

# Chatham Borough Affordable Housing Ordinances – Questions and Answers

## Helpful links (click to be directed to link)

[Affordable Housing Plan Summary](#)

[Planning Board Special Meeting/ Public Hearing June 18, 2025 \(video\)](#)

[Borough Council Settlement Discussions and Q and A \(video\)](#)

[Housing Element and Fair Share Plan \(Affordable Housing Plan 4th Round\)](#)

## What is the purpose of these ordinances?

These ordinances implement the Borough's Fourth Round Housing Element and Fair Share Plan, which covers the years 2025–2035. The Planning Board adopted this plan on June 18, 2025. By law, all implementing ordinances and resolutions must be adopted by March 15, 2026. This is the case for every town in New Jersey subject to these requirements.

These ordinances are not new. With two exceptions, draft versions were included in the Housing Element and Fair Share Plan that was adopted by the Planning Board on June 18<sup>th</sup> after a public hearing and posted to the Borough web site. Ordinances 26-03 and 26-08 arose from issues brought up during the plan's "challenge period".

## What happens if these ordinances are not adopted?

If the Borough does not adopt these ordinances by March 15<sup>th</sup> the law provides that the Borough automatically loses its immunity from exclusionary zoning lawsuits, including builder's remedy lawsuits. As a result, the Borough will lose control over its zoning and developers and courts can decide where and how housing is built instead of the Borough.

## How did we get to this point?

The rule that towns must provide for their fair share of their regions need for affordable housing comes from the New Jersey Supreme Court Mount Laurel decisions in 1975 and 1983.

Over time, the state created different "rounds" of housing plans. We are now in the Fourth Round, which lasts for ten years, from 2025 to 2035.

In 2024 the state amended the Fair Housing Act which set strict deadlines for towns to create and approve their housing plans for the Fourth Round and then adopt their implementing ordinances and resolutions.

To meet these deadlines:

- The Planning Board and Council approved and filed with the court the Borough's Fourth Round Housing Element and Fair Share Plan by the June 30, 2025 deadline.
- During the required challenge period, three groups challenged the plan.
- In December, 2025, the Borough negotiated settlements of two of the challenges, one with a developer, and the other with Fair Share Housing Center. The third challenger withdrew its challenge.
- The court then reviewed and approved the settlement as well as the Borough's Fourth Round Housing Element and Fair Share Plan in an Order entered on February 12, 2026.

Now the Borough must adopt the implementing ordinances and resolutions in accordance with the settlements as well as required by law.

### **What has the Borough agreed to?**

Under the settlement entered into between the Borough and Fair Share Housing Center, Fair Share Housing Center agreed that Chatham's plan met the Borough's affordable housing requirement from 2025 to 2035, as long as certain steps happen. These included:

1. Complete the Post Office Plaza Project (a 15-unit 100% affordable housing project) by the end of 2026.
2. Adopt zoning ordinance for two Main Street sites for inclusionary development (development by private developers that include some affordable units)  
589 Main Street  
311 Main Street
3. Build a small affordable project on Borough land (a 4-unit 100% affordable housing project) at 58 N. Passaic Street.
4. Adopt a zoning ordinance amendment to resolve minor zoning issues for the Cottage Deli property located at 23-33 South Passaic Avenue.
5. Create a draft redevelopment plan for River Road. The Borough must release a draft plan to the public and decide whether or not to adopt the plan by July 1. If the Borough does not comply with the above conditions, and additionally, if the Borough does not adopt a redevelopment plan, the area will likely face new legal challenges.

## How many affordable housing units will be built?

The Fourth-Round plan includes seven new affordable housing units - three from the inclusionary projects and four from the 100% project.

Two projects will be inclusionary developments. That means together they include a total of 15 market-rate units.

Included in the 4<sup>th</sup> round settlement is revisions to one of the Third-Round zones, specifically, the Cottage Deli property. The zoning amendment will allow to be constructed what the site was previously zoned for but with minor zoning adjustments to make the construction realistic:

- 4 affordable units
- 25 market-rate units

The River Road area already allows higher-density housing with affordable units included under the 3<sup>rd</sup> round.

## Why was the 58 North Passaic site chosen?

To reduce the amount of development, the Borough wanted to pursue a 100% affordable project to produce 4 affordable units. (The alternative would be an inclusionary project which would have had to have a total of 20 units to produce 4 affordable units (20% of the total number of units) so would have had 16 market rate units.)

The Borough planner looked at all available property for an all-affordable project. The Affordable Housing law sets very strict rules regarding these properties – including that they be fully controlled by the municipality, suitable for housing, and realistic for construction in a reasonable period of time.

After examining other Borough-owned properties it was determined that 58 North Passaic was by far the most suitable site.

- The Borough controls the land, which is a requirement of the State rules governing 100% Affordable Housing projects
- It was – unlike all other Borough properties looked at – suitable for development.
- The property was unused, fenced, and zoned for housing, and previously had a house on the property. Purchasing a property was not an option because of the deadlines involved.

## Now that the Affordable Housing plan is approved by the courts, will the Borough consider alternatives to 58 N. Passaic?

