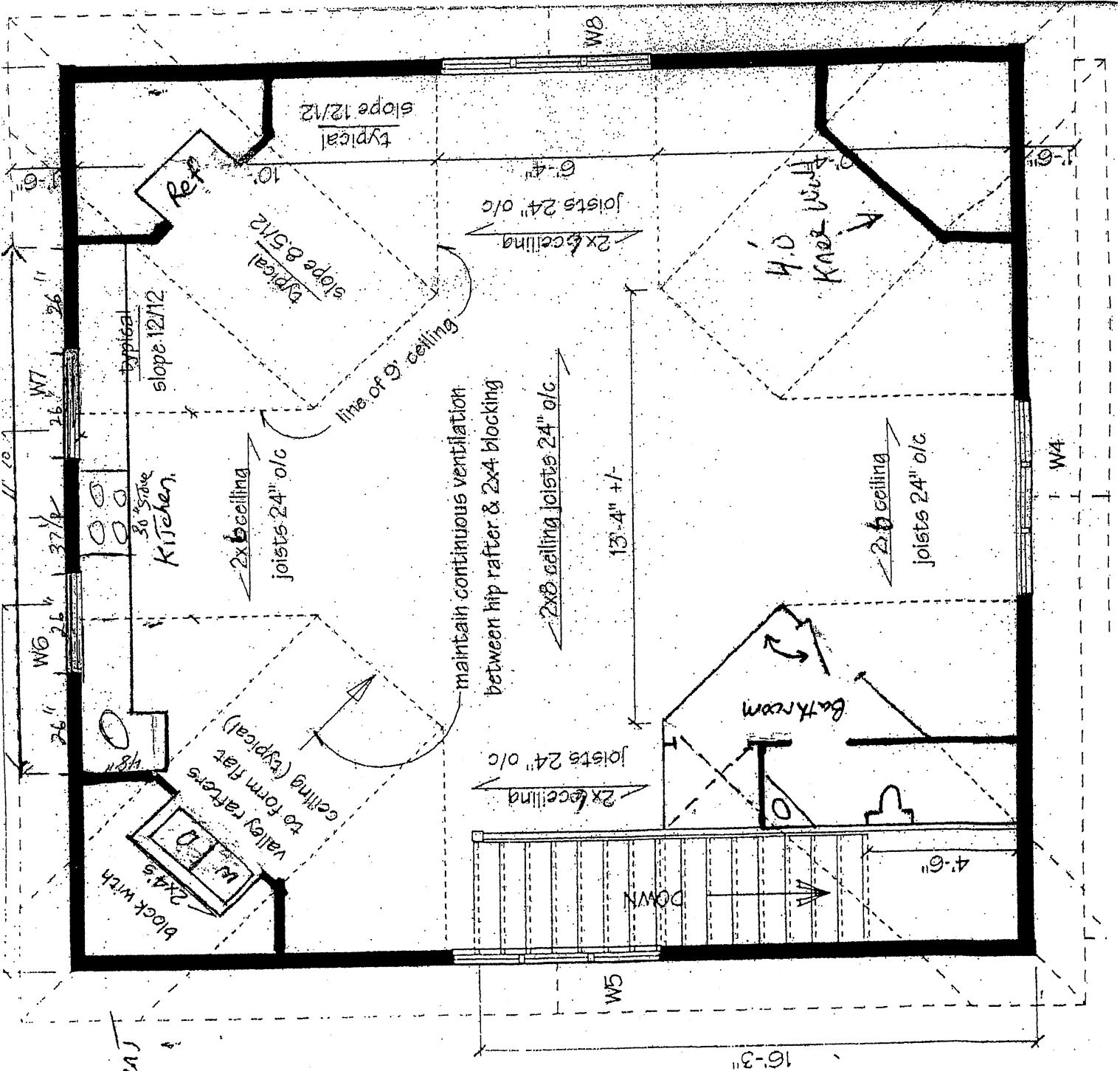
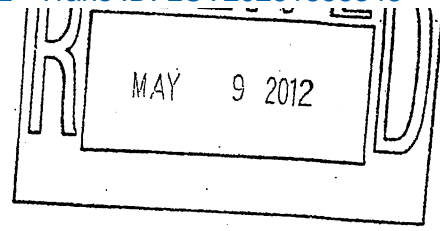
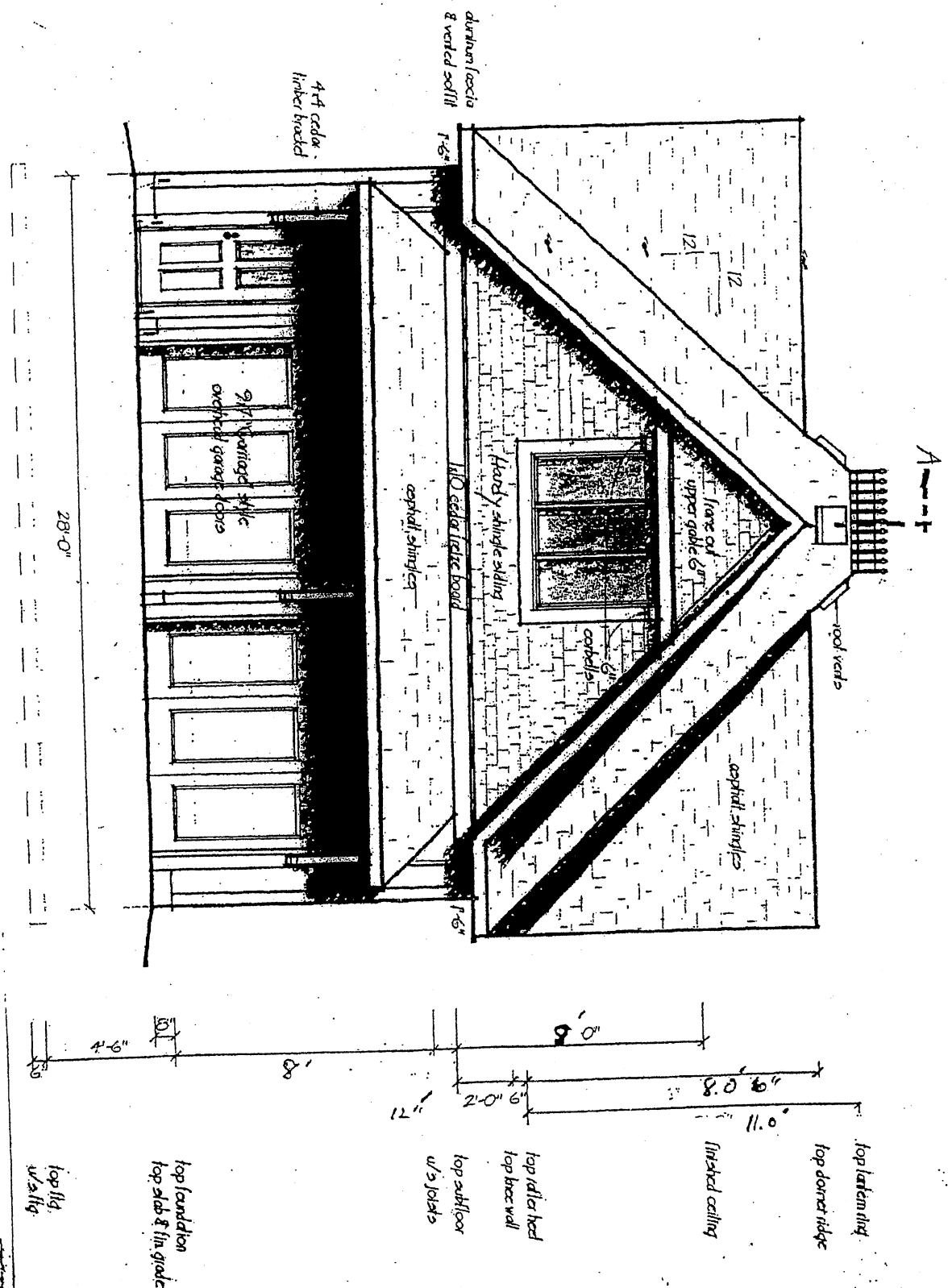
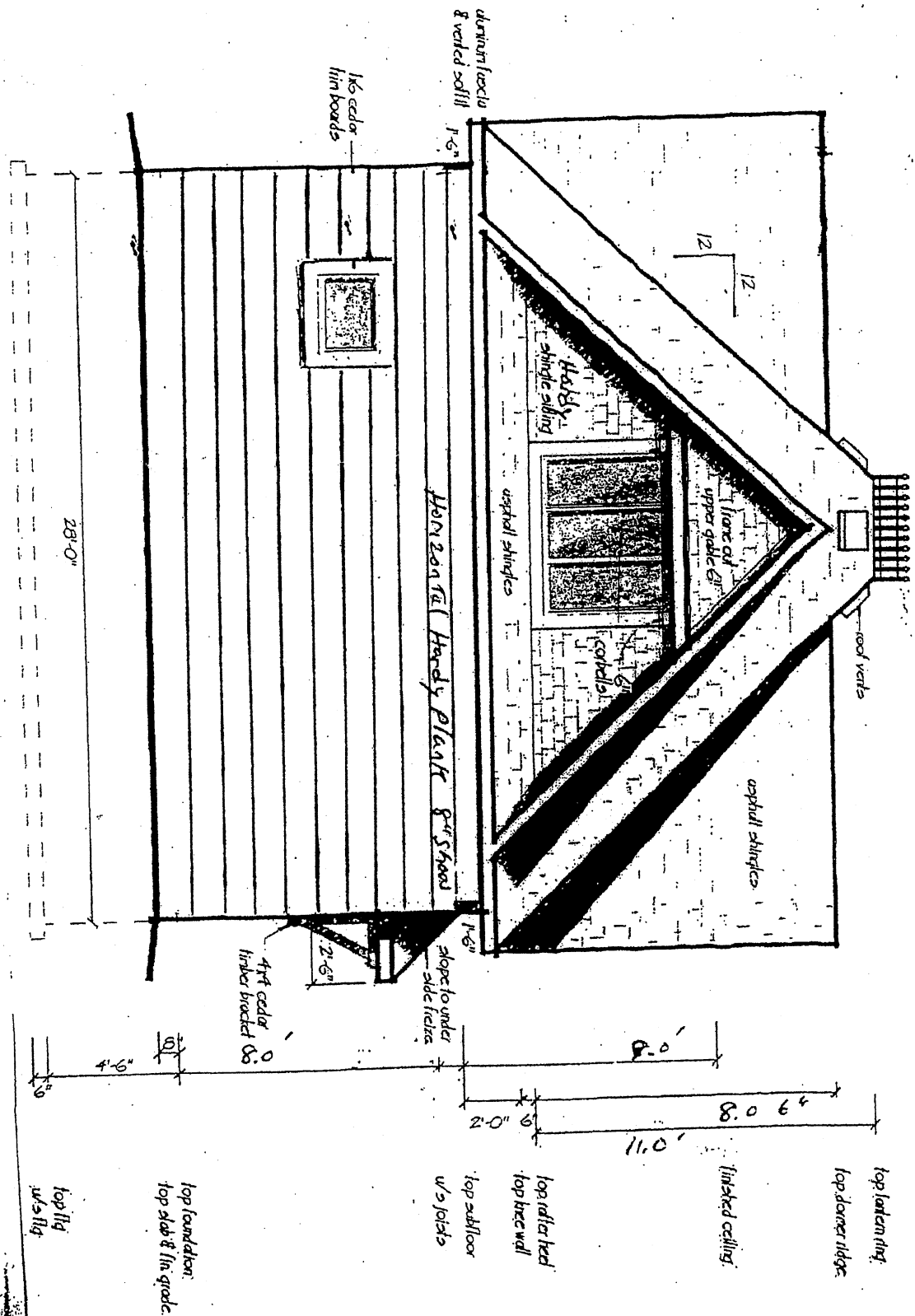

 NASSAU SURVEYING
 DIVISION OF VAN NOTE-HARVEY ASSOCIATES, P.C.
 KENNETH R. RAIKE
 NEW JERSEY PROFESSIONAL LAND SURVEYOR #36753

