



2022 HOUSING ELEMENT AND FAIR SHARE PLAN AMENDMENT

April 7, 2022

2022 HOUSING ELEMENT AND FAIR SHARE PLAN AMENDMENT

Borough of Peapack and Gladstone
Somerset County, New Jersey

Prepared for: Borough of Peapack and Gladstone
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The original document was appropriately signed and sealed on in accordance with the State Board of Professional Planners and adopted by the Peapack and Gladstone Land Use Board after public hearing on April 7, 2022.



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Table of Contents

INTRODUCTION	3
EXECUTIVE SUMMARY	6
FAIR SHARE PLAN	8
<i>Summary of Fair Share Obligation</i>	8
<i>Plan Components</i>	8
<i>Prior Round Obligation</i>	9
<i>Table 1: Prior Round Plan Components</i>	9
<i>Present Need</i>	9
<i>Prospective Need – 1999 to 2025</i>	9
<i>Table 2: 2022 Third Round Housing Element and Fair Share Components</i>	10
<i>Table 3: Satisfaction of Obligation Minimums and Maximums</i>	14
<i>Table 4: Anticipated Satisfaction of Income Obligation Very Low to Moderate</i>	14

INTRODUCTION

The Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-62a, requires every municipality with a zoning ordinance to adopt a master plan containing at least a land use plan element and housing plan element. N.J.S.A. 40:55D-28 b (3) requires that the housing plan element include residential standards and proposals for the construction and improvement of housing in accordance with the New Jersey Fair Housing Act (FHA), specifically, N.J.S.A. 52:27D-310. This required plan is commonly referred to as the Housing Plan Element and Fair Share Plan (HE&FSP) and must contain certain sub-elements that, at minimum, include the following:

1. An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to low and moderate income households and substandard housing capable of being rehabilitated, and in conducting this inventory the municipality shall have access, on a confidential basis for the sole purpose of conducting the inventory, to all necessary property tax assessment records and information in the assessor's office, including but not limited to the property record cards.
2. A projection of the municipality's housing stock, including the probable future construction of low and moderate-income housing, for the next ten years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands;
3. An analysis of the municipality's demographic characteristics, including but not necessarily limited to, household size, income level and age;
4. An analysis of the existing and probable future employment characteristics of the municipality;
5. A determination of the municipality's present and prospective fair share for low and moderate-income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low and moderate income housing; and
6. A consideration of the lands that are most appropriate for construction of low and moderate-income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low and moderate income housing, including a consideration of lands of developers who have expressed a commitment to provide low and moderate income housing.

Enacted in 1985, the Fair Housing Act (FHA) established the Council on Affordable Housing (COAH) which was charged with establishing rules and regulations to promote the development of affordable

housing in the State of New Jersey. COAH was created in response to the extensive litigation arising from the Supreme Court's Mount Laurel I and II decisions wherein the Court determined that every municipality had a State constitutional obligation to provide the realistic opportunity for the development of affordable housing within their communities. COAH was created to expedite and otherwise remove the court system from exclusionary zoning disputes and to provide the administrative mechanism of review and mediation as a much more preferable avenue for resolving affordable housing issues.

Since the adoption of the FHA and the creation of COAH, there have been two prior rounds or cycles of regulations adopted by COAH providing the methodology that established a municipality's affordable housing obligation and the mechanisms by which that obligation should be addressed. At the end of the second-round period which expired in 1999, COAH subsequently promulgated new rules for the Third Round" of affordable housing regulations and introduced the concept of "Growth Share" as the methodology by which municipal affordable housing obligations and compliance would be determined. Simply stated, the growth share model established a municipality's affordable housing requirements as a function of its potential future residential and economic growth.

Significantly, these regulations were challenged as unconstitutional in court by affordable housing advocates and representatives of the building industry. After years of litigation and failed amendments, on September 26, 2013, the New Jersey Supreme Court (Court) affirmed the Appellate Division's invalidation of COAH's "growth share methodology" on the basis that the "growth share" methodology, incorporated into the Third Round Rules, were beyond the purview of the rulemaking authority delegated to COAH because they conflicted with the FHA.¹

The Supreme Court "endorsed the remedy imposed by the Appellate Division," that required COAH to adopt new Third Round Rules within five (5) months.² The effect of the Supreme Court's decision was to require COAH to adopt new Third Round Rules by February 26, 2014 consistent with the lower court's decision.

