

**RESOLUTION GRANTING ALLENDALE BOROUGH A WAIVER OF NJ.A.C. 5:95-15.3 PURSUANT TO NJ.A.C. 5:95-14.1 COAH 07-1912**

**WHEREAS**, on October 1, 2003, Allendale Borough, Bergen County, received second round certification of a Housing Element and Fair Share Plan from COAH, valid through October 1, 2009; 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, Allendale 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 petition 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**, Allendale Borough submitted a letter requesting a waiver of NJ.A.C. 5:95-15.3; and

**WHEREAS**, Allendale's waiver request dated April 18, 2007 states that the implementation of NJ.A.C. 5:95-15.3 would cause the Borough financial and other hardships by requiring the creation of an 'interim' plan which would require revision upon COAH's adoption of new third round regulations, and that a practical hardship would be created as the Court has determined that portions of NJ.A.C. 5:94-1 et seq. are invalid, making it difficult to prepare a comprehensive affordable housing plan; and

**WHEREAS**, Allendale additionally provided a statement of progress, asserting that the municipality has addressed the preparation of its Third Round Plan, through the following:

1. Preliminary meetings with Borough officials were held to discuss historical and future growth;
2. Research was conducted concerning population and employment projections;
3. A meeting was held with a non-profit agency to discuss the creation of a group home;
4. The Borough continues to search for a receiver for one proposed RCA and has secured a receiver for a second;
5. The Borough recently granted development approvals for a site that was included in Allendale's second round certified plan. This project will provide payments in lieu of constructing affordable units that are earmarked for one of the above RCA transfers;
6. Representatives from Allendale met with COAH staff on April 27, 2007, to discuss the Borough's third round plan; and

**WHEREAS**, opposition to Allendale's motion was received on April 27, 2007, submitted by Michael D' Antonio on behalf of CALM Development, the owner of property within the Borough; and

**WHEREAS**, Mr. D'Antonio objects to the Borough's request for a waiver, stating that:

1. Pursuant to COAH's regulations, any plan submitted at this time may be modified in the future;
2. The planning process involved may be valuable to other municipalities and to COAH;
3. The Borough still has remaining unmet need from its second round plan<sup>1</sup> and the Mayor has indicated that two sites "as submitted in the Borough's Housing Element are agreed to be ineffective pursuant to COAH rules";
4. No harm would come to Allendale by having a tentative Housing Element submitted "[a]s this process is ongoing and will have survivorship, any expedient end is better than no submission...";
5. Compliance would be of minimal cost to the municipality;
6. COAH has stated that it will continue to accept third round petitions and to hold voluntary mediation sessions and "[t]here are issues that have been brought to COAH's attention that are not affected by the court decision and would benefit from continuing the mediation process...";
7. There has been a lack of monitoring of RCA contributions by the Borough; and

<sup>1</sup> Unmet need is a term used to denote the need represented by the postponed delivery of affordable housing obligations through a mechanism known as a 'vacant land adjustment'. This does not apply to Allendale as Allendale has never received a vacant land adjustment from COAH.

8. The Borough's objection is not in the "highest and best interest of Public Policy and or Public Benefit and it is in direct opposition to the new guidelines as issued by the CO AH"; and

**WHEREAS**, on May 4, 2007, the Borough responded to CALM's opposition, noting that CALM does not refute the municipality's statement of potential financial and practical hardships, on which this waiver is based pursuant to COAH's regulations at N.J.A.C. 5:95-14.1(b); and

**WHEREAS**, Allendale clarifies that it has requested a waiver of the time to file, and not a waiver of the obligation to do so, and any comments pertaining to Allendale's certified second round plan and its future third round plan are misplaced as these issues were addressed by COAH's decision of August 9, 2006, which denied CALM's motion to dismiss Allendale's second round substantive certification; and

**WHEREAS**, Allendale reiterates that submission of a Plan at this time would impose both financial and practical hardships on the Borough, and states that, regarding mediation, subjects not germane to the instant waiver request are irrelevant; and

**WHEREAS**, a CO AH Task Force met on May 24, 2007 to consider Allendale's waiver request and the Task Force recommends 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.

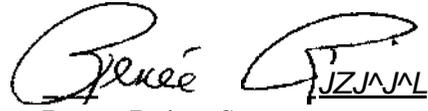
**NOW, THEREFORE BE IT RESOLVED**, Allendale Borough has met the waiver requirement of N.J.A.C. 5:95-14.1(b) by demonstrating that strict application of N.J.A.C. 5:95-15.3 would create an unnecessary financial, environmental or other hardship for the Borough; and

**BE IT FURTHER RESOLVED**, Allendale 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 submissions in support of this waiver request; 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 Allendale 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; and

**BE IT FINALLY RESOLVED THAT** during COAH's review of Allendale's third round petition, any previously zoned, but currently unbuilt, sites will be reexamined to ensure these sites continue to provide a realistic opportunity for the creation of affordable housing units.

I hereby certify that this resolution was duly adopted by the Council on Affordable Housing at its meeting on

Handwritten signature of Renee Reiss in cursive script.

Renee Reiss, Secretary  
Council on Affordable Housing