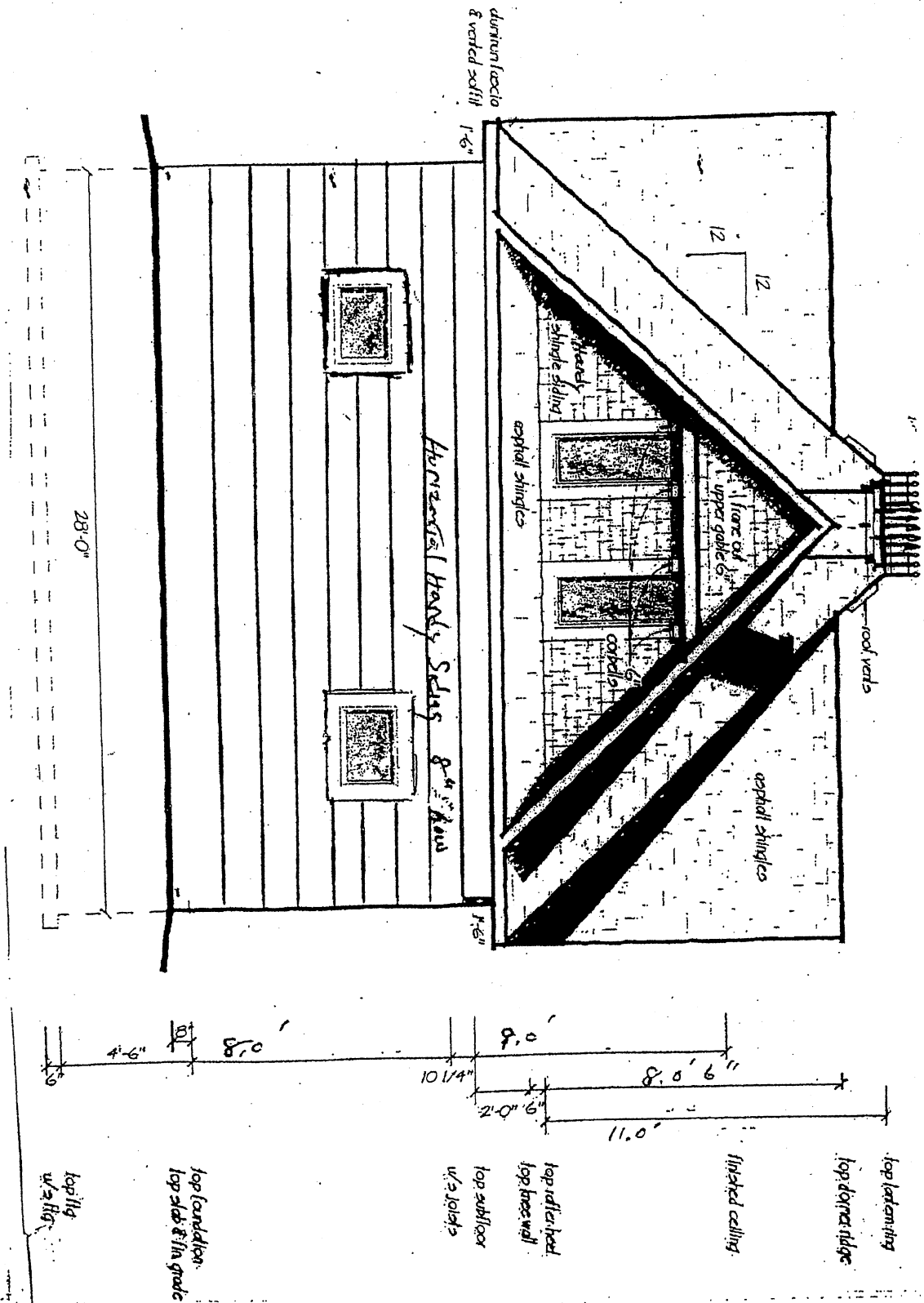
EXHIBIT B

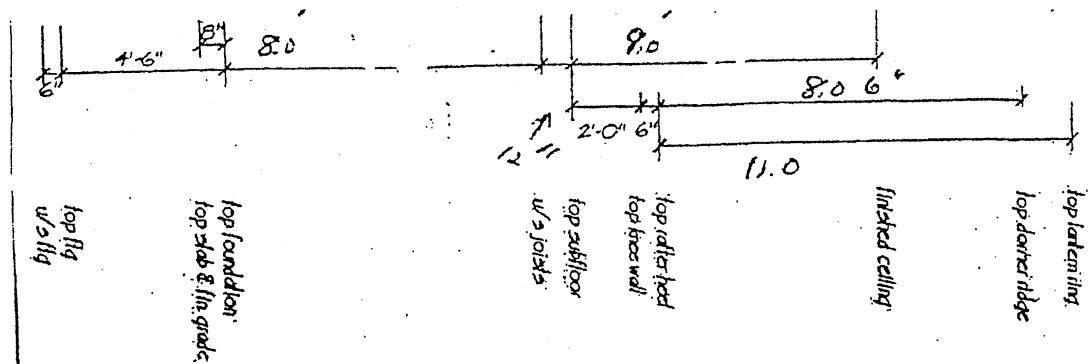


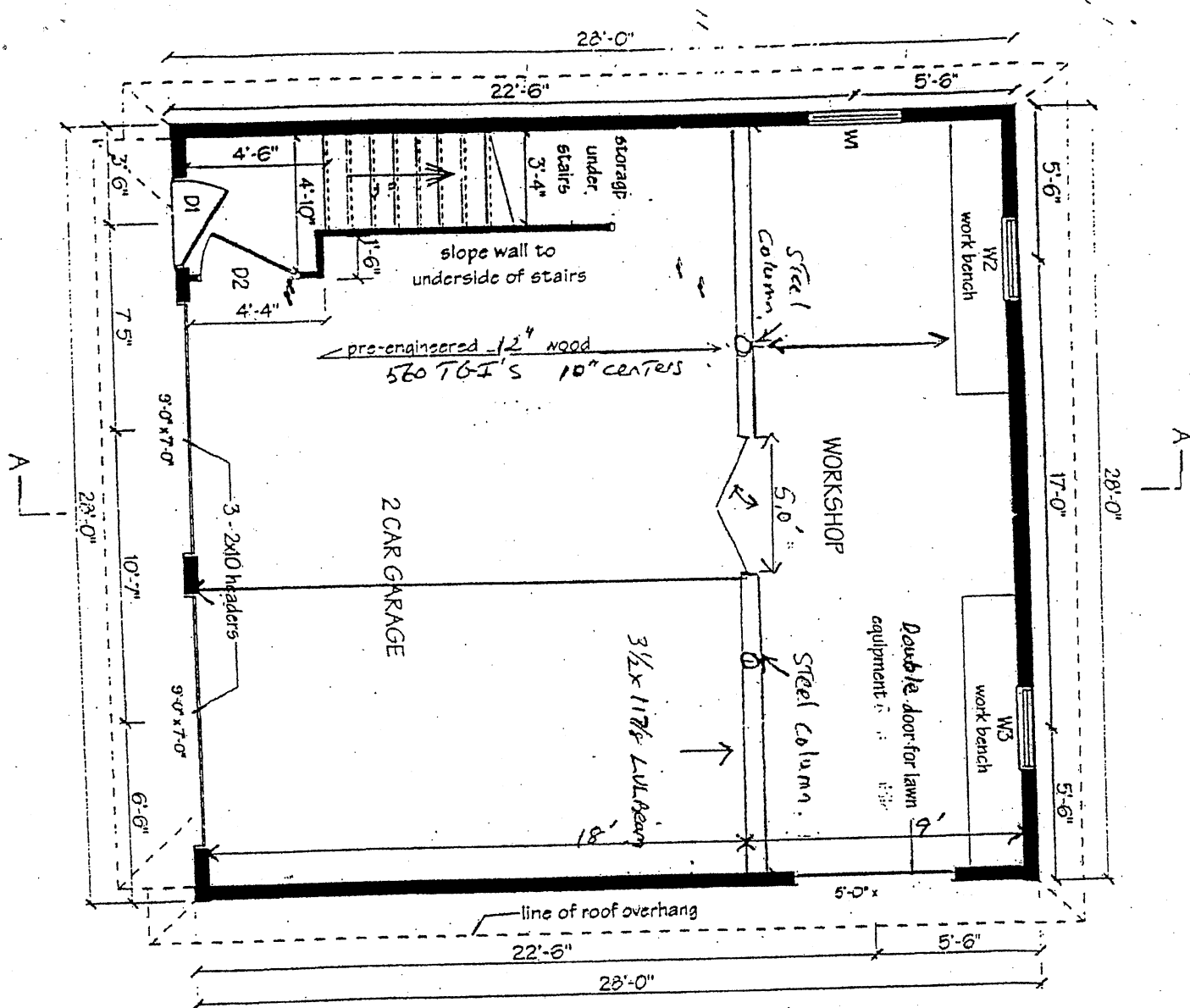
New
Apartment











NOTES:

1. All exterior wall widths nominal 6"
2. All interior wall widths nominal 4" except as noted otherwise

1st Level Priority



DEED RESTRICTION

Dated: June 7th, 2012

CRAIG LEWIS and ANTONIA LEWIS,
husband and wife,

Owner,

AND

BOROUGH OF PENNINGTON,

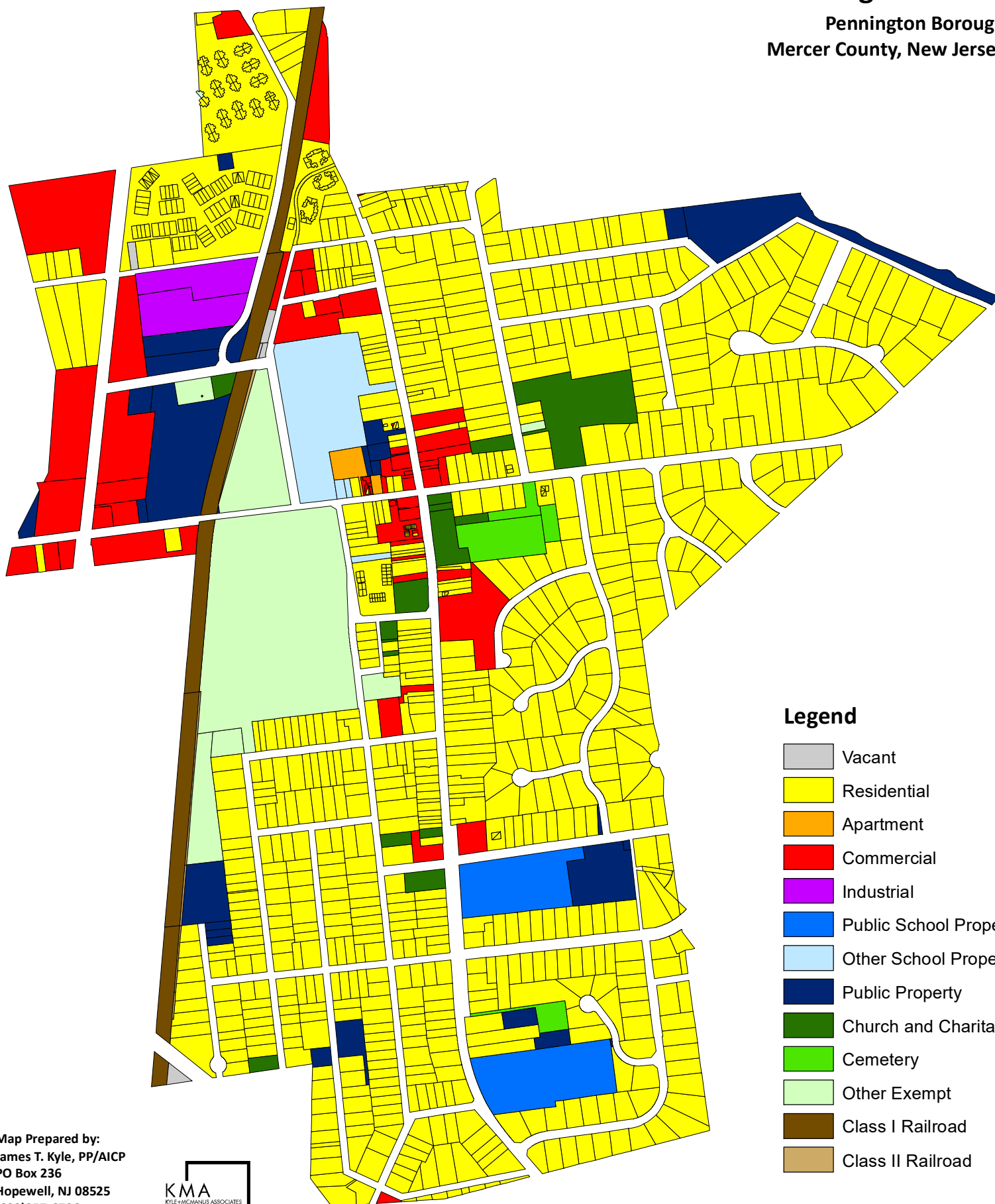
Borough.

Record and Return to:
Mason, Griffin & Pierson, P.C.
101 Poor Farm Road
Princeton, NJ 08540

Appendix 3

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:
James T. Kyle, PP/AICP
PO Box 236
Hopewell, NJ 08525
(609)257-6706
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:
James T. Kyle, PP/AICP
PO Box 236
Hopewell, NJ 08525
(609)257-6706
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
Notes:							2.57

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 4

Borough of Pennington**ORDINANCE NO. ____****AN ORDINANCE AMENDING CHAPTER 215 "ZONING", ARTICLE VII "ZONE REGULATIONS" TO INCLUDE NEW SECTION 215-78.3 ENTITLED "AH-1 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 215-78.3 "AH-1 Affordable Housing Zone"

- A. Intent. It is the intent of the AH-1 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) 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 garden apartments:
 - (a) Minimum tract area: 2.5 acres
 - (b) Minimum setback of building from tract boundary: 50 feet
 - (c) Minimum setback of parking from tract boundary: 15 feet
 - (d) Maximum permitted building coverage: 35%
 - (e) Maximum permitted impervious coverage: 70%
 - (f) Maximum permitted building height: 48 feet and 4 stories
 - (g) Maximum building length: 200 feet
 - (h) Minimum distance between structures: 100 feet
 - (i) Minimum landscaped buffer adjacent to existing public streets: 30 feet
 - (j) Minimum distance from building to parking spaces: 15 feet
 - (k) More than one building per lot shall be permitted, provided that the minimum tract area is met.