After numerous delays, court challenges and COAH's failure to adopt revised regulations consistent with the Court's order and in response to the Fair Share Housing Center (FSHC) filing a motion "in aid of litigant's rights," the Supreme Court issued its decision In re: Adoption of N.J.A.C. 5:96 & 5:97, 221 N.J. 1 (2015) on March 10, 2015 stripping COAH of its administrative duties relating to the affordable housing certification process. This decision granted FSHC's motion in aid of litigant's rights, declared COAH ineffective in complying with the mandates of the FHA, dissolved the substantive certification process before COAH and created a judicial process by which a municipality can file a declaratory judgment action with the court seeking a judicial determination that their housing element satisfied their "third round" affordable housing obligation. The New Jersey Supreme Court appointed fifteen

1 See in re: Adoption of N.J.A.C. 5:96 & 5:97, 215 N.J. 578, 586, 620 (2013).

2 See in re: N.J.A.C. 5:96 & 5:97, 416 N.J. Super. 462, 511 (App. Div. 2010).

(15) “Mount Laurel” judges specifically to hear and decide these actions. The Court directed that the reviewing judges utilize methodologies similar to that developed by COAH in the prior first and second rounds. The Court further established a specific deadline (July 8, 2015) by which municipalities could file such actions.

In response to the Supreme Court’s March 10, 2015 decision, the Borough filed a declaratory judgment action (DJ Action) with the Superior Court on July 8, 2015. The DJ Action sought a judicial determination of compliance with the Borough’s Third Round affordable housing obligation.

At this point in the process resulting from the New Jersey Supreme Court’s Mount Laurel IV decision, when fair share obligations have yet to be definitively determined and as a result of ongoing mediation and by way of settlement with the Fair Share Housing Center, the Borough’s prospective need for the Third Round has been determined to be 104 units. The Borough does not agree with the basis of the Third Round Prospective Need obligation but accepts the number solely for purposes of settling its fair share obligation with the FSHC and Court with the advice of the Court Appointed Master. It should be further noted that this number reflects a 30-percent reduction of the proffered Third Round Prospective Need number by FSHC and is deemed to also include the Gap Period Present Need as recognized by the New Jersey Supreme Court in In re Declaratory Judgement Actions Filed by Various Municipalities, 227 N.J. 508 (2017).

The DJ Action was settled, and the settlement was reviewed and approved by the Superior Court of New Jersey (the Honorable Hon. Thomas C. Miller, P.J.Ch. presiding) after a Fairness Hearing held on June 14, 2018, which approval is memorialized in an order entered by the court and filed on June 27, 2018 (the “Settlement Approval Order”).

The Borough then proceeded to adopt the necessary documents to comply with the requirements of the settlement agreement and Court order including the adoption of a Housing Element and Fair Share Plan in 2018 (HE&FSP) with all required ordinances and resolutions. The HE&FSP provided the methodology for implementing the Borough’s settlement agreement with FSHC as approved by the Court. The adopted plan components for compliance included rezoning two adjoining properties identified as the Elks Club and American Legion Hall sites on Route 206 for inclusionary housing development as well as 10 bedrooms of special needs housing to be located at the Matheny School facility.

The combined Elks and American Legion sites were rezoned to produce 11 affordable housing units. Shortly afterwards, an application for a gasoline service station with convenience store was approved by the Borough’s Land Use Board effectively removing the Elks property as a potential site for affordable housing development. The remaining parcel, the American Legion property, is not of sufficient land area by itself to provide for the difference in units that would have been constructed in combination with the adjoining Elks Club property and therefore, is no longer a viable property for inclusionary development.

Subsequent to adoption of the 2018 HE&FSP, the Borough was also informed by the Matheny Hospital and School that the State of New Jersey advised that the State Department of Developmental Disabilities would not license group homes on the Matheny property as it was contrary to state regulations. The two group homes contemplated for the Matheny site no longer presented a viable opportunity for affordable housing.

As a consequence of these two unforeseen circumstances, it became necessary for the Borough to develop an alternative plan to address the units that would have otherwise been constructed under the originally adopted 2018 HE&FSP.