To date, the Council’s focus has been to get the best possible plan adopted and approved by the courts within the required deadlines; examining potential changes to the plan before it was even approved could be seen as bad faith and jeopardize the approval.

Several factors weigh against alternatives.

- There is not a realistic alternative site or a way to pay for it.
- Buying another property would likely cost more than \$2 million and would take months because of rules related to public land purchases.
- The land would have to be under contract before proposing it as a substitute location and there is no guarantee that it would be approved by the court or supported by FSHC, which would be essential to increase the chances that it would be approved.
- Changing the plan could reopen legal challenges to other portions of the Borough’s plan, exposing the Borough to potentially lengthy and costly legal action with no guarantees of successful outcomes.

### **What about the business overlay zone near University Avenue?**

The new B-AHO overlay zone works the same way as other affordable housing overlay areas in the Borough. It does not guarantee development, but it provides for the possibility of multi-unit housing, including affordable housing.

The requirement of an overlay zone to address the Borough’s “unmet” need is also dictated by law, and it includes requiring that the property be likely to redevelop, and not displace or replace existing affordable housing.

Much of the Borough’s commercial areas already have overlay zones, seven in total, so there were very few available alternatives left where an overlay such as this could be implemented.

Currently, this area is zoned exclusively for commercial use; however, the proposed overlay will allow for both multifamily residential and commercial uses should a property owner elect to pursue such development.

### **Why are there zoning changes for the Cottage Deli property?**

The Cottage Deli property was part of the previous Third affordable housing round but the owners challenged the Borough because they indicated that zoning changes were needed to make any project realistic.

The settlement includes small zoning changes related to rooftop equipment, windows, and mezzanines in some units.

In return, the developer agreed to present alternative designs in public meetings. That has occurred. The project will also be reviewed by the Historic Preservation Commission and Planning Board, and the developer will provide streetscape improvements at Post Office Plaza.

### **What about River Road?**

The River Road area already allows high-density housing with affordable units.

However, a challenge claimed that the current zoning does not allow enough density for projects to be financially feasible.

The Borough agreed to release a redevelopment plan to the public and to vote on the Redevelopment Plan by July 1st. This process had already been started by the Borough including obtaining public input from residents through a survey and public workshop. The Borough's goal was to avoid the area developing with only high-density apartments (as is currently allowed) and to encourage mixed uses (retail, restaurants), open space, public amenities, and road and sidewalk improvements.

If the Borough does not adopt a plan by July 1, Fair Share Housing Center has the right to re-open this issue to ask for the existing affordable housing overlay zones to even higher density in that area. Fair Share Housing Center may also request changes to the adopted plan if they do not believe that the plan will lead to a successful project.

### **Would River Road include a PILOT program?**

A PILOT (Payment in Lieu of Taxes) at River Road is a complex decision that would be examined if and when a developer's agreement is negotiated with a potential developer.

A Financial Agreement containing a PILOT could allow for less density and more public amenities at the site, plus positive benefits for the Borough and our residents. Any consideration of a PILOT will involve extensive discussion and financial analysis.

### **What ordinances must be adopted at this meeting?**

All ordinances that implement the Borough's Fourth Round Housing Element and Fair Share Plan must be adopted at this meeting because of the March 15, 2026, statutory deadline. The ordinances that must be adopted are as follows

- Ord. 26-02 – 100% Affordable housing zone at 58 N. Passaic
- Ord. 26-03 – Post Office Plaza redevelopment plan change
- Ord. 26-04 – Inclusionary zone at 311 Main Street
- Ord. 26-05 – Inclusionary zone at 589 Main Street
- Ord. 26-06 – Business affordable housing overlay zone

- Ord. 26-07 – Affordable housing regulations and development fees
- Ord. 26-08 – Inclusionary zoning at 23–33 S. Passaic

Of these, 26-02 to 26-07 were included in the Housing Element and Fair Share Plan adopted by the Planning Board in July. 26-03 and 26-08 arose from challenges to that plan and was discussed in detail at the December 2025 Council Meeting.

### **What happens if the ordinances are not adopted?**

To repeat from above, if the Borough does not adopt these ordinances by March 15, the law provides that the Borough automatically loses its immunity from exclusionary zoning lawsuits, including builder’s remedy lawsuits. As a result, the Borough will lose control over its zoning, and developers and courts can decide where and how housing is built instead of the Borough.

### **Why has there not been more public input?**

Some residents have said there was no public input to the affordable housing plan, but that is not correct.

Including the presentation of the outline of the HEFSP at the May 7, 2025, Planning Board meeting, and the public hearing at the Special Planning Board Meeting on June 18, 2025 (video link on page one of the FAQ), residents provided comments on the HEFSP draft at three Planning Board meetings and two Council meetings. Changes were made to the final plan due to the extensive input from residents. Further, in December 2025 there was a detailed presentation by the Borough’s planner and attorney about the then proposed settlements which were then approved by the Council.

Unfortunately for this process, the state law set extraordinarily tight deadlines, which limited the time for discussion, which should be a part of all land use conversations.

As projects move forward, there will be more chances for public input through Planning Board hearings.