E. Facilities for recyclable materials.

- (1) There shall be included in any new multifamily housing development an indoor or outdoor recycling area for the collection and storage of residentially generated recyclable materials. The dimensions of the recycling area shall be sufficient to accommodate recycling bins or containers which are of adequate size and number and which are consistent with anticipated usage and with current methods of collection in the area in which the project is located. The dimensions of the recycling area and the bins or containers shall be determined in consultation with the Township's Recycling Coordinator and shall be consistent with the district recycling plan adopted pursuant to Section 3 of P.L. 1987, c. 102 (N.J.S.A. 13:1E-99.13) and any applicable requirements of the Township's Master Plan.
- (2) The recycling area shall be conveniently located for the residential disposition of source-separated recyclable materials, preferably near, but clearly separated from, a refuse dumpster.
- (3) The recycling area shall be well lit and shall be safely and easily accessible by recycling personnel and vehicles. Collection vehicles shall be able to access the recycling area without interference from parked cars or other obstacles. Reasonable measures shall be taken to protect the recycling area and the bins and containers placed therein against theft of recyclable materials, bins or containers.
- (4) The recycling area or the bins or containers placed therein shall be designed so as to provide protection against adverse environmental conditions which might render the collected materials unmarketable. Any bins or containers which are used for the collection of recyclable paper or cardboard and which are located in an outdoor area shall be equipped with a lid or otherwise covered so as to keep the paper or cardboard dry.
- (5) Signs clearly identifying the recycling area and the materials accepted therein shall be posted adjacent to all points of access to the recycling area. Individual bins or containers shall be equipped with signs indicating the materials to be placed therein.

- (6) Landscaping and/or fencing shall be provided around any outdoor recycling area and shall be developed in an aesthetically pleasing manner.

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 Township of Mantua 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 5

Borough of Pennington**ORDINANCE NO. ____****AN ORDINANCE AMENDING CHAPTER 215 "ZONING", ARTICLE VII "ZONE REGULATIONS" TO INCLUDE NEW SECTION 215-78.4 ENTITLED "AH-2 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 215-78.4 "AH-2 Affordable Housing Zone"

- A. Intent. It is the intent of the AH-2 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) 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 garden apartments:
 - (a) Minimum tract area: 1 acre
 - (b) Minimum front yard setback: 15 feet
 - (c) Minimum side yard setback: 40 feet
 - (d) Minimum rear yard setback: 50 feet
 - (e) Minimum setback of parking from tract boundary: 10 feet
 - (f) Maximum permitted building coverage: 35%
 - (g) Maximum permitted impervious coverage: 75%
 - (h) Maximum permitted building height: 45 feet and 3 stories
 - (i) Maximum building length: 200 feet
 - (j) Minimum landscaped buffer adjacent to existing public streets: 10 feet
 - (k) Minimum distance from building to parking spaces: 10 feet

E. Facilities for recyclable materials.

- (1) There shall be included in any new multifamily housing development an indoor or outdoor recycling area for the collection and storage of residentially generated recyclable materials. The dimensions of the recycling area shall be sufficient to accommodate recycling bins or containers which are of adequate size and number and which are consistent with anticipated usage and with current methods of collection in the area in which the project is located. The dimensions of the recycling area and the bins or containers shall be determined in consultation with the Township's Recycling Coordinator and shall be consistent with the district recycling plan adopted pursuant to Section 3 of P.L. 1987, c. 102 (N.J.S.A. 13:1E-99.13) and any applicable requirements of the Township's Master Plan.
- (2) The recycling area shall be conveniently located for the residential disposition of source-separated recyclable materials, preferably near, but clearly separated from, a refuse dumpster.
- (3) The recycling area shall be well lit and shall be safely and easily accessible by recycling personnel and vehicles. Collection vehicles shall be able to access the recycling area without interference from parked cars or other obstacles. Reasonable measures shall be taken to protect the recycling area and the bins and containers placed therein against theft of recyclable materials, bins or containers.
- (4) The recycling area or the bins or containers placed therein shall be designed so as to provide protection against adverse environmental conditions which might render the collected materials unmarketable. Any bins or containers which are used for the collection of recyclable paper or cardboard and which are located in an outdoor area shall be equipped with a lid or otherwise covered so as to keep the paper or cardboard dry.
- (5) Signs clearly identifying the recycling area and the materials accepted therein shall be posted adjacent to all points of access to the recycling area. Individual bins or containers shall be equipped with signs indicating the materials to be placed therein.
- (6) Landscaping and/or fencing shall be provided around any outdoor recycling area and shall

be developed in an aesthetically pleasing manner.

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 Township of Mantua 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:

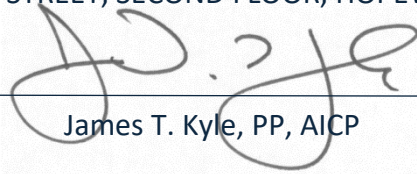
Appendix 6

Draft Redevelopment Plan for Block 201, Lots 6 and 7

PREPARED FOR THE MAYOR AND COUNCIL OF THE
BOROUGH OF PENNINGTON

KYLE MCMANUS ASSOCIATES

2 EAST BROAD STREET, SECOND FLOOR, HOPEWELL, NJ 08525



James T. Kyle, PP, AICP

Licensed NJ Professional Planner Number 05667

The original of this document was signed and sealed
in accordance with N.J.S.A. 45:14A-12



4/22/2025

Borough of Pennington

30 North Main Street, Pennington, NJ 08534

BOROUGH OF PENNINGTON MAYOR AND COUNCIL

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Nadine Stern, Council President
Daniel Rubenstein, Council Member
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Katrina Angarone, Council Member
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Robin Tillou, Secretary
James T. Kyle, PP/AICP, Borough Planner
Brandon Fetzer, PE, Borough Engineer
Edwin Schmierer, Esq., Board Attorney

BOROUGH OF PENNINGTON STAFF

G.P Caminiti, Borough Administrator
Betty Sterling, Borough Clerk
Walter Bliss, Esq., Borough Attorney
Tyler Gronau, Zoning Officer

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INTRODUCTION

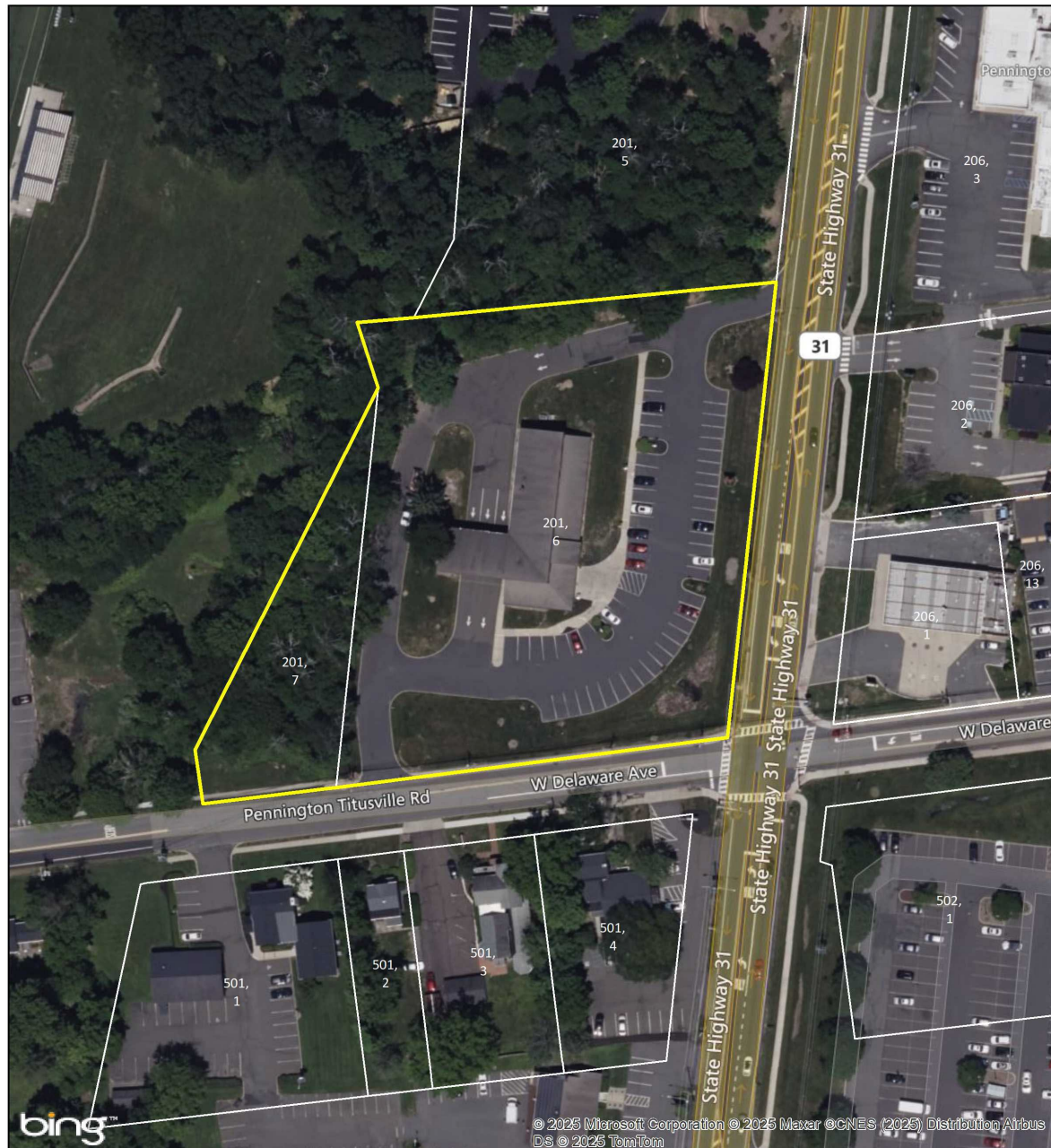
On March 5, 2025, the Borough Council, with the adoption of a resolution 2025-5.7 declared Block 201, Lots 6 and 7 as an area in need of redevelopment (see Appendix 1). This designation followed detailed investigation by the Planning Board and a public hearing on January 21, 2025 where the Board recommended such designation by resolution (see Appendix 2). As the property is located in the Fringe Planning Area (PA-3), explicit approval by the New Jersey Department of Community Affairs is required (see Appendix 3).

The redevelopment plan area consists of approximately 2.8 acres of land at the northwest corner of the intersection of West Delaware Avenue and Route 31. At present Lot 6 contains two-story brick building formerly utilized by Wells Fargo as a bank along with drive through lanes, parking and pedestrian improvements while Lot 7 is wooded and contains drainage features.

In reviewing data published by the New Jersey Department of Environmental Protection (NJDEP) through NJ GEOWEB, the study area does not contain any wetlands. A tributary of the Lewis Brook flows roughly west to east through Lot 6 in its northwest corner, eventually flowing onto Lot 5 immediately to the north then under Route 31. Although FEMA has not studied the Lewis Brook and established a floodway and 100-year flood elevation, more detailed engineering study of the Brook will be needed to establish the potential flood hazard area and any regulatory issues under NJDEP rules. There are no known contaminated sites documented by NJDEP that lie within the study area.

The redevelopment plan area is bound to the west by Hopewell Valley Central High School and the library, to the north by the Global Neurosciences Institute and medical office uses, a gas station and other commercial uses to the east and commercial uses to the south across West Delaware Avenue.

Figure 1 – Route 31 and Delaware Redevelopment Plan Area



Route 31 and Delaware Redevelopment Area

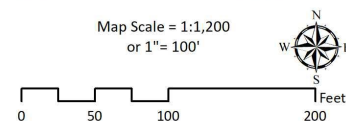
A Portion of Pennington Borough
Mercer County, New Jersey
April 2025

Legend

Route 31 and Delaware Redevelopment Area

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

Map Scale = 1:1,200
or 1" = 100'



Map Prepared by:
James T. Kyle, PP/AICP
PO Box 236
Hopewell, NJ 08525
(609) 257-6706
jkyle@kylemcmanus.com



REDEVELOPER SELECTION AND DESIGNATION

The Pennington Borough Mayor and Council will act as the Redevelopment Entity for this redevelopment plan area. Upon adoption of this redevelopment plan, the Redevelopment Entity, through counsel, shall begin negotiations of a redevelopment agreement with the designated redeveloper which shall be forwarded to Mayor and Council for consideration and adoption. Any Payment in Lieu of Taxes (PILOT) proposal and financial agreement shall be similarly negotiated and subject to consideration, introduction, and adoption of an ordinance by Mayor and Council.