The alternative plan that was developed proposed to redevelop properties located on Main Street and Lackawanna Avenue for affordable housing consisting of low and moderate income rental units, group homes and mixed use residential and commercial development with an inclusionary housing component that will provide for 37 market rate rental units, 7 affordable rental units, and 10 bedrooms for special needs housing in two group homes. As a result of approvals granted by the Borough Land Use Board, 5 low and moderate income family units were also included in the housing plan as a result of the conversion of the Fin Pro property located on Route 206 from office to mixed office-residential use. Additionally, there was to be a deed restriction placed on 3 existing market rate residential units on property located at 1 Railroad Avenue to be affordable to low and moderate income families to address the requirement that 3 affordable rental units be provided as a result of the approval of 19 market rate units associated with Vernon Manor. The Land Use Board subsequently adopted the revised plan on August 19, 2020 which was then endorsed by the Governing Body.

Subsequent to the adoption of the amended housing plan changed circumstances regarding certain sites again require further amendment to the present plan.

The Fin Pro parcel located on Route 206 is to be sold by the present owner and the intention of the purchaser is to convert the existing office building into a self-storage facility. In order to maintain the five (5) affordable units associated with this property, the new owner will construct a 5-unit multifamily rental building on-site that will be deed restricted to low and moderate income families thereby maintaining the number of units committed to previously by the Borough.

The second amendment involves a request by the developer of the Lackawanna Avenue inclusionary mixed use development to exchange the 201 and 205 Main Street properties for properties identified as 191 and 193 Main Street. Both parcels will be developed as previously planned for group home and rental units with no change in unit count.

Finally, the Borough will designate the Lackawanna Avenue area as an area "in need of rehabilitation" pursuant to N.J.S.A.40A:12A-1 et. seq. also referred to as the Local Redevelopment and Housing Law (LRHL). There will be no change in the affordable housing unit count as a result of this designation, in

fact, the Borough takes this action to facilitate the development of the area by utilizing the development tools provided under the LRHL.

This document is intended to amend and supersede the Fair Share Plan component of the housing plan previously adopted on August 19, 2020. The Housing Element component of the prior plan remains unchanged and is readopted as if set forth verbatim in this amendment.

EXECUTIVE SUMMARY

The history and plan details presented in this document not only demonstrates the Borough's efforts but commitment as well to satisfy its constitutional obligation to provide for affordable housing opportunities in the community.

As will be detailed in subsequent sections of the HE&FSP, for this Third Round and as a basis for settlement, the Borough of Peapack and Gladstone affordable housing obligation is as follows:

The affordable housing obligation for the Borough consists of the following:

Rehabilitation Share	1
Prior Round Obligation (pursuant to N.J.A.C. 5:93)	82
Third Round (1999-2025) Prospective Need Fair Share	104

Although the Borough of Peapack and Gladstone does not agree with the prospective need number, the following plan details provide for a reasonable and realistic opportunity to satisfy the Borough's Third Round obligation in the following manner:

1. The Borough of Peapack and Gladstone has a present need/rehabilitation obligation of 1-unit. The Borough will implement a housing rehabilitation program to address its 1-unit present need.
2. The Borough has no prior round obligation, having satisfied its affordable housing needs in Rounds One and Two.
3. The Borough's Prospective Need obligation is established at 104 units by way of settlement with the Fair Share Housing Center which includes rezoning properties for inclusionary development and adopting ordinances to implement a Boroughwide affordable housing program.

The Fair Share Plan described herein details the Borough's compliance with satisfying its 187 unit Third Round affordable housing obligation (the Borough's total obligation). The Borough's Prior Round obligation of 52 units has been satisfied so there is no remaining prior round obligation, the Borough will rehabilitate one unit to satisfy its Present Need and the Borough's Prospective Need of 104 units is to be satisfied through a combination of inclusionary development, development of special needs housing, an accessory apartment program, prior round credits, and credits that are available under Second Round rules. The Borough has already implemented significant portions of its affordable housing program including the adoption of a mandatory development fee ordinance, a zoning ordinance amendment requiring inclusionary development municipal wide for any proposed residential development involving more than 5 units and at a density of 6 units or more per acre,

granting approval to the SJP Properties site that includes an affordable housing set aside of 14 units, approval of 5 affordable rental units at the Fin Pro site and the adoption of a comprehensive affordable housing ordinance implementing COAH, Fair Housing and UHAC rules and regulations.

