



# Navigating Affordable Housing: The 160 Main Street Zoning Overlay

A presentation regarding Ordinance 25-12, a proposed zoning overlay for 160 Main Street. This issue has generated significant community discussion, and I'd like to walk you through what brought us to this point, what's at stake, and what the proposed settlement means for Matawan.

What's before us was never part of our plan, but it is the response to a situation that has been developing over several years. Let's explore the context, challenges, and proposed solutions.

# Comparison of NJ Affordable Housing Rounds

1	1975 – 1983*	Mount Laurel I decision initiated constitutional obligation for towns to provide affordable housing. No formal administrative framework yet.
2	1983 – 1993/1999*	Mount Laurel II and the Fair Housing Act of 1985 established the Council on Affordable Housing (COAH) to assign obligations and review compliance.
3	1999 – July 1, 2025*	Delayed and litigated round. COAH attempted regulations, later invalidated. On <b>March 10, 2015</b> , the NJ Supreme Court ruled COAH defunct, transferring enforcement to the courts. Some municipalities began seeking immunity from builder’s remedy lawsuits through declaratory judgment actions, while other instead relied on the assumption that the housing stock was naturally affordable and already provided sufficient opportunity.
4	July 1, 2025 – June 30, 2035	Statutory process adopted in 2024 by NJ Legislature. NJ DCA assigns obligations; municipalities must adopt Housing Plans by set deadlines to retain immunity from lawsuits.

*\*Approximate dates, or not as clearly defined like they are with the 2024 Law adopted by the NJ Legislature*

# Understanding Builder's Remedy Lawsuits

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## 2021

After nearly 40 years without protection, the Borough files an affordable housing declaratory judgment action.

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## Legal Challenge

Days later the property owner of 160 Main Street files "builder's remedy" lawsuit

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## Negotiation Period & Temporary Builder's Remedy Immunity

Three years of litigation and negotiation with the developer, during which the Court granted the Borough of Matawan temporary builder's remedy immunity, its first protection in nearly 40 years, despite multiple rounds of affordable housing compliance programs.

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## Settlement Agreement with Developer

On November 12, 2024, the Borough Council unanimously approved Resolution 24-11-18, which includes numerous terms: including the requirement that following the Court's approval of the Settlement Agreement, the Borough Council must adopt a rezoning ordinance that is substantially consistent with the Concept Plan.

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## Present Day

Proposed zoning overlay before the Borough Council

To convert the temporary immunity into permanent protection for the duration of the Fourth Round, the Borough must adopt a Master Plan Amendment including a Housing Plan Element and Fair Share Plan that satisfies Round 4 obligations.

A "builder's remedy" lawsuit is a specific legal action available to developers when a municipality is alleged to have fallen short of its affordable housing obligations under the New Jersey Constitution. The developer offers to include affordable housing units and gains the ability to challenge and override local zoning laws that would otherwise restrict their development.





## Why the Borough Chose to Settle

### Legal Reality

Courts consistently side with builders in these cases, as New Jersey municipalities are constitutionally obligated to provide affordable housing. Municipalities have recorded virtually no victories in builder's remedy lawsuits.

### Financial Considerations

Continued litigation would mean mounting legal fees, expert costs, and likely an unfavorable outcome.

### Local Control

Settlement allows us to retain some control over the outcome rather than facing a court-imposed development.

If we don't adopt the overlay and follow through with this process, we face serious consequences: the settlement could be voided, sending us back to square one, and we could be subject to a larger, denser court-imposed development, potentially the original 54-unit proposal or larger.



# Settlement Achievements

## Original Proposal

- 54 units
- Four-story building
- No design standards

## Negotiated Settlement

- Reduced to 46 units (8 affordable)
- Three-story building
- Partially underground parking
- Enforceable architectural standards
- Developer responsible for infrastructure costs

This proposed settlement is the result of three years of litigation, negotiation with the developer and their legal counsel, and extensive consultation with our own legal team, planners, and engineers. It represents a pragmatic compromise—not a perfect outcome, but a much better one than the alternative.

# Consequences of Non-Adoption

Choosing not to adopt this zoning overlay would have severe repercussions, voiding the settlement agreement and forcing the Borough back into costly and uncertain litigation.



## Increased Legal Costs

Without a settlement, the Borough would face escalating legal fees and court expenses, potentially draining public funds with no guaranteed outcome.



## Loss of Control Over Development

A voided settlement means relinquishing control over key aspects like building height, unit count, and architectural style, leaving decisions to the court.