PUBLIC PURPOSE

Aside from the reasons outlined in the Planning Board's redevelopment investigation, redevelopment planning has tremendous benefits to the community from a land use planning perspective. First and foremost, it enables a municipality to establish new parameters for redevelopment, which can in some cases represent a significant departure from status quo zoning with respect to physical form, building materials, design and density. Whether treated as an overlay to existing zoning or superseding underlying zoning requirements (as will be the case here), a redevelopment plan offers the opportunity to meet emerging needs of the community through a small-scale, self-contained planning process. In this case, that planning process will greatly aid the Borough in addressing its constitutional obligation to provide its fair share of the region's required affordable housing while also providing the opportunity for market-rate, handicap-accessible rental apartments. This aids in diversifying the Borough's housing stock, which is predominately comprised of single-family detached dwellings with limited townhome and apartment options.

LEGAL BASIS FOR REDEVELOPMENT IN NEW JERSEY

The New Jersey Local Redevelopment and Housing Law (LRHL), N.J.S.A. 40A:12A-1 et. seq., enables municipalities to take advantage of a broad range of tools that assist in remedying deteriorated conditions and blight or lack of proper utilization of land that can ultimately impact the public welfare. Areas that exhibit a preponderance of vacant or underutilized properties or structures, or lands that have remained underutilized for a significant length of time can ultimately impact the viability of surrounding uses to the detriment of the public interest. In the case of this redevelopment plan area, the site exhibits such characteristics, as the office/bank building located on the property has been more than half vacant for over two years. Given the office vacancy rate in Mercer County was at 23.4% in the first quarter of 2025, there is little hope of maintaining office space at this location

Redevelopment starts with the governing body authorizing the Planning Board to undertake a "Preliminary Investigation" of whether a certain area or group of parcels meet the criteria outlined in N.J.S.A. 40A:12A-5. Changes to the LRHL resulting from court decisions require the governing body, in its resolution authorizing the preliminary investigation, to specify whether condemnation powers will be utilized in redevelopment efforts. In the case of this investigation, the governing body has already determined condemnation powers will not be used, branding this a "non-condemnation redevelopment area." This means the Borough will not seek to condemn any privately owned properties within the redevelopment area for the purposes of redevelopment and will instead rely on

normal market forces to drive the assemblage of land for new development. In this case, the Borough Council authorized the redevelopment investigation with adoption of resolution 2024-8.6 on August 5, 2024.

While the LRHL does not prescribe an exact form for the preliminary investigation, it must contain, at a minimum, a map of the area studied and the location of parcels included along with a statement as to the basis for the investigation. The Planning Board is required to hold a public hearing on the preliminary investigation, with notice given to affected property owners and general notice given by publication of the hearing in a newspaper of general circulation. Notice must be published once each week for two consecutive weeks, the second publication occurring at least 10 days prior to the date of the hearing on the preliminary investigation. The hearing is held much like a hearing for land development applications, where interested parties and those immediately affected are afforded the opportunity to speak and enter evidence for the Board's consideration. At the conclusion of the public hearing, the Board is required to recommend to the governing body that all or any part of the area studied be determined, or not be determined, to be an area in need of redevelopment. The Pennington Borough Planning Board conducted a public hearing on October 9th, 2024 in accordance with the above requirements, and recommended by resolution that Borough Council designate the area studied as an area in need of redevelopment.

Considering the recommendation of the Planning Board, the governing body may adopt a resolution determining that the area studied, or any part thereof, is an area in need of redevelopment. Once adopted, the resolution must be forwarded to the Commissioner of Community Affairs for review. The governing body must issue a notice of determination within 10 days to all property owners within the delineated area and any person who filed a written objection and specified an address where a notice of determination must be sent. The Borough Council designated Block 201, Lots 6 and 7 as an area in need of redevelopment by resolution on March 5, 2025 (see Appendix 1). As the redevelopment plan area is located in PA-3 (Fringe Planning Area), approval from the Department of Community Affairs is required and was received on _____ (see Appendix 3).

Once an area is determined to be an area in need of redevelopment, the governing body must prepare or, authorize the Planning Board to prepare, a redevelopment plan. The LRHL specifies that "the redevelopment plan shall include an outline for the planning, development, redevelopment, or rehabilitation of the project area sufficient to indicate:"

- (1) Its relationship to definite local objectives as to appropriate land uses, density of population, and improved traffic and public transportation, public utilities, recreational and community facilities and other public improvements.
- (2) Proposed land uses and building requirements in the project area.
- (3) Adequate provision for the temporary and permanent relocation, as necessary, of residents in the project area, including an estimate of the extent to which decent, safe and sanitary dwelling units affordable to displaced residents will be available to them in the existing local housing market.
- (4) An identification of any property within the redevelopment area which is proposed to be acquired in accordance with the redevelopment plan.

- (5) Any significant relationship of the redevelopment plan to (a) the master plans of contiguous municipalities, (b) the master plan of the county in which the municipality is located, and (c) the State Development and Redevelopment Plan adopted pursuant to the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.).
- (6) As of the date of the adoption of the resolution finding the area to be in need of redevelopment, an inventory of all housing units affordable to low and moderate income households, as defined pursuant to section 4 of P.L.1985, c.222 (C.52:27D-304), that are to be removed as a result of implementation of the redevelopment plan, whether as a result of subsidies or market conditions, listed by affordability level, number of bedrooms, and tenure.
- (7) A plan for the provision, through new construction or substantial rehabilitation of one comparable, affordable replacement housing unit for each affordable housing unit that has been occupied at any time within the last 18 months, that is subject to affordability controls and that is identified as to be removed as a result of implementation of the redevelopment plan. Displaced residents of housing units provided under any State or federal housing subsidy program, or pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), provided they are deemed to be eligible, shall have first priority for those replacement units provided under the plan; provided that any such replacement unit shall not be credited against a prospective municipal obligation under the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), if the housing unit which is removed had previously been credited toward satisfying the municipal fair share obligation. To the extent reasonably feasible, replacement housing shall be provided within or in close proximity to the redevelopment area. A municipality shall report annually to the Department of Community Affairs on its progress in implementing the plan for provision of comparable, affordable replacement housing required pursuant to this section.
- (8) Proposed locations for zero-emission vehicle fueling and charging infrastructure within the project area in a manner that appropriately connects with an essential public charging network.

Any redevelopment plan may include requirements for the provision of affordable housing, but it must contain discussion on the relationship of the plan to development regulations of the municipality and must be "substantially consistent with" or "designed to effectuate" the municipal master plan. Redevelopment plans are required to be adopted by ordinance and go through the normal procedure undertaken by the governing body for such an action. If the governing body prepares the redevelopment plan, it must be referred to the Planning Board for review as set forth in the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-26 to determine if any provisions of the redevelopment plan are inconsistent with the master plan. In accordance with the LRHL, if the Planning Board prepares the redevelopment plan, the governing body need not refer the plan and ordinance back to the Board for review.

EXISTING ZONING

The redevelopment plan area is situated within the O-B Office Business Zone. Permitted primary uses include executive or administrative, general business and professional offices, technical training centers, childcare centers and educational uses. Permitted secondary uses include municipal parks, playgrounds and buildings deemed appropriate and necessary by the Borough Council, garage and storage buildings which are necessary to store vehicles, equipment or materials on the premises in conjunction with a permitted use, off-street parking for the use of employees and visitors, cafeterias located within a permitted primary use and operated for the exclusive use of employees and their guests and satellite and other receiving antennas. Permitted conditional uses include public utility uses, scientific and research laboratories, banks, including drive-in facilities, limited retail uses, cannabis retailers, cannabis delivery services and medical cannabis dispensaries.

REDEVELOPMENT PLAN OBJECTIVES

The following objectives are intended to guide redevelopment within the redevelopment plan area:

1. To promote and advance the purposes of the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-2, including:
 - o a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare;
 - o g. To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens;
 - o i. To promote a desirable visual environment through creative development techniques and good civic design and arrangement;
2. To provide equitable access to housing by diversifying the Borough's housing stock.
3. To provide a realistic opportunity for the construction of affordable housing within the Borough.
4. To locate affordable housing opportunities in areas of the Borough where everyday needs and services are within walking distance and have access to public transit.
5. To redevelop properties and achieve better compliance with current stormwater management regulations and explore opportunity for enhanced .
6. Enhance walkability in the redevelopment area and ensure pedestrian safety.

With adoption of the following development regulations and through the redevelopment process in general, the Borough seeks to promote the above objectives. The development regulations supersede underlying zoning and will provide credits towards the Borough's affordable housing obligation.

GENERAL PROVISIONS

Redevelopment Authority

The Borough Council shall act as the “Redevelopment Entity” pursuant to N.J.S.A. 40A-12A-4.c for the purposes of implementing this redevelopment plan and carrying out redevelopment projects. In doing so, the Council shall have the powers set forth in N.J.S.A. 40A-12A-15 to effectuate all of its duties and responsibilities in the execution and implementation of this redevelopment plan.

Site Plan Review

Review of applications for development shall be conducted by the Borough of Pennington Planning Board pursuant to N.J.S.A. 40:55D-1, et seq. Any departure from the permitted principal or accessory uses, residential density or building height exceeding that permitted by 10’ or 10% must be addressed through amendment of the plan by the Borough Council. Any departure from the bulk regulations contained in this must be approved by the Borough of Pennington Planning Board in accordance with criteria similar to those typically considered for bulk variances under the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-70c(1) or 70c(2). The redeveloper must demonstrate that the departure(s) proposed promote the purposes of the New Jersey Municipal Land Use Law and the objectives of this redevelopment plan, and that they can be granted without substantial detriment to the public good and that they will not impair the intent and purpose (objectives) of this redevelopment plan. Similarly, any departure(s) from the design regulations contained in section G of this redevelopment plan must be supported by demonstration that compliance is impracticable, or would exact undue hardship on the redeveloper and must present this testimony before the Borough of Pennington Planning Board to seek relief afforded under the Municipal Land Use Law

Effect of Approval

The effect of Planning Board approval shall be consistent with the rights granted by the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) except to the extent they may be modified by any redevelopment agreement between the Borough and the designated redeveloper.

Acquisition of Property (N.J.S.A. 40A:12A7a(4))

Pursuant to Section 15 of the LRHL (N.J.S.A. 40A:12A-15), no property is proposed to be acquired by public entities in the redevelopment plan area as part of this redevelopment plan.

Affordable Housing Units and Replacement Units (N.J.S.A. 40A:12A 7a(6 and 7))

At present there are no residential dwelling units located within the redevelopment plan area. As such, replacement units are not required under the Local Redevelopment and Housing Law. The proposed redevelopment will be adding credits to be applied toward the Borough’s Fourth Round Affordable

Housing Obligations.

Relocation Provisions (N.J.S.A. 40A:12A-7a(3))

No property acquisition will be undertaken by a public entity or utilizing government funds pursuant to this redevelopment plan. Consequently, there will be no displacement of either residents or businesses that requires a Workable Relocation Assistance Program under N.J.A.C. 5:11-1 et seq.

Zero-Emission Vehicle Fueling and Charging Infrastructure (N.J.S.A. 40A:12A-7a(8))

Through the redevelopment process and implementation of the requirements of the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-66.20b(1), electric vehicle charging infrastructure shall be provided by the redeveloper.

DEVELOPMENT REGULATIONS

Pursuant to Section 7 of the LRHL (N.J.S.A. 40A:12A-7), the following sections set forth development regulations applicable to the redevelopment plan area. These regulations shall supersede the O-B Office Business zone. Any departure from the permitted principal or accessory uses, residential density or building height exceeding that permitted by more than 10% or 10' must be addressed through amendment of the plan by the Borough Council. Any use not permitted, whether principal or accessory, is prohibited.

Any departure from the bulk regulations contained in this plan must be approved by the Borough of Pennington Land Use Board in accordance with criteria similar to those typically considered for bulk variances under the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-70c(1) or 70c(2). The redeveloper must demonstrate to the Land Use Board that the departure(s) proposed promote the objectives of this redevelopment plan, and that they can be granted without substantial detriment to the public good and that they will not impair the intent and purpose (objectives) of this redevelopment plan. Similarly, any departure(s) from the design regulations contained in section E of this redevelopment plan shall be treated as design exceptions and must be shown to be reasonable and within the general intent of the provisions and must be supported by demonstration that compliance is impracticable or will exact undue hardship on the redeveloper because of peculiar conditions relative to the redevelopment parcel.

A. Applicability of other requirements

1. Unless specific requirements set forth in this redevelopment plan provide standards to the contrary, the redeveloper shall be subject to and comply with the provisions of Chapter 215 of the Borough of Pennington Code, entitled "Zoning", Chapter 163, entitled "Site Plan Review" and Chapter 58, entitled "Affordable Housing".

B. Permitted Principal Uses

1. Residential multifamily apartments not to exceed a total of 40 units.
2. One or more principal structures.

C. Permitted Accessory Uses

1. Off-street parking.
2. Solar panels mounted on a roof.
3. Signs.
4. Fences and walls.
5. Light fixtures.
6. Street furniture including planters, tables, chairs, umbrellas, benches and trash receptacles.
7. Masonry and fenced trash enclosures.
8. Electrical transformers and other utility equipment.
9. Electric vehicle charging stations and required infrastructure.
10. Swales/rain gardens and stormwater management facilities.
11. Temporary construction trailers while site construction is occurring.
12. Emergency backup generators.
13. Uses customarily incidental to a permitted principal use.