FAIR SHARE PLAN

Summary of Fair Share Obligation

As a result of a Settlement Agreement, executed by the Borough and FSHC on April 25, 2018, the extent of Peapack Gladstone’s rehabilitation, prior round and gap + prospective need obligations were established by mutual consent.

The parties have agreed upon the following obligations for the Borough for the period from 1987 through July 1, 2025:

	<u>Obligation per Settlement</u>
1. Rehabilitation Obligation:	1
2. Prior Round Obligation (1987-1999):	82
3. Gap + Prospective Need Obligation (1999-2025):	104

The Settlement Agreement reached between the Borough and FSHC was approved by the Court at a fairness hearing duly advertised and held on June 14, 2018 and established the Borough’s Prospective Need Obligation (1999-2025) inclusive of the GAP period at 104 units. The Borough’s Fair Share Plan provides mechanisms that creates opportunities to satisfy the Borough’s entire obligation pursuant to the settlement. Therefore, there is no unmet need. The Borough proposes to satisfy its affordable housing obligation by sponsoring a 100 percent affordable housing project on Borough owned land (Smith Property), zoning certain properties for inclusionary development, implementing an accessory apartment program and utilizing credits for existing development and rental housing.

Plan Components

The Borough’s Fair Share obligation falls within three components: prior round obligation, present or rehabilitation need and prospective need for the time covering 1999 to 2025, inclusive of the GAP period. Each component is described in detail in the following sections.

Prior Round Obligation

The Borough has satisfied its prior round obligation of 82 affordable units for the Second Round as illustrated by Table 23 below:

Table 1: Prior Round Plan Components

Plan Component	Units	Bonus	Credits
Lutheran Social Ministries (family rental), 85 Main Street, Block 23, Lot 17	20	20	40
Regional Contribution Agreement with Perth Amboy	37	-	37
St. Luke's Senior Housing	9	-	9
Total	64	18	84

The Prior Round Plan resulted in 84 credits generating two (2) additional credits eligible to be carried to the Third Round obligation.

Present Need

The Borough will satisfy its Present Need obligation of 1-unit by implementing a rehabilitation program consistent with COAH regulations.

Prospective Need – 1999 to 2025

The HE&FSP identifies the manner in which the Borough's 104-unit affordable housing obligation is to be addressed. This is summarized in the accompanying table.

Table 2: 2022 Third Round Housing Element and Fair Share Components

Plan Component	Number of Units	Bonus	Credits
Prior Round Surplus Credits-Lutheran Ministries	2	2	4
Smith Property (special needs group home; 100% affordable Municipally sponsored housing); Block 20, Lot 1.03	8	6	14
Smith Property (family rental; 100% affordable Municipally sponsored housing); Block 20, Lot 1.03	20	18	38
Accessory Apartment Ordinance	10	-	10
SJP Properties (family rental); Block 33, Lot 13	14	-	14
Fin Pro (mixed office/family rental); Block 20, Lot 1.02	5		5
Main and Lackawanna Street Rezoning: Block 22, Lot 13 and Block 20, Lot 5 for mixed use inclusionary commercial and residential development	3	-	3
191 Main Street (special needs group home with 4 Beds: Block 22, Lot 8	4	-	4
193 Main Street 2 Affordable Rental Units: Block 22, Lot 7	2	-	2
291 Main Street (special needs group home (6 beds) w/2 affordable rental unit); Block 1, Lot12	8	-	8
1 Railroad Avenue; Block 29, Lot 18	3	-	3
Total	79	26	105

As noted in Table 1, the HE&FSP can accommodate the entirety of the community’s affordable housing obligation, with an additional unit credit available to be applied to the Borough’s future affordable housing obligation anticipated for the next round. The HE&FSP affirmatively addresses the Borough’s affordable housing obligation while at the same time maintaining the overall character of the community. This Plan describes the affordable housing delivery techniques used to satisfy the municipality’s affordable housing obligation through 2025.

