

**RESOLUTION GRANTING MIDLAND PARK BOROUGH A WAIVER OF NJ.A.C.
5:95-15.3 PURSUANT TO NJ.A.C. 5:95-14.1**

WHEREAS, on August 11, 2004, Midland Park Borough received second round certification of a Housing Element and Fair Share Plan from COAH, valid through August 11, 2010; and

WHEREAS, on May 15, 2006, COAH's rules were amended, NJ.A.C. 5:95-15.3, to state that in order to remain under the jurisdiction of the Council for the third round fair share obligation, a municipality shall either file a newly adopted Housing Element and Fair Share Plan addressing the third round obligation with the Council or petition for third round substantive certification by the earlier of the expiration date of its second round substantive certification or May 15, 2007; and

WHEREAS, on June 8, 2006, Midland Park Borough adopted a resolution committing to adhere to NJ.A.C. 5:95-15.3; and

WHEREAS, on January 25, 2007, the Appellate Division issued a decision on COAH's third round rules that directed COAH to make certain changes to its third round growth share approach; and

WHEREAS, as part of its ruling, the Court stayed the grant of substantive certification pending the process of amending COAH's regulations, stating that "[m]unicipalities that have acted in good faith in devising Fair Share Plans to comply with the existing third round rules should not be subjected to an exclusionary zoning lawsuit."; and

WHEREAS, COAH issued correspondence on March 28, 2007 advising municipalities required to submit by May 15, 2007, as per NJ.A.C. 5:95-15.3, that they may submit a Housing Element and Fair Share Plan by the prescribed date, or in the alternative, that they may submit a request for a waiver pursuant to NJ.A.C. 5:95-14.1; and

WHEREAS, Midland Park Borough submitted a letter requesting a waiver of NJ.A.C. 5:95-15.3; and

WHEREAS, Midland Park's waiver request dated April 13, 2007 notes that the Borough has been working to compile the documents necessary for its third round petition, but that in light of the recent Appellate Court decision, the Borough "suspended" work on its third round housing plan in February 2007; and

WHEREAS, the Borough states that the probable changes in COAH's rules resulting from the court decision "relate to crucial components of the Borough's formulation of a credible, thorough and implementable third round fair share plan."; and

WHEREAS, the Borough also states that the expenditure of funds to prepare a Housing Element and Fair Share Plan is premature and presents an unnecessary financial hardship upon the Borough's fiscal resources, that the preparation of a Housing Element and Fair Share Plan is

a comprehensive planning effort that cannot be successful when guidelines for the process are still evolving, and that holding public hearings and seeking public input when COAH's third round process and the Borough's growth share obligation are subject to change is imposes great difficulty on the Borough; and

WHEREAS, Midland Park Borough submitted additional information in support of the waiver on April 19, 2007, including a second round status report and a partial draft of the Borough's Housing Element and Fair Share Plan, which included population, housing, and employment data for the Borough as well as a calculation of Midland Park's growth share obligation based on N.J.A.C. 5:94 but does not identify mechanisms for addressing the Borough's affordable housing obligation; and

WHEREAS, Midland Park indicates that work underway on the plan was deferred because the Appellate Court's January 25, 2007 decision stayed grants of substantive certification and builder's remedy lawsuits for six months, but the Borough fully intends to work toward compliance with COAH's third round rules as ultimately adopted; and

WHEREAS, A COAH Task Force met on May 1, 2007 to consider Midland Park's waiver request and the Task Force recommended that the Borough's request for a waiver of N.J.A.C. 5:95-15.3, pursuant to N.J.A.C. 5:95-14.1, be granted.

NOW, THEREFORE BE IT RESOLVED, Midland Park Borough has met the waiver requirement of N.J.A.C. 5:95-14.1(b) by demonstrating that strict application of N.J.A.C. 5:95-15.3 would create an unnecessary financial, environmental or other hardship for the Borough; and

BE IT FURTHER RESOLVED, Midland Park has shown a good faith effort in devising a Housing Element and Fair Share Plan to comply with the third round rules, as demonstrated through the submission of a partial draft of the Borough's third round plan; and

BE IT FURTHER RESOLVED, the Borough's request for a waiver of N.J.A.C. 5:95-15.3, pursuant to N.J.A.C. 5:95-14.1, is hereby granted with the condition that Midland Park must, within 45 days of the date of this resolution, adopt a resolution committing to petition COAH with a third round Housing Element and Fair Share Plan within six months of COAH's adoption of revised third round rules or by the date of the expiration of its second round certification, whichever is earlier.

I hereby certify that this resolution was duly adopted by the Council on Affordable Housing at its meeting on <E>f\2_oD*!



jienee Reiss, Secretary
Council on Affordable Housing