D. Area, Yard and Bulk Requirements

1. Minimum lot area: 2.5 acres
2. Minimum lot width: 250 feet
3. Minimum lot frontage: 250 feet
4. Minimum front yard setback, Route 31: 35 feet
5. Minimum front yard setback, West Delaware Avenue: 25 feet
6. Minimum side yard setback: 25 feet
7. Maximum building coverage: 30%
8. Maximum overall impervious coverage: 75%
9. Maximum building height: 48 feet, maximum 4 stories.
10. Minimum parking stall setback from western property line: 5 feet, all other property lines: 25 feet
11. Minimum drive aisle setback from property line: 10 feet

E. Off-street parking

- i. Parking stalls shall be provided at a rate of one and one half spaces per unit, regardless of the number of bedrooms within the unit.
- ii. With the exception of required handicapped-accessible stalls, all parking stalls shall measure a minimum of 9 feet in width and 18 feet in length.
- iii. Drive aisles shall measure a minimum of 24 feet in width.

F. Affordable Housing Requirements

- i. Where rental units are proposed, a minimum of 15% of the total new units to be constructed shall be set aside and made available to low and moderate income households. Where for-sale units are proposed, the minimum set aside shall be 20%. Affordable housing units shall be developed in compliance with the Borough's affordable housing ordinance and the Uniform Housing Affordability Controls.
- ii. Affordable housing units shall be managed by the redeveloper or his or her designated administrative agent, including but not limited to affirmative marketing, income

qualification and records management. The redevelopment or his or her administrative agent shall work with the Borough's Municipal Housing Liaison to comply with reporting requirements of the State.

iii. Affordable housing units shall be integrated amongst market-rate units and have access to the same amenities as market-rate units.

iv. Deed restrictions for affordable housing units shall comply with New Jersey Fair Housing Act as to minimum length of affordability controls.

G. Design Standards

1. Lighting.

i. Adequate illumination of parking areas, pedestrian pathways and other portion of the site requiring areas lighting shall be provided and meet the following criteria.

- a) all lights shall be focused downward so that the direct sources of light is not visible from adjoining streets or properties.
- b) No light source, including illuminated signs, shall exceed a height of 18 feet.
- c) All lights shall be shielded to restrict the maximum apex angle of the cone of illumination to 150 degrees.
- d) Light intensity provided at ground level shall be a minimum of 0.5 footcandles and shall average a minimum of 1.0 footcandle over the entire area improved with buildings and parking areas.
- e) Light intensity at the property line shall not exceed 1.0 footcandle, which may be exceeded at driveways but in no case be greater than 3.0 footcandles.
- f) Provision shall be made for reduction in the intensity of illumination from 10:00 pm to 5:00 am to only that needed for adequate security.
- g) The style of any light or light standard shall be consistent with the architectural style of the building.
- h) Freestanding lights shall be located behind the curb or in curbed islands.
- i) Whenever possible, walkways shall be illuminated with bollard style fixtures.
- j) LED fixtures shall have a color temperature of 3000 kelvin.

2. Fences and walls.

i. All fences and walls shall comply with the requirements of §215-24.

3. Awnings and canopies.

- i. Canopies and awnings should match the architectural style of the building.
- ii. No canopy or awning shall extend more than 5 feet into a required yard area.

4. Landscaping

- i. The redeveloper shall provide a comprehensive landscape plan in conjunction with an application for site plan approval. Native species shall be utilized.
- ii. Street trees shall be provided along all public roadways, and shall be located on the property to be developed. Larger street trees shall be provided every 50 feet, medium street trees every 40 feet and smaller street trees every 30 feet.
- iii. Landscape buffering shall be provided between the buildings and all public roadways.
 - a) A mix of evergreen and deciduous trees and shrubs shall be provided.

- b) Evergreen trees and shrubs shall constitute a minimum of 60% of those proposed.
 - c) Larger trees and shrubs shall constitute a minimum of 85% of those proposed.
 - d) Stormwater management features within the required buffer area may be removed when considering the minimum percentages specified above.
- iv. All buildings shall include foundation plantings.
- v. An irrigation system should be installed.
- 5. Refuse and recycling
 - i. A centrally-located enclosure for disposal of refuse and recycling shall be provided on-site. Separate dumpsters shall be provided.
 - ii. Refuse enclosures shall be constructed of material consistent with that of the principal structure, but shall at a minimum be of masonry construction. Gates shall be provided on the front of the enclosure to permit access for collection.
 - iii. If required by stormwater management regulations, the enclosure shall be covered.
 - iv. Refuse enclosures shall be screened with evergreen trees or shrubs.
- 6. Signs
 - i. Each redevelopment project shall be permitted one main identification sign, which shall be a monument sign not exceeding 40 square feet in area, not including any decorative base. Such sign shall not be higher than 5 feet from finished grade and shall not exceed a width of 8 feet. A monument sign may be located within a front yard but not where it would impair sight distance at driveways or intersections.
 - ii. One façade signs shall be permitted for each façade facing a public street. Such signs shall not exceed 12 square feet in area and not be higher than 2 feet nor wider than 6 feet.
 - iii. Each building shall be identified with the number or letter portion of the street address. Such identification shall not exceed 6 square feet in area and shall not count towards the allowed area of façade signs.
 - iv. Directional signage not exceed 2 square feet in area shall be permitted at the discretion of the redeveloper with approval by the Planning Board.
 - v. All signage required for EV charging stations is considered permitted provided it complies with all State regulations and those of the electric code.
- 7. Architecture
 - i. Buildings should be designed with flat roofs or treatments that otherwise downplay the mass and height of the structure. If a flat roof or low pitch roof cannot be reasonably accommodated, then a mansard roof should be utilized.
 - ii. All building-mounted HVAC equipment and plumbing venting on the roof shall be screened from view to the greatest extent practical.
 - iii. Building facades should be articulated to break up stretches of building such that no individual section is longer than 50 feet.
 - iv. Building entrances should be enhanced by projection or other unique features such as awnings or overhangs.

v. While there is no discernable vernacular for the Route 31 corridor, building materials should be compatible with nonresidential buildings in the area yet should distinguish the project in some measure.

RELATIONSHIP TO DEFINITE LOCAL OBJECTIVES

This redevelopment plan is consistent with the general planning policies of the Borough of Pennington and those of surrounding municipalities, the County and the State Development and Redevelopment Plan. While some of the provisions contained in this plan are intended to supersede requirements of the Zoning regulations, those departures are consistent with the intent and purpose of the ordinance and the Borough of Pennington Master Plan. In accordance with the requirements of the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-7a(1), these standards will result in appropriate land uses that will not negatively impact traffic and public transportation, public utilities and recreational and community facilities.

Considering the goals and objectives of the master plan, the standards set forth in this redevelopment plan are designed to be consistent with and effectuate the Borough's planning policy. More specifically, the 2020 Master Plan encourages the construction of senior citizen housing, continuing to meet the Borough's obligation to provide its fair share of the region's affordable housing and to enhance gateways to the Borough. The permitted use of senior living community will create a spectrum of housing accommodation that addresses the needs of senior citizens while creating affordable housing credits. Redevelopment of the site will create high quality development at one of the northern gateways of the Borough.

SIGNIFICANT RELATIONSHIP OF THE REDEVELOPMENT PLAN TO OTHER MUNICIPAL, COUNTY AND STATE PLANS

Other Municipal Plans

The redevelopment area subject to this redevelopment plan is located immediately along the border with Hopewell Township. On the north side of West Delaware Avenue are the County Library and Hopewell Valley Central High School while the south side contains single-family detached dwellings. All property to the west in Hopewell Township lies within the R-100 residential district. Based on the nature of existing uses in the area, multifamily residential development along a State highway is not inconsistent with this zoning designation.

Mercer County

Mercer County adopted its most recent Master Plan in September of 2010, with amendments adopted in 2016. The plan follows a three-system approach providing policies related to the economy, transportation and the environment as noted below.

ECONOMY

- Promote the appropriate location and design of new development with opportunities for transit, regional equity, and preservation
- Provide infrastructure and other incentives that promote growth
- Promote housing choice to meet the region's needs

TRANSPORTATION

- Direct growth to transit corridors and centers
- Promote access management to enhance safety and capacity
- Promote compact design, walkable, mixed use centers
- Match jobs to housing to reduce long auto commutes to work

ENVIRONMENT

- Promote land use patterns that limit stormwater runoff and increase green infrastructure
- Promote redevelopment of brownfields and grayfields
- Prioritize open space acquisition to complete greenway networks, support compact development, and provide recreation opportunities to underserved populations

The proposed development of multifamily apartments in the redevelopment plan area promotes many of the policies of the County Master Plan, including promoting new development with access to transit, promoting compact design, walkable, mixed-use center and matching jobs to housing.

State of New Jersey

The 2001 State Development and Redevelopment Plan classifies the redevelopment plan area as PA-3, Fringe Planning Area. In PA-3, the State Plan's intention is to:

- Accommodate growth in centers
- Protect the environs primarily as open lands
- Revitalize cities and towns
- Protect the character of existing stable communities
- Protect natural resources
- Provide a buffer between more developed Metropolitan and Suburban planning areas and less developed Rural and Environmentally Sensitive planning areas
- Confine programmed sewer and public water services to centers

Of particular relevance to the redevelopment plan area, the State Plan in the policy objectives related to housing desires to provide a full range of housing choices, but also to ensure that affordable and senior citizen housing is developed with maximum access to a full range of commercial, educational, recreational, health and transportation services and facilities. The location of the redevelopment plan

area meets this objective, as the area functions as a center with a host of commercial and personal service businesses with access to public transit on Route 31. This redevelopment plan is consistent with the State's policy for PA-3 noted above and promotes these intentions.

DRAFT

APPENDIX 1

APPENDIX 2

APPENDIX 3

DRAFT

APPENDIX 4

DRAFT

Appendix 7

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) 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 garden apartments:
 - (a) Minimum tract area: 10,000 square feet
 - (b) Minimum front yard setback: 8 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: 35%
 - (g) Maximum permitted impervious coverage: 80%
 - (h) Maximum permitted building height: 45 feet and 3 stories
 - (i) Maximum building length: 80 feet
 - (j) Minimum landscaped buffer adjacent to existing public streets: 5 feet
 - (k) Minimum distance from building to parking spaces: 10 feet

E. Facilities for recyclable materials.

- (1) There shall be included in any new multifamily housing development an indoor or outdoor recycling area for the collection and storage of residentially generated recyclable materials. The dimensions of the recycling area shall be sufficient to accommodate recycling bins or containers which are of adequate size and number and which are consistent with anticipated usage and with current methods of collection in the area in which the project is located. The dimensions of the recycling area and the bins or containers shall be determined in consultation with the Township's Recycling Coordinator and shall be consistent with the district recycling plan adopted pursuant to Section 3 of P.L. 1987, c. 102 (N.J.S.A. 13:1E-99.13) and any applicable requirements of the Township's Master Plan.
- (2) The recycling area shall be conveniently located for the residential disposition of source-separated recyclable materials, preferably near, but clearly separated from, a refuse dumpster.
- (3) The recycling area shall be well lit and shall be safely and easily accessible by recycling personnel and vehicles. Collection vehicles shall be able to access the recycling area without interference from parked cars or other obstacles. Reasonable measures shall be taken to protect the recycling area and the bins and containers placed therein against theft of recyclable materials, bins or containers.
- (4) The recycling area or the bins or containers placed therein shall be designed so as to provide protection against adverse environmental conditions which might render the collected materials unmarketable. Any bins or containers which are used for the collection of recyclable paper or cardboard and which are located in an outdoor area shall be equipped with a lid or otherwise covered so as to keep the paper or cardboard dry.
- (5) Signs clearly identifying the recycling area and the materials accepted therein shall be posted adjacent to all points of access to the recycling area. Individual bins or containers shall be equipped with signs indicating the materials to be placed therein.
- (6) Landscaping and/or fencing shall be provided around any outdoor recycling area and shall

be developed in an aesthetically pleasing manner.

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 Township of Mantua 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 8

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 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) 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 garden 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: 50%
 - (g) Maximum permitted impervious coverage: 90%
 - (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. Facilities for recyclable materials.