As detailed above, the Borough of Peapack and Gladstone’s Third Round Prospective Need obligation per the Borough’s settlement with FSHC is 104 units. The Borough will affirmatively address its of 104 units through the following mechanisms:

- a. Prior Round Credit for Excess Units. The Borough is entitled to a credit of 2 units generated by its prior round compliance with Lutheran Social Ministries.
- b. Smith Property Municipally Sponsored Housing. The Borough has entered into

an agreement with Bethel-Ridge, a non-profit affordable housing corporation, to develop a group home with 8 bedrooms on the site. The Borough has also entered into a separate agreement with Natirar Resort Development, LLC as the contractor to develop the 20 affordable family rental units on Borough owned property located at Block 20, Lot 1.03. The Borough will contribute \$500,000.00 in Affordable Trust Funds in exchange for Natirar to construct the 100 percent family rental affordable project. This is a three (3) acre property purchased by the Borough specifically for the purpose of developing affordable housing. The property is available, suitable, developable and approvable for inclusionary development pursuant to N.J.A.C. 53:93- 5.3:

- 1) The property is owned by the Borough and has clear title with no known encumbrances that would preclude development;
 - 2) The property is within the Borough's sewer service area and there is available sewer and water capacity to service the project.
 - 3) There is sufficient land available that is not impacted by environmental constraints to permit development consistent with Borough and State environmental regulations; and
 - 4) The property will be zoned for affordable housing development that will affirmatively permits the development envisioned by this plan and is therefore, approvable.
- c. Accessory Apartment Program. The Borough will provide funding for up to 10 accessory apartments through its affordable housing trust fund and create and adopt an accessory apartment program including adopting modifications to the Borough's zoning regulations to permit accessory apartments. Consistent with COAH Second Round rules the Borough will commit \$20,000 per accessory apartment deed restricted for moderate income families and \$25,000 per accessory apartment restricted to low or very low income families.
- d. SJP Properties. The Borough has amended its zoning ordinance to permit the construction of sixty-eight (68) market-rate homes with the requirement that an additional fourteen (14) units of affordable housing be provided as part of the development of Block 33, Lot 13. The Borough has also entered into a memorandum of agreement confirming the affordable housing commitment for the development. As a result, the Borough Land Use Board has subsequently granted site plan approval for this project and development is proceeding.

The property is available, suitable, developable and approvable for inclusionary

development pursuant to N.J.A.C. 53:93-5.3:

1. The property has clear title with no known encumbrances that would preclude development;
 2. The property is within the Borough's sewer service area and there is available sewer and water capacity to service the project.
 3. There is sufficient land available that is not impacted by environmental constraints to permit development consistent with Borough and State environmental regulations; and
 4. The property is presently zoned for inclusionary development that affirmatively permits the development envisioned by this plan and is therefore, approvable.
- e. 291 Main Street, Block 1, Lot 12. This is an existing three-family residential structure that will be converted into a group home for special needs housing with 6 bedrooms and 2 affordable family rental units.
- f. 191-193 Main Street, Block 22, Lots 7 & 8. These are existing dwellings that will be converted to create a group home for special needs housing with 4 bedrooms and 2 affordable family rental units.
- g. 1 Railroad Avenue, Block 29, Lot 18. This is an existing three-family residential structure that will be deed restricted as family rental units affordable to low and moderate income families.
- h. Main and Lackawanna Street Rezoning. The Borough has adopted an ordinance rezoning property located on Main and Lackawanna Streets, specifically 219 Main Street further identified as Block 22, Lot 13 and 9-35 Lackawanna Street further identified as Block 20, Lot 5 for mixed use and residential inclusionary zoning. The proposed rezoning of the properties from Village Neighborhood Zone to Mixed Use Affordable Housing will result in the development of 39,850 square feet of commercial space and 40 residential rental units including 3 units that will be affordable to low- and moderate-income families. Development contemplated by the plan includes the demolition of existing structures and new construction with associated parking and public improvements. The Borough further intends to designate these parcels as "An Area in Need of Rehabilitation" under N.J.S.A. 40A:12A-6, also known as the Local Redevelopment and Housing Law. This action will provide the Borough additional tools afforded under the law to facilitate the development of the parcels for mixed use inclusionary housing development. The properties are available, suitable, developable

and approvable for inclusionary development pursuant to N.J.A.C. 53:93-5.3:

- 1) The properties have clear title with no known encumbrances that would preclude development;
 - 2) The property is within the Borough's sewer service area and there is available sewer and water capacity to service the project;
 - 3) Although subject to flood plain regulations, there is sufficient land available that is not impacted by environmental constraints to permit development consistent with Borough and State environmental regulations; and
 - 4) The properties will be rezoned by the Borough to affirmatively permit the inclusionary development envisioned by this plan and is approvable.
- i. Additional Requirements. Based upon the settlement agreement reached with FSHC, the following additional requirements are incorporated into the Fair Share Plan affecting any affordable housing developments generated by the plan:
- 1) At least fifty percent of the units addressing the Third Round Prospective Need shall be affordable to very-low income and low-income households with the remainder affordable to moderate-income households.
 - 2) At least twenty-five percent of the Third Round Prospective Need shall be met through rental units, including at least half in rental units available to families.
 - 3) At least half of the units addressing the Third Round Prospective Need in total shall be available to families.
 - 4) There will be a cap of twenty-five percent on age-restricted units on all units developed or planned to meet its cumulative prior round and third round fair share obligation.
 - 5) At minimum 13 percent of all units referenced in this plan, with the exception of units constructed as of July 1, 2008, and units subject to preliminary and final site plan approval, shall be affordable to very low income families with half of the very low income units being available to families.
 - 6) All units shall include the required bedroom distribution, be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls, N.J.A.C. 5:89-26.1.

Table 3: Satisfaction of Obligation Minimums and Maximums

Requirement	Required	Proposed
Max. Age-Restricted Units	26	0
Min. Rental Units	26	77
Max. Rental Bonus Credits (Total, Incl. Age-Rest.)	26	26
Max. Rental Bonus Credits (Age-Restricted)	4	0
Min, Very Low Units (13% of obligation)	14	26

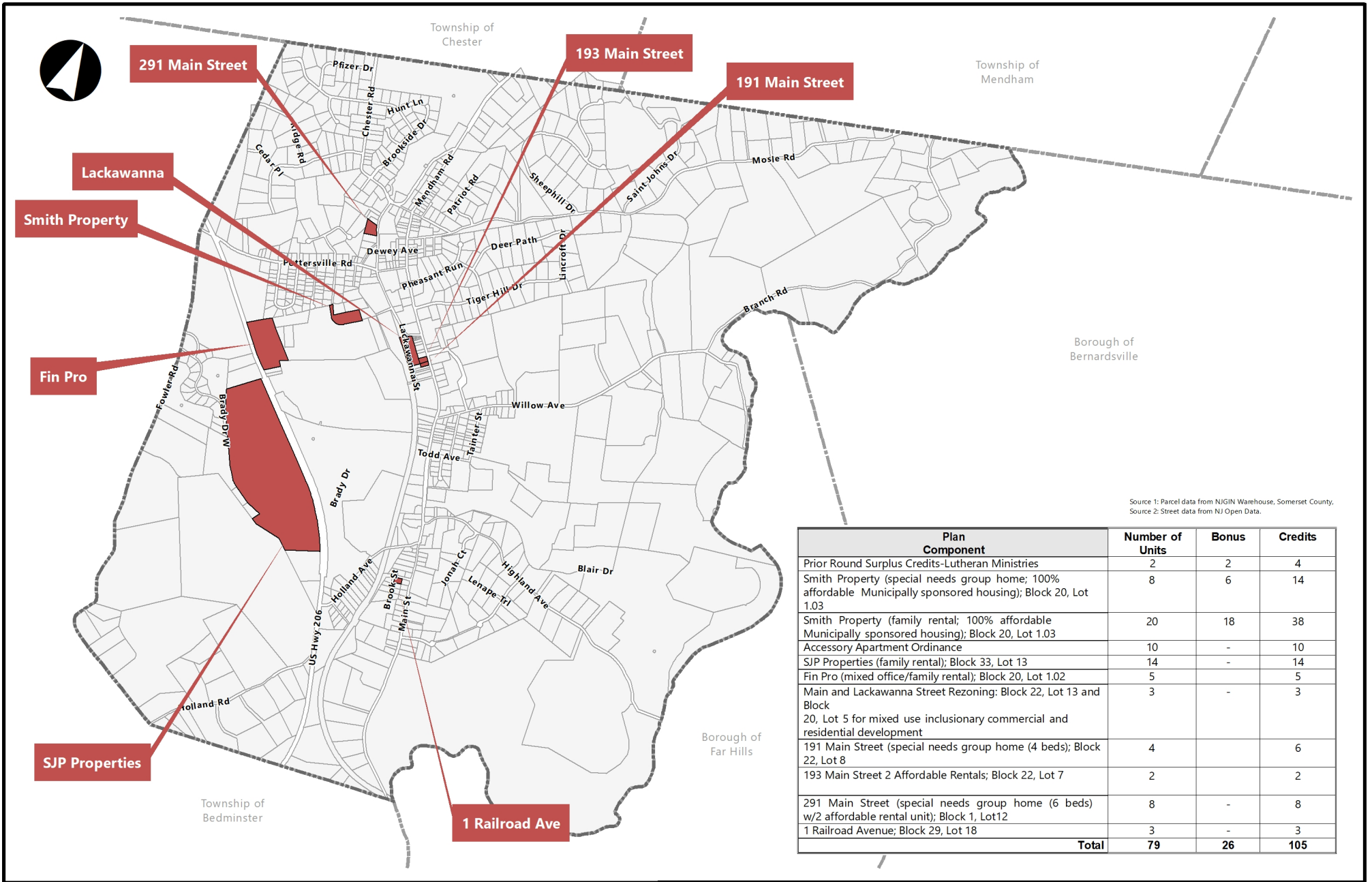
Table 4: Anticipated Satisfaction of Income Obligation Very Low to Moderate

