

**RESOLUTION GRANTING BRIDGEWATER TOWNSHIP, SOMERSET COUNTY
WAIVERS FROM N.J.A.C. 5:94-6.1(a) AND N.J.A.C. 5:94-6.2(c)**

COAH-07-1933

WHEREAS, on December 6, 1995, Bridgewater Township, Somerset County, received second round certification of a Housing Element and Fair Share Plan from COAH; and

WHEREAS, at the time of substantive certification, the Township had addressed its entire new construction obligation and was committed to the continuation of its rehabilitation program; and

WHEREAS, Bridgewater subsequently received extended substantive certification on March 9, 2005; and

WHEREAS, on December 7, 2005, Bridgewater Township petitioned COAH with its third round Housing Element and Fair Share Plan; and

WHEREAS, COAH originally approved Bridgewater's spending plan on June 7, 1995, and later approved an amendment to the spending plan on August 25, 2004; and

WHEREAS, as of December 31, 2006, the Township had a balance of \$5,485,325.86 in its affordable housing trust fund account; and

WHEREAS, on November 29, 2007, Bridgewater submitted a motion to the Council on Affordable Housing (COAH), pursuant to N.J.A.C. 5:95-12 and N.J.A.C. 5:95-14, requesting waivers of the following provisions:

- N.J.A.C. 5:94-6.1(a), which requires that development fees be used only for projects in an adopted Housing Element and Fair Share Plan (HEFSP); and
- N.J.A.C. 6.2(c), which stipulates that no municipality shall spend development fees unless COAH has approved a plan for spending such fees and also that a municipality shall have received substantive certification of its HEFSP before spending development fees; and

WHEREAS, these waivers are necessary because the affordable housing development on which Bridgewater wishes to spend affordable housing trust funds is neither in the Township's certified second round HEFSP nor in its proposed third round HEFSP; and

WHEREAS, the proposed expenditures are not included in the COAH-approved spending plan or proposed spending plan submitted with the Township's third round petition on December 7, 2005; and

WHEREAS, Bridgewater is proposing to use affordable housing trust funds to assist the Raritan Valley Habitat for Humanity ("RVHH") in constructing nine affordable single-family detached housing units for low-income households; and

WHEREAS, the subject property is located at 140 Southside Avenue (Block 300, Lot 14) in the R-10 Residential Zoning District of Bridgewater Township; and

WHEREAS, by resolution of the Township Planning Board dated May 8, 2007, the proposed development received preliminary and final major subdivision approval; and

WHEREAS, the Township is seeking waivers in order to provide grants of \$315,000 toward the acquisition and development of the property and \$12,000 toward the cost of installation of curbing at the site; and

WHEREAS, Bridgewater Township is proposing to take on the responsibility of maintaining the on-site detention basin at an estimated cost of \$1500 per year, thereby rendering the units more affordable by eliminating the need for a Homeowners' Association and related maintenance fees; and

WHEREAS, the Township also proposes to reserve \$150,000 for future use when the detention basin has to be replaced or repaired; and

WHEREAS, Bridgewater's motion also seeks an order granting a nine-unit credit against any fair share obligation which the Township may have in the third round or future round to which a municipal fair share obligation may apply; and

WHEREAS, as part of the Township's motion, Bridgewater submitted a memorandum of law prepared by the Township attorneys, Mauro, Savo, Camerino & Grant, P.A., which addresses COAH's waiver requirements and concludes that the granting of the waivers would foster the intent, and in large part, the letter of COAH's rules, and would foster the production of affordable housing by producing nine units of affordable single-family detached housing; and

WHEREAS, the memorandum also verifies that Bridgewater's proposed third round Fair Share Plan provides a mix of housing options; and

WHEREAS, the Township's submission also contains a certification from Patricia Padovani, Director of Welfare/Housing for the Township of Bridgewater, recounting the Township approval of the RVHH application and summarizing the testimony of Pamela Ely, Executive Director of RVHH, regarding the proposed development's consistency with COAH's rules; and

WHEREAS, Ms. Padovani's certification also includes a statement that, based on past trends, Bridgewater expects to collect approximately \$7,000,000 in affordable housing trust funds through 2014; and

WHEREAS, the motion submission also includes a certification from Pamela Ely of RVHH verifying that without the affordable housing trust funds from Bridgewater, the pending property transaction may be terminated by the seller and RVHH would lose approximately \$100,000 in engineering costs; and

WHEREAS, due to the urgency of the motion, Bridgewater requested an emergency hearing and an expedited motion schedule; and

WHEREAS, COAH staff concurs that the waiver is necessary for Bridgewater to take advantage of an emergent affordable housing opportunity in the municipality, thus fostering the production of affordable housing in the Township and fostering the intent, if not the letter, of COAH's rules; and

WHEREAS, COAH staff also notes that Bridgewater's Fair Share Plan provides a mix of housing options including rental and for-sale units for both families and age-restricted households; and

WHEREAS, in a letter dated December 28, 2007, COAH acknowledged receipt of Bridgewater Township's motion and stated that any opposing briefs should be filed with COAH not later than January 3, 2008; and

WHEREAS, no replies in opposition were received by COAH; and

WHEREAS, pursuant to N.J.A.C. 5:95-14.1(b), COAH's review of a waiver shall consider whether the strict application of the rule would create an unnecessary hardship; or that such a waiver fosters the production of low- and moderate-income housing, fosters the intent, if not the letter, of COAH's rules, and that the Housing Element and Fair Share Plan provide a mix of housing options; and

WHEREAS, Bridgewater Township has demonstrated that the proposed use of affordable housing trust funds is consistent with the waiver criteria under N.J.A.C. 5:95-14.1(b); and

WHEREAS, COAH staff has prepared a report dated January 2, 2008 (Exhibit A), recommending that the waivers from N.J.A.C. 5:94-6.1(a) and N.J.A.C. 5:94-6.2(c) be granted.

NOW THEREFORE BE IT RESOLVED that that the allocation of affordable housing trust funds for the RVHH development is consistent with the goal of promoting affordable housing in Bridgewater Township; and

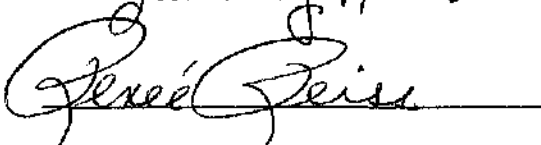
BE IT FURTHER RESOLVED that the waivers requested by Bridgewater Township are consistent with the waiver criteria under N.J.A.C. 5:95-14.1(b) and

BE IT FURTHER RESOLVED that Bridgewater's request for an order granting Bridgewater a nine-unit credit against any fair share obligation that the Township may have in the third round or future round is denied without prejudice and that the creditworthiness of the RVHH development will be addressed as part of the third round substantive certification review process; and

BE IT FURTHER RESOLVED that COAH grants the waivers from N.J.A.C. 5:94-6.1(a) and N.J.A.C. 5:94-6.2(c), with the following stipulations:

1. Bridgewater Township must, within 45 days, adopt a resolution committing to petition COAH with an amended third round HEFSP and spending plan that includes the RVHH development, according to the timetable established upon adoption of COAH's revised third round rules; and
2. These waivers permit Bridgewater to expend \$315,000 toward the acquisition and development of the RVHH property, \$12,000 toward the cost of installing curbing for the development, and \$1,500 per year on detention basin maintenance through the period of third round substantive certification; and to reserve \$150,000 for future detention basin repair or replacement.

Date: January 9, 2008



Renee Reiss, Council Secretary
Council on Affordable Housing