- (1) There shall be included in any new multifamily housing development an indoor or outdoor recycling area for the collection and storage of residentially generated recyclable materials. The dimensions of the recycling area shall be sufficient to accommodate recycling bins or containers which are of adequate size and number and which are consistent with anticipated usage and with current methods of collection in the area in which the project is located. The dimensions of the recycling area and the bins or containers shall be determined in consultation with the Township's Recycling Coordinator and shall be consistent with the district recycling plan adopted pursuant to Section 3 of P.L. 1987, c. 102 (N.J.S.A. 13:1E-99.13) and any applicable requirements of the Township's Master Plan.
- (2) The recycling area shall be conveniently located for the residential disposition of source-separated recyclable materials, preferably near, but clearly separated from, a refuse dumpster.
- (3) The recycling area shall be well lit and shall be safely and easily accessible by recycling personnel and vehicles. Collection vehicles shall be able to access the recycling area without interference from parked cars or other obstacles. Reasonable measures shall be taken to protect the recycling area and the bins and containers placed therein against theft of recyclable materials, bins or containers.
- (4) The recycling area or the bins or containers placed therein shall be designed so as to provide protection against adverse environmental conditions which might render the collected materials unmarketable. Any bins or containers which are used for the collection of recyclable paper or cardboard and which are located in an outdoor area shall be equipped with a lid or otherwise covered so as to keep the paper or cardboard dry.
- (5) Signs clearly identifying the recycling area and the materials accepted therein shall be posted adjacent to all points of access to the recycling area. Individual bins or containers shall be equipped with signs indicating the materials to be placed therein.
- (6) Landscaping and/or fencing shall be provided around any outdoor recycling area and shall be developed in an aesthetically pleasing manner.

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 Township of Mantua 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

Mercer County, NJ

Spending Plan

June 11, 2025

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												\$0
(b) Interest	\$3,737	\$2,514	\$2,237	\$1,929	\$1,618	\$1,305	\$1,195	\$1,084	\$972	\$860	\$746	\$18,198
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
Projected Development Fee and Interest Projected - 2025-2035	\$18,198
Total	\$509,864
20% Maximum	\$101,973

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 \$101,973 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	\$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	\$2,000						\$33,000
Total	\$160,796	\$42,796	\$42,796	\$42,796	\$42,796	\$15,796	\$15,796	\$15,796	\$15,796	\$15,796	\$15,796	\$426,756

Appendix 10

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 to be offered for-sale or seven (7) or more new residential units to be offered for rental, shall be required to provide an appropriate percentage of the residential units be set aside for very low, low, and moderate income households, as set forth below.
- 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.
- C. For residential or mixed-use projects in which the affordable units are to be offered for sale, the set-aside percentage shall be twenty (20) percent; for projects in which the affordable units are to be offered for rent, the set-aside percentage shall be fifteen (15) percent.
- D. The developer shall provide that half of the affordable units constructed be reserved for low-income households and that the remaining half be reserved for moderate-income households. At least 13 percent of all restricted units shall be very low-income units (affordable to a household earning 30 percent or less of median income). The very-low income units shall be counted as part of the required number of low-income units within the development.

- E. 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.
- F. 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.
- G. 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.
- H. In the event application of the required set-aside percentage (15% or 20%) to the total number of residential units proposed does not result in a full integer, the developer shall round the required set-aside upward and construct a whole affordable unit when 0.5 unit or more is the resulting fraction of a unit.
- I. In the event application of the required set-aside percentage (15% or 20%) to the total number of residential units proposed does not result in a full integer, the developer may round the required set-aside downward and make a payment-in-lieu of providing the affordable unit when 0.4 unit or less is the resulting fraction of a unit. The resulting fractional unit shall be multiplied by \$235,000 to determine the required payment-in-lieu. All payments-in-lieu of providing fractional units meeting the requirements of this section shall be deposited into the Borough of Pennington Affordable Housing Trust Fund.
- J. 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.

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 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

*Borough of Pennington, NJ
Tuesday, June 10, 2025*

Chapter 58. Affordable Housing

§ 58-1. Purpose.

- A. The purpose of this chapter is to comply with the Substantive Rules of the New Jersey Council on Affordable Housing (COAH) regarding the Borough of Pennington and its efforts to satisfy its Mt. Laurel II housing obligations.
- B. This chapter of the Code of the Borough of Pennington sets forth regulations regarding low- and moderate-income housing units in the Borough of Pennington that are consistent with the provisions of N.J.A.C. 5:93 et seq. as effective on June 6, 1994, and as amended thereafter. These rules are pursuant to the Fair Housing Act of 1985 and the Borough of Pennington's constitutional obligation to provide for its fair share of low- and moderate-income housing.

§ 58-2. Definitions.

Any term pertaining to affordable housing referenced in this chapter is intended to have the meaning as defined in the New Jersey Fair Housing Act (N.J.S.A. 52:270-301 et seq.) or the Procedural Rules of the New Jersey Council on Affordable Housing (N.J.A.C. 5:91) or the Substantive Rules of the New Jersey Council on Affordable Housing (N.J.A.C. 5:92 or N.J.A.C. 5:93), as appropriate.

§ 58-3. Fair share for inclusionary developments.

- A. The Borough of Pennington's new construction or inclusionary component shall be divided equally between low- and moderate-income households as per N.J.A.C. 5:93-2.20.
- B. Except for inclusionary developments constructed pursuant to low-income tax credit regulations:
 - (1) At least 1/2 of all units within each inclusionary development shall be affordable to low-income households; and
 - (2) At least 1/2 of all rental units shall be affordable to low-income households; and
 - (3) At least 1/3 of all units in each bedroom distribution pursuant to N.J.A.C. 5:93-7.3 shall be affordable to low-income households.
- C. Inclusionary developments that are not restricted to age-restricted housing units shall be structured in conjunction with realistic market demands so that:
 - (1) The combination of efficiency and one-bedroom units is at least 10% and no greater than 20% of the total low- and moderate-income units; and
 - (2) At least 30% of all low- and moderate-income units are two-bedroom units; and
 - (3) At least 20% of all low- and moderate-income units are three-bedroom units; and
 - (4) Low- and moderate-income units that are age-restricted may utilize a modified bedroom distribution. At a minimum, the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development.

- D. In conjunction with realistic market information, the following criteria shall be used in determining maximum rents and sale prices:
- (1) Efficiency units shall be affordable to 1.0 person households;
 - (2) One-bedroom units shall be affordable to 1.5 person households;
 - (3) Two-bedroom units shall be affordable to 3.0 person households;
 - (4) Three-bedroom units shall be affordable to 4.5 person households;
 - (5) Median income by household size shall be established by a regional weighted average of the uncapped Section 8 income limits published by the federal Department of Housing and Urban Development (HUD) as per N.J.A.C. 5:93-7.4(b);
 - (6) The maximum average rent and sales price of low- and moderate-income units within each inclusionary development shall be affordable to households earning no more than 57.5% of median income. The moderate-income sales units shall be made available for at least three different prices and low-income sales units also shall be made available for at least two different prices;
 - (7) For both owner-occupied and rental units, the low- and moderate-income units shall utilize the same heating source as the market units within an inclusionary development;
 - (8) low-income units shall be reserved for households with a gross household income less than or equal to 50% of the median income approved by COAH; moderate-income units shall be reserved for households with a gross household income less than 80% of the median income approved by COAH as per N.J.A.C. 5:93-7.4; and
 - (9) The regulations outlined in N.J.A.C. 5:93-9.15 and 5:93-9.16 shall be applicable to all affordable units.
- E. For rental units, the following conditions shall apply:
- (1) Developers may establish one rent for a low-income unit and one rent for a moderate-income unit for each bedroom distribution; and
 - (2) Gross rents, including an allowance for tenant-paid utilities, shall be established so as not to exceed 30% of the gross monthly income of the appropriate household size as per N.J.A.C. 5:93-7.4(a). The tenant-paid utility allowance shall be consistent with the utility allowance approved by HUD for use in New Jersey.
- F. For sale units, the following conditions shall apply:
- (1) The initial price of a low- and moderate-income owner-occupied for-sale housing unit shall be established so that after a down payment of 5%, the monthly principal, interest, homeowner and private mortgage insurance, property taxes (based on the restricted value of the low- and moderate-income unit) and condominium or homeowner association fees do not exceed 28% of the eligible gross monthly income;
 - (2) Master deeds of inclusionary developments shall regulate condominium or homeowner association fees or special assessments of low- and moderate-income purchasers at 100% of those paid by market purchasers. This one-hundred-percent percentage is consistent with the requirement of N.J.A.C. 5:93-7.4. Once established within the master deed, the one-hundred-percent percentage shall not be amended without prior approval from COAH;
 - (3) The Borough of Pennington shall follow the general provisions concerning uniform deed restriction liens and enforcement through certificates of occupancy or reoccupancy on sale units as per N.J.A.C. 5:93-9.3;
 - (4) The Borough of Pennington shall require a certificate of reoccupancy for any occupancy of a low- or moderate-income sales unit resulting from a resale as per N.J.A.C. 5:93-9.3(c);

- (5) Municipal, state, nonprofit and seller options regarding sale units shall be consistent with N.J.A.C. 5:93-9.5 through 5:93-9.8. Municipal rejection of repayment options for sale units shall be consistent with N.J.A.C. 5:93-9.9;
- (6) The continued application of options to create, rehabilitate or maintain low- and moderate-income sale units shall be consistent with N.J.A.C. 5:93-9.10;
- (7) Eligible capital improvements prior to the expiration of controls on sale units shall be consistent with N.J.A.C. 5:93-9.11; and
- (8) The regulations detailed in N.J.A.C. 5:93-9.12 through 5:93-9.14 shall be applicable to low- and moderate-income units that are for sale units.

G. For inclusionary developments, the following conditions shall apply:

- (1) Low- and moderate-income units within an inclusionary development shall be built in accordance with N.J.A.C. 5:93-5.6(d) as follows:

Minimum Percent of Low/Moderate Income Units Completed	Percent of Market Housing Units Completed
0%	25%
10%	25% + 1 unit
50%	50%
75%	75%
100%	<u>90%</u>
	100%

- (2) The design of an inclusionary development shall integrate the low- and moderate-income units with the market units in accordance with N.J.A.C. 5:93-5.6(f).

H. A Development Fees Ordinance (Ordinance No. 98-8) was approved by COAH and adopted by the Borough of Pennington on August 3, 1998, and appears as Chapter **98**, Article **I**, Affordable Housing Development Fees.

I. To provide assurances that low- and moderate-income units are created with controls on affordability over time and that low- and moderate-income households occupy these units, the Borough of Pennington shall designate an administrative agency, to be named by resolution, which shall have the responsibility of ensuring the affordability of sales and rental units over time. The administrative agency shall be responsible for those activities detailed in N.J.A.C. 5:93-9.1(a).

- (1) In addition, the administrative agency shall be responsible for utilizing the verification and certification procedures outlined in N.J.A.C. 5:93-9.1(b) in placing households in low- and moderate-income units;
- (2) Newly constructed low- and moderate-income sales units shall remain affordable to low- and moderate-income households for at least thirty (30) years, and the administrative agency shall require all conveyances of newly constructed units to contain the deed restriction and mortgage lien adopted by COAH and referred to as "Technical Appendix E" as found in N.J.A.C. 5:93; and
- (3) Housing units created through the conversion of a nonresidential structure shall be considered a new housing unit and shall be subject to thirty-year controls on affordability. The administrative agency shall require COAH's appropriate deed restriction and mortgage lien.

J. The following durations of affordability controls shall apply to rehabilitated units:

- (1) Rehabilitated owner-occupied single-family housing units that are improved to code standard will be subject to affordability controls for at least six years; and

- (2) Rehabilitated renter-occupied housing units that are improved to code standard shall be subject to affordability controls for at least 10 years.

K. The following durations of affordability controls shall apply to rental units:

- (1) Newly constructed low- and moderate-income rental units shall remain affordable to low- and moderate-income households for at least 30 years. The administrative agency shall require the deed restriction and lien and deed of easement referred to as "Technical Appendix H" as found in N.J.A.C. 5:93;
- (2) Affordability controls on accessory apartments shall be for a period of at least 10 years, except if the apartment is to receive a rental bonus credit pursuant to N.J.A.C. 5:93-5.15, then the controls on affordability shall extend for 30 years in accordance with N.J.A.C. 5:93-5.9; and
- (3) Alternate living arrangements shall be controlled in a manner suitable to COAH, that provides assurances that such a facility will house low- and moderate-income households for at least 10 years, except that if the alternative living arrangement is to receive a rental bonus credit pursuant to N.J.A.C. 5:93-5.15, then the controls on affordability shall extend for 30 years in accordance with N.J.A.C. 5:93-5.8.

L. Section 14(b) of the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., incorporates the need to eliminate unnecessary cost generating features from the Borough of Pennington's land use ordinances. Accordingly, the Borough of Pennington shall eliminate development standards that are not essential to protect the public welfare and to expedite or fast track municipal approvals/denials on inclusionary development applications. The Borough of Pennington shall adhere to the components of N.J.A.C. 5:93-10.1 through 5:93-10.3. The Borough of Pennington has a fair share obligation of 29 units, of which 20 is the new construction component. This chapter shall apply to all developments that contain proposed low- and moderate-income units that are listed below and any future developments that may occur:

- (1) Pennington Point East.

§ 58-4. Affirmative marketing.

[Added 3-6-2006 by Ord. No. 2006-2]

A. The Borough of Pennington in the County of Mercer has a fair share obligation of 29 units, of which 20 provide new affordable housing opportunities. This section shall apply to all affordable accessory apartments and all developments that contain, or will contain, affordable units that are listed below and any future developments that may occur:

- (1) Pennington Point East;
- (2) MU-3 Zone (Capital Heath Systems site); and
- (3) Affordable Housing Overlay Zone (former Landfill site).