Proposed Projects	Tenancy	Very Low	Low	Mod	Total Units
Smith Property Family	Rent	3	7	10	20
Smith Property Group Homes	Rent	8	-	-	8
Fin Pro	Rent	1	2	2	5
291 Main Street Group Home+2 Rental	Rent	6	1	1	8
191-193 Main Street Group Home+ 2 Rental	Rent	4	1	1	6
1 Railroad Avenue Rental	Rent	1	1	1	3
SJP Properties	Rent	2	5	7	14
Lackawanna/Main Avenue	Rent	1	1	1	3
Total	--	26	18	23	67

All proposed affordable units are expected to be for rent.

APPENDIX

Housing Location Map



Source 1: Parcel data from NJIN Warehouse, Somerset County.
 Source 2: Street data from NJ Open Data.

Plan Component	Number of Units	Bonus	Credits
Prior Round Surplus Credits-Lutheran Ministries	2	2	4
Smith Property (special needs group home; 100% affordable Municipally sponsored housing); Block 20, Lot 1.03	8	6	14
Smith Property (family rental; 100% affordable Municipally sponsored housing); Block 20, Lot 1.03	20	18	38
Accessory Apartment Ordinance	10	-	10
SJP Properties (family rental); Block 33, Lot 13	14	-	14
Fin Pro (mixed office/family rental); Block 20, Lot 1.02	5	-	5
Main and Lackawanna Street Rezoning; Block 22, Lot 13 and Block 20, Lot 5 for mixed use inclusionary commercial and residential development	3	-	3
191 Main Street (special needs group home (4 beds); Block 22, Lot 8	4	-	6
193 Main Street 2 Affordable Rentals; Block 22, Lot 7	2	-	2
291 Main Street (special needs group home (6 beds) w/2 affordable rental unit); Block 1, Lot12	8	-	8
1 Railroad Avenue; Block 29, Lot 18	3	-	3
Total	79	26	105

Dwg. Title
Affordable Housing Sites Overview

Project No. 3222.09
 Date 04.07.22
 Drawn DN

Legend
 Municipal Boundary
 Parcels

ba BURGIS ASSOCIATES, INC.
 COMMUNITY PLANNING | LAND DEVELOPMENT AND DESIGN | LANDSCAPE ARCHITECTURE
 25 Westwood Avenue
 Westwood, New Jersey 07675
 p: 201.666.1811
 f: 201.666.2599

Project Title
Land Use Plan Amendment
 Borough of Peapack and Gladstone | Somerset County, New Jersey

Scale: 1" = 2,500'
 Dwg. No.: lup

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