## Risk of Court-Imposed Larger Outcome

The most likely result would be a court-ordered development, potentially far more dense and less aligned with community character than the current negotiated terms. Potentially, the original 54-unit proposal or larger.



## Loss of Immunity to Other Lawsuits

By rejecting this zoning, we jeopardize the court-granted immunity from other builder's remedy lawsuits, potentially subjecting the Borough to multiple, simultaneous legal challenges from other developers all over the borough.



# The Zoning Overlay Process



## First Reading

Introduction of ordinance to create zoning overlay



## Planning Board

Review and analysis by Planning and Zoning Board



## Second Reading

Potential second reading and final vote

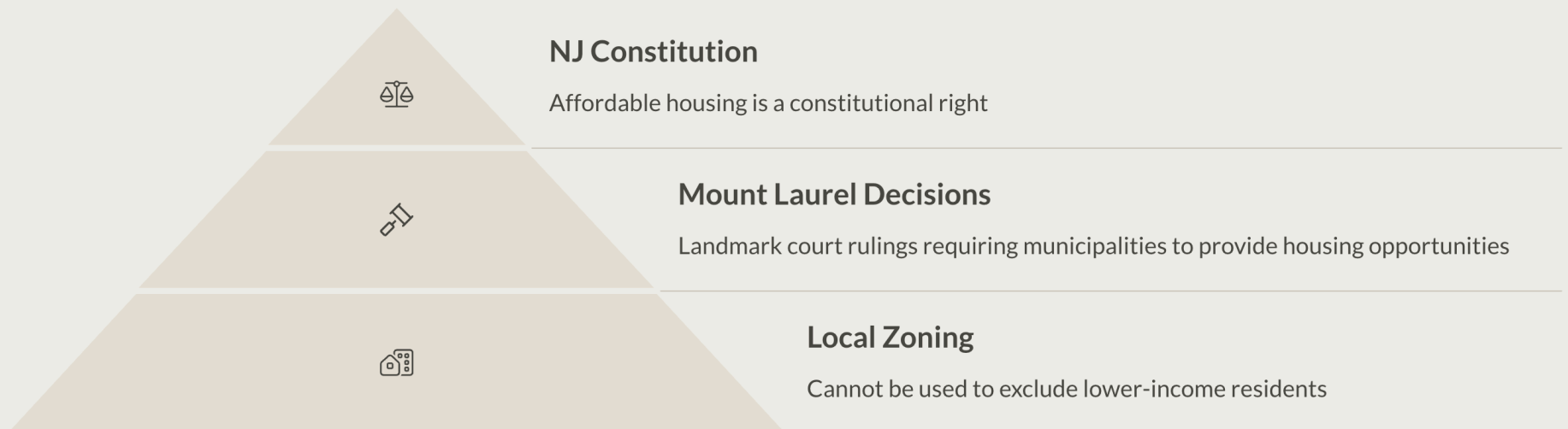


## Site Plan Review

Full development review process with community input

Rezoning is not final project approval. After this process, the site plan itself will undergo full development review, with scrutiny of traffic, parking, stormwater, neighborhood impact, and more.

# Affordable Housing as a Constitutional Mandate



While we understand and respect the desire to preserve Matawan's historic character, it is essential to recognize that affordable housing is a constitutional obligation in New Jersey. Courts have consistently ruled that this obligation takes precedence over local zoning preferences, even those based on aesthetics or preservation goals.



# Addressing Community Concerns



## Historic Status

160 Main Street is not a state or federally designated historic site. It sits within our Downtown Preservation District, which is a local zoning classification, not a formal historic protection.



## Property Ownership

The protections in the settlement run with the land. Any future buyer or developer must comply with the same limitations, unit count, building height, and architectural style.



# Transparency and Legal Limitations

We've heard the criticism about a perceived lack of transparency.

Let us be clear: **We take transparency seriously.**

During litigation, we are advised not to publicly discuss or debate the matters, including with residents or in open session. Doing so can expose the Borough to greater legal risk, further litigation, and jeopardize our legal position.

Because the settlement is still pending final court approval, we still remain legally constrained in what we can say.

We understand this has been frustrating and confusing for many. But these legal limitations are necessary to protect the Borough and ensure the best possible outcome.

# Moving Forward Responsibly



This is not an easy decision, but it is a necessary and responsible one. We are not rubber-stamping a development or surrendering to a developer. We are navigating a complex legal landscape in a way that minimizes harm, preserves community character, and protects Matawan from greater risk.

To walk away from this settlement would put millions of dollars, the integrity of our zoning code, and the fabric of our downtown at stake.

# Proposed Building Design: Front and Side Views



Front View



Side View