B. The affirmative marketing plan shall be 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 the affordable units being marketed by a developer or sponsor of the units, the Borough and/or the designated administrative agency of affordable housing. The plan shall address the requirements of N.J.A.C. 5:94-7 and N.J.A.C. 5:80-26. In addition, the plan prohibits discrimination in the sale, rental, financing or other services related to housing on the basis of race, color, sex, affectional or sexual orientation, religion, handicap, age, familial status/size or national origin. The Borough of Pennington is in Housing Region IV consisting of Monmouth, Ocean and Mercer Counties.

C. The affirmative marketing plan is a continuing program and shall meet the following requirements:

- (1) The affirmative marketing process for available affordable ownership units shall begin at least four months prior to the expected occupancy. The affirmative marketing of rental units shall take place at least one month prior to the expected occupancy. Advertising and outreach shall take place during the first week of the marketing program and each month thereafter until all available units have been leased or sold.
- (2) All advertisements shall include the following:
 - (a) Street address (location) of the housing units;
 - (b) Directions to the housing units;
 - (c) Size of the units, as measured in bedrooms;
 - (d) Range of selling prices/rents;
 - (e) The maximum income permitted to qualify for the housing units;
 - (f) Application fees, if any; and
 - (g) Location of applications, including business hours and where/how applications may be obtained.
- (3) In order to reach all the entire housing region, as required by the New Jersey Council on Affordable Housing (COAH), at least one display advertisement will be published in each the following newspapers of general circulation:
 - (a) The Trenton Times (Mercer County edition); and
 - (b) The Asbury Park Press (Monmouth County and Ocean County editions).
- (4) All newspaper articles, advertisements and requests for applications for affordable housing also shall appear in the following newspapers:
 - (a) Pennington Post; and
 - (b) Hopewell Valley News.
- (5) The following regional radio and/or cable television station(s) shall be used to advertise affordable housing units:
 - (a) Comcast Public Access.
- (6) The primary marketing shall take the form of at least one press release and a paid advertisement with the above media outlets. Monthly advertising initiatives will continue until all affordable units are occupied. Additional advertising and publicity shall be on an "as needed" basis.
- (7) Applications and copies of press releases and/or information packages will be made available at the following locations:
 - (a) Developer's sales/rental office on site;
 - (b) Pennington Borough Public Library;
 - (c) The main branches of the Monmouth County and Ocean County public libraries;
 - (d) Pennington Municipal Building;
 - (e) Pennington Senior Center;
 - (f) Mercer County Administration Building; and
 - (g) The Pennington Market.

- (8) In effort to reach those households that are traditionally underserved by affordable housing opportunities, press releases and/or information packages shall be sent to each of the following agencies in Monmouth, Ocean and Mercer Counties:

- (a) All public housing authorities within COAH Housing Region IV, including but not limited to:

Hightstown HA
131 Rogers Avenue
Hightstown, NJ 08520

Princeton HA
50 Clay Street
Princeton, NJ 08542

Trenton HA
875 New Willow Street
Trenton, NJ 08638

Hamilton Township HA
2090 Greenwood Avenue
PO Box 00150
Hamilton, NJ 08650

Red Bank HA
52 Evergreen Terrace
Red Bank, NJ 07701

Asbury Park HA
1000 1/2 3rd Avenue
Asbury Park, NJ 07712

Belmar HA
710 8th Avenue
Belmar, NJ 07719

Freehold HA
107 Throckmorton St.
Freehold, NJ 08723

Highlands HA
215 Shore Drive
Highlands, NJ 07732

Keansburg HA
1 Church Street
Keansburg, NJ 07734

Long Branch HA
Garfield Court
Long Branch, NJ 07740

Middletown HA
1 Oakdale Drive
Middletown, NJ 07748

Neptune HA

1810 Alberta Avenue

Neptune, NJ 07753

Dover HA

215 E Blackwell Street

Dover, NJ 07801

Lakewood HA

317 Sampson Avenue

Lakewood, NJ 08701

Berkeley HA

44 Frederick Drive

Bayville, NJ 08721

Brick HA

165 Chambers Bridge Road

Bricktown, NJ 07732

(b) County offices on aging within COAH Housing Region IV:

Mercer County Office on Aging

640 S. Broad Street

PO Box 8068

Trenton, NJ 08650-0068

Monmouth County Office on Aging

21 Main and Court Center

Freehold, NJ 07728

Ocean County Office of Senior Services

1027 Hooper Avenue, Building #2

PO Box 2191

Toms River, NJ 08754-2191

(c) County boards of social services within COAH Housing Region IV:

Mercer County Board of Social Services

200 Woolverton St., PO Box 1450

Trenton, NJ 08650-2099

Monmouth County Div. of Social Services

Kozloski Rd., PO Box 3000

Freehold, NJ 07728

Ocean County Board of Social Services

1027 Hooper Ave., PO Box 547

Toms River, NJ 08754-0547

(9) Applications also will be mailed to prospective applicants upon request.

D. The following is a description of the random selection method that will be used to select occupants of affordable housing in accordance with the procedures employed by the administrative agency:

- (1) All households that wish to be considered for affordable housing will be asked a series of questions to assess their likelihood of being approved as a low- or moderate-income family.
 - (a) How many people comprise the household?
 - (b) Is the total household income above or below the moderate income limit for their family size?
 - (c) Does the household currently live in the COAH Housing Region IV?
 - (d) Do the heads of the household currently work in COAH Housing Region IV?
 - (2) If the applicant indicates that their total household income is below the moderate income limit for their family size, they will be eligible for placement in the applicant pool. Applicants will, of course, be required to provide written documentation to evidence this and other eligibility criteria at a later time.
 - (3) Once a sufficient number of applicants have been placed in the pool, the administrative agent will close the pool and no other applicants will be considered until the applicant pool is reopened by the administrative agent.
 - (4) All households in the applicant pool will then be notified of the location, date and time the random selection will take place. Each applicant will be assigned a number that will be used to identify them in the random selection process. This number will be provided to the applicant prior to the random selection.
 - (5) All numbers will be placed in a container and chosen at random. Using the order set by the random selection, the administrative agent will contact applicants that indicated that they lived or worked in COAH Housing Region IV. Once those applicants are exhausted, the administrative agent will contact applicants outside Region IV in the order in which they were chosen.
 - (6) As units become available, and in the order described above, the administrative agent will notify applicants in writing that they are among a group of applicants that are being considered for sale or rental of an affordable unit. Applicants will be given 14 days to complete a full application and submit it along with the requisite back-up documentation.
- E. A waiting list of all eligible candidates will be maintained by the administrative agency in accordance with the provisions contained in N.J.A.C. 5:80-26 et seq.
- F. The Borough of Pennington is ultimately responsible for administering the affirmative marketing plan. The Borough of Pennington has delegated this responsibility to the following administrative agencies: Community Grants and Planning, Inc. (previously Housing Services, Inc.) for administering the accessory apartment program; and the Housing Affordability Service of HMFA for administering the other affordable units that are part of the Borough's new construction component.
- G. The administrative agencies shall have the responsibility to do the following:
- (1) To income qualify low- and moderate-income households;
 - (2) To place income-eligible households in affordable units upon initial occupancy;
 - (3) To provide for the initial occupancy of affordable units with income-qualified households;
 - (4) To continue to qualify households for reoccupancy of units as they become vacant during the period of affordability controls;
 - (5) To assist with advertising and outreach to low- and moderate-income households, if so stated in the contract;
 - (6) To enforce the terms of the deed restriction and mortgage loan as per N.J.A.C. 5:80-26 et seq.; and

- (7) Generally, to administer the Borough's affordable housing program, including administering and enforcing the affordability controls and this affirmative marketing plan, in accordance with the provisions of Chapter **58**, entitled the "Affordable Housing Ordinance Provisions," of the Code of the Borough of Pennington, the regulations of the Council on Affordable Housing pursuant to N.J.A.C. 5:94 et seq., and the New Jersey Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26 et seq.
- H. The Borough Administrator within the Borough of Pennington is the designated Municipal Housing Liaison who shall supervise the contracting administrative agencies and shall serve as a liaison to the contracting administrative agencies.
- I. As appropriate, the administrative agencies will refer families to counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, responsibilities of homeownership, rental lease requirements and landlord/tenant law. A complete list of housing counseling providers will be provided to the family so that they may identify a counseling provider that is convenient to their current home and/or job. This list of housing counselors is maintained by the U.S. Department of Housing and Urban Development (<http://www.hud.gov/local/nj/homeownership/hsgcounseling.cfm>).
- J. Households who live or work in the COAH Housing Region IV (Monmouth, Ocean, and Mercer Counties) will be given preference for the available affordable units. Applicants living outside the housing region shall have an equal opportunity for units after the regional applicants have been initially serviced. Pennington Borough intends to comply with N.J.A.C. 5:80-26 et seq.
- K. All developers of affordable housing units shall be required to assist in the marketing of the affordable units in their respective developments in accordance with the preceding paragraphs. Specifically, the cost of advertising will be the responsibility of the developer where required as a condition of the Pennington Borough Planning Board and/or in a developer's agreement with the Borough of Pennington.
- L. The administrative agencies shall comply with monitoring and reporting requirements as per N.J.A.C. 5:94-9.

Appendix 13

**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(l).
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 14

*Borough of Pennington, NJ
Tuesday, June 10, 2025*

Chapter 98. Fees

Article I. Affordable Housing Development Fees

[Adopted 8-3-1998 by Ord. No. 98-8; amended in its entirety 12-29-2008 by Ord. No. 2008-10]

§ 98-1. Purpose.

- A. In *Holmdel Builder's Ass'n v. Holmdel Borough*, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., and the State Constitution, subject to the Council On Affordable Housing's (COAH) adoption of rules.
- B. Pursuant to P.L. 2008, c. 46, § 8 (N.J.S.A. 52:27D-329.2), and the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 40:55D-8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from nonresidential development.
- C. The purpose of this article is to establish standards for the collection, maintenance and expenditure of development fees pursuant to COAH's rules and in accordance with P.L. 2008, c. 46, §§ 8 and 32 through 38. Fees collected pursuant to this article shall be used for the sole purpose of providing low- and moderate-income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.

§ 98-2. Basic requirements.

- A. The ability to impose, collect and spend development fees is predicated on the Borough of Pennington's participation in COAH's substantive certification process.
- B. The Borough of Pennington shall not spend development fees until COAH has approved a plan for spending such fees in conformance with N.J.A.C. 5:97-8.10 and N.J.A.C. 5:96-5.3.
- C. This ordinance shall not be effective until COAH has approved and the Borough has adopted this article pursuant to N.J.A.C. 5:96-5.1.
- D. The meaning of any word or term, when used in this article, shall be consistent with the definitions set forth in N.J.A.C. 5:96-1.3, 5:97-1.4, and P.L. 2008, c. 46 (N.J.S.A. 40:55D-8.1 through 40:55D-8.7).

§ 98-3. Residential development.

- A. In accordance with N.J.A.C. 5:97-8.3(c) of COAH's "Substantive Rules," all new development of principal and accessory residential buildings within the Borough of Pennington, not exempt from the collection of development fees in accordance with the provisions specified in § **98-3C** of this article

hereinbelow, shall pay a fee to Pennington Borough equal to 1.5% of the equalized assessed value of the residential construction, provided no increased density is permitted.

- B. Notwithstanding the provisions of § **98-3A** hereinabove, if a "d" variance is granted pursuant to N.J.S.A. 40:55D-70d(5) for more residential units than otherwise permitted by right under the existing zoning, then the additional residential units realized as a result of the "d" variance approval shall pay a bonus development fee to Pennington Borough equal to 6% of the equalized assessed value of the residential development, rather than the one-and-one-half-percent development fee otherwise required for the residential units permitted by right.

- (1) However, if the zoning of a site has changed during the immediate two years prior to the filing of the "d" variance application, then the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year time period.
- (2) In any case, these fees shall not apply to developments exempt from the collection of development fees in accordance with the provisions specified in § **98-3C** of this article hereinbelow.

- C. Eligible exactions, ineligible exactions and exemptions for residential development.

- (1) All affordable housing developments and developments where the developer has made a payment in lieu of constructing affordable units shall be exempt from paying development fees. All other forms of new construction shall be subject to development fees, except for developments that are subject to and comply with any growth share affordable housing requirements provisions of the Code of Pennington Borough.
- (2) Developments that have received preliminary or final site plan approval prior to August 5, 1998, shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or construction permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that building permits are issued.
- (3) In addition to the construction of new principal and/or accessory buildings, development fees shall be imposed and collected for the construction of additions or expansions to existing buildings, for the change or conversion of an existing building to accommodate a more intense use, and/or for the demolition and replacement of an existing building, provided that:
 - (a) The development fee shall be calculated on the increase in the equalized assessed value of the improved building.
 - (b) No development fee shall be collected for a demolition and replacement of a residential building resulting from a natural disaster.
 - (c) No development fee shall be collected for the construction of an "accessory structure" which is not a "building" as these terms are defined in the Pennington Borough Zoning Ordinance.^[1]

[1] *Editor's Note: See Ch. 215, Zoning.*

§ 98-4. Nonresidential development.

- A. All new nonresidential development within the Borough of Pennington, not exempt from the collection of development fees in accordance with the provisions specified in § **98-4C** of this article hereinbelow, shall pay a fee to Pennington Borough equal to 2.5% of the equalized assessed value of the land and improvements for all new nonresidential construction on an unimproved lot(s) or equal to 2.5% of the increase in equalized assessed value resulting from any additions to existing structures to be used for nonresidential purposes.

- B. Development fees also 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 improvement and the equalized assessed value of the newly improved structure, i.e., land and improvement, at the time 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.
- C. Eligible exactions, ineligible exactions and exemptions for nonresidential development.
- (1) The nonresidential portion of a mixed-use inclusionary or market-rate development shall be subject to the two-and-one-half-percent development fee, unless otherwise exempted below.
 - (2) The two-and-one-half-percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
 - (3) Non-residential projects that have received a certificate of occupancy or general development plan approval or have entered into a developer's agreement or a redevelopment agreement, all prior to July 17, 2008 (the effective date of P.L.2008, c. 46), shall be exempt from the payment of nonresidential development fees, provided that an affordable housing fee of at least 1% of the equalized assessed value of the improvements is included in the development plan, developer's agreement or redevelopment agreement.
 - (4) Nonresidential developments shall be exempt from the payment of nonresidential development fees in accordance with the exemptions required pursuant to P.L.2008, c. 46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" Form and listed below. Any exemption claimed by a developer shall be substantiated by that developer.
 - (a) All nonresidential construction of buildings or structures on property used by houses of worship, and property used for educational purposes which is tax exempt pursuant to N.J.S.A. 54:4-3.6, provided that the property continues to maintain its tax-exempt status under that statute for a period of at least three years from the date of the certificate of occupancy;
 - (b) Parking lots and parking structures, regardless of whether the parking lot or parking structure is constructed in conjunction with a nonresidential development or as a stand-alone nonresidential development;
 - (c) Any nonresidential development which is an amenity to be made available to the public, including, but not limited to, recreational facilities, community centers and senior centers as defined in § 35 of P.L.2008, c. 46 (N.J.S.A. 40:55D-8.4), which are developed in conjunction with or funded by a nonresidential developer;
 - (d) Nonresidential construction resulting from a relocation of or an on-site improvement to a nonprofit hospital or a nursing home facility;
 - (e) Projects that are located within a specifically delineated urban transit hub, as defined pursuant to § 2 of P.L.2007, c. 346 (N.J.S.A. 34:1B-208);
 - (f) Projects that are located within an eligible municipality, as defined under § 2 of P.L.2007, c. 346 (N.J.S.A. 34:1B-208), when a majority of the project is located within a one-half-mile radius of the midpoint of a platform area for a light rail system;
 - (g) Projects determined by the New Jersey Transit Corporation to be consistent with a transit village plan developed by a transit village designated by the New Jersey State Department of Transportation; and
 - (h) Commercial farms and Use Group "U" buildings and structures.

- (5) A developer of a nonresidential development exempted from the nonresidential development fee above shall be subject to it at such time the basis for the exemption set forth in this subsection 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 of the nonresidential development, whichever is later.
- (6) 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.

§ 98-5. (Reserved)

§ 98-6. Collection of fees.

The Pennington Borough shall collect development fees for affordable housing in accordance with the following:

- A. The Planning Board Secretary of Pennington Borough shall notify the Pennington Borough Construction Code Official whenever either a preliminary or final approval is granted to any development which is subject to the collection of a development fee.
- B. For nonresidential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption," which is to be completed by the developer as per the instructions provided.
 - (1) The Borough Construction Official shall verify the information submitted by the nonresidential developer as per the instructions provided in the Form N-RDF.
 - (2) The Borough Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- C. The Borough Construction Official responsible for the issuance of a building permit shall notify the Borough Tax Assessor of the issuance of the first building permit for a development which is subject to a development fee.
- D. Within 90 days of receipt of that notice, the Borough Tax Assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development. The equalized assessed value and the required development fee shall be estimated by the Borough Tax Assessor prior to the issuance of the construction permit, with the understanding that the estimate of the equalized assessed value is not intended to establish the equalized assessed value for tax purposes.
- E. Developers shall pay 50% of the required development fee to Pennington Borough at the time of the issuance of the construction permit.
- F. Developers shall pay the remainder of the development fee to Pennington Borough at the time of the issuance of a certificate of occupancy.
 - (1) The Borough Construction Official responsible for the issuance of a final certificate of occupancy notifies the Borough Tax Assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
 - (2) 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 of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.

- (3) The equalized assessed value and the required development fee shall be re-estimated by the Borough Tax Assessor prior to the issuance of the certificate of occupancy, again with the understanding that the estimate of the equalized assessed value is not intended to establish the equalized assessed value for tax purposes. The developer shall be responsible for paying the difference between the development fee calculated at the time of the issuance of the certificate of occupancy and the amount paid at the time of the issuance of the construction permit.
 - (4) Should the Borough 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 § 37 of P.L.2008, c. 46 (N.J.S.A. 40:55D-8.6).
 - (5) Upon tender of the remaining development fee, provided the developer is in full compliance with all other applicable laws, the Borough shall issue a final certificate of occupancy for the subject property.
- G. Regardless of the time of collection of the development fee, the fee shall be based upon the percentage that applies on the date that the construction permit is issued.
- H. The Construction Code Official shall forward all collected development fees to Pennington Borough's Chief Financial Officer who shall deposit such fees into the established Housing Trust Fund.
- I. A developer may challenge the development fees imposed by filing a challenge with the Director of the Division of Taxation for nonresidential development and with the County Board of Taxation for residential development.
- (1) Pending a review and determination by the Director or Board, as the case may be, 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.
 - (2) Appeals from a determination of the Director or Board, as the case may be, 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.
 - (3) Accrued interest earned on escrowed amounts to be returned shall also be returned to the developer.

§ 98-7. Affordable Housing Trust Fund.

- A. All collected development fees and any proceeds from the sale of units with extinguished controls shall be deposited by the Chief Financial Officer of the Borough of Pennington into a separate designated interest-bearing Housing Trust Fund, which shall be maintained by the Borough Chief Financial Officer.
- (1) No money shall be expended from the Housing Trust Fund unless the expenditure conforms to the spending plan which has been approved by COAH; and
 - (2) In establishing the Housing Trust Fund, the Borough Council shall provide COAH with written authorization in the form of a three-party escrow agreement between the Borough, COAH and the bank in order to permit COAH to direct the disbursement of development fee funds as provided in N.J.A.C. 5:97-8.13(b) of the "Substantive Rules" of COAH. This authorization shall be submitted to COAH within seven days from the opening of the Housing Trust Fund.
- B. Additionally, the following sources of funding shall be deposited in the Housing Trust Fund and shall at all times be identifiable by source and amount:
- (1) Recapture funds;

- (2) Proceeds from the sale of affordable units;
 - (3) Rental income from municipally operated units;
 - (4) Payments in lieu of on-site construction of affordable units;
 - (5) Affordable housing enforcement fines and application fees;
 - (6) Developer-contributed funds for barrier-free affordable housing pursuant to N.J.A.C. 5:97-8.5;
 - (7) Repayments from affordable housing program loans; and
 - (8) Any other funds collected in connection with the Borough's affordable housing program.
- C. All interest accrued in the Housing Trust Fund shall only be used on eligible affordable housing activities approved by COAH.

§ 98-8. Use of funds.

- A. Funds deposited in the Housing Trust Fund may be used for any housing activity as itemized in the spending plan and approved by COAH to address the Borough's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to:
- (1) A rehabilitation program;
 - (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) Accessory apartment, market-to-affordable, or regional affordable housing partnership programs;
 - (4) Financial assistance designed to increase affordability;
 - (5) Conversion of existing nonresidential buildings to create new affordable units;
 - (6) Acquisition and/or improvement of land to be used for affordable housing;
 - (7) Purchase of existing market-rate or affordable housing for the purpose of maintaining or implementing affordability controls, such as in the event of a foreclosure;
 - (8) Extensions or improvements of roads and infrastructure directly serving affordable housing sites; in the case of inclusionary developments, costs shall be prorated based on the proportion of affordable housing units included in the development;
 - (9) Green building strategies designed to be cost-saving for low- and moderate-income households, either for new construction that is not funded by other sources, or as part of necessary maintenance or repair of existing units, in accordance with accepted federal or state standards or such guidance as may be provided by the New Jersey State Department of Community Affairs or the New Jersey Housing and Mortgage Finance Agency;
 - (10) Maintenance and repair of affordable housing units;
 - (11) Repayment of municipal bonds issued to finance low- and moderate-income housing activity;
 - (12) To defray the costs of structural parking; in the case of inclusionary developments, eligible costs shall be prorated based on the proportion of affordable housing units included in the development;
 - (13) Administration necessary for implementation of the Housing Plan Element and Fair Share Plan, in accordance with § 98-8G below; and

- (14) Any other activity as specified in the approved spending plan and as permitted pursuant to N.J.A.C. 5:97-8.7 through 5:97-8.9.
- B. The Borough also may request authorization for expenditure of Housing Trust Funds on emergent affordable housing mechanisms not included in the Borough's Fair Share Plan in the form of an amendment to the spending plan. In addition to the amendment to the spending plan, the Borough shall submit the following:
- (1) A resolution to COAH that includes a certification that the affordable housing opportunity addresses COAH's criteria set forth in N.J.A.C. 5:97-6 and information regarding the proposed mechanism in a format to be provided by COAH; and
 - (2) An amendment to its Fair Share Plan to include the mechanism at the earlier of two years after COAH's approval of the spending plan amendment or the next planned amendment to the Fair Share Plan resulting from the plan evaluation review pursuant to N.J.A.C. 5:96-10.
- C. Funds shall not be expended to reimburse the Borough of Pennington for past housing activities.
- D. Payments in lieu of constructing affordable housing units on residential and mixed-use sites shall only be used to fund eligible affordable housing activities within the Borough.
- E. At least 30% of all development fees collected and interest earned shall be devoted to provide affordability assistance to low- and moderate-income households in affordable units included in the Housing Element and Fair Share Plan, provided and in accordance with the following:
- (1) One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to very-low-income households.
 - (2) Affordability assistance programs may include down payment assistance, security deposit assistance, low-interest loans, rental assistance, assistance with homeowners' association or condominium fees and special assessments, and assistance with emergency repairs.
 - (3) Affordability assistance for very-low-income households may include buying down the cost of low- or moderate-income units in the third round Borough's Fair Share Plan to make them affordable to very-low-income households (earning 30% or less of median income). The use of development fees in this manner may entitle the Borough to bonus credits pursuant to N.J.A.C. 5:97-3.7.
 - (4) 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.
- F. The Borough of Pennington may contract with a private or public entity to administer any part of its Housing Plan Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18, subject to COAH's approval.
- G. No more than 20% of development fee revenues collected in any given year from the development fees may be expended on administration, including, but not limited to, the salaries and benefits for Pennington Borough employees or consultant fees necessary to develop or implement a new affordable housing program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program.
- (1) In the case of a rehabilitation program, no more than 20% of the revenues collected from development fees shall be expended for such administrative expenses.
 - (2) Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, preserving existing affordable housing, and compliance with COAH's monitoring requirements.
 - (3) Legal or other fees related to litigation opposing affordable housing sites or objecting to COAH's regulations and/or action are not eligible uses of the Housing Trust Fund.

§ 98-9. Monitoring.

The Pennington Borough Municipal Housing Liaison shall coordinate with the appropriate municipal officials the completion and return to COAH of all monitoring forms included in the annual monitoring report related to the collection of development fees from residential and nonresidential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier-free escrow funds, recapture funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines and application fees, and any other funds collected in connection with the Borough's housing program, and the expenditure of revenues and implementation of the plan certified by COAH.

- A. At minimum, the monitoring shall include an accounting of any Housing Trust Fund activity, identifying the source and amount of funds collected, the amount and purpose for which any funds have been expended, and the status of the spending plan regarding the remaining balance pursuant to N.J.A.C. 5:97-8.10(a)8.
- B. All monitoring reports shall be completed on forms designed by COAH.

§ 98-9.1. Ongoing collection of development fees; expiration of article.

The ability for the Borough of Pennington to impose, collect and expend development fees shall expire with its substantive certification unless Pennington Borough has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for substantive certification, and has received COAH's approval of its development fee ordinance.

- A. If the Borough of Pennington fails to renew its ability to impose and collect development fees prior to the date of expiration of substantive certification, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund.
- B. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to § 20 of P.L.1985, c. 222 (N.J.S.A. 52:27D-320).
- C. The Borough of Pennington shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its substantive certification, nor shall the Borough of Pennington retroactively impose a development fee on such a development.
- D. The Borough of Pennington shall not expend development fees after the expiration of its substantive certification or judgment of compliance.