

RESOLUTION GRANTING DELAWARE TOWNSHIP, HUNTERDON COUNTY

WAIVERS FROM N.J.A.C. 5:94-6.1(a) AND N.J.A.C. 5:94-6.2(c)

COAH Docket 08-2003

WHEREAS, on January 10, 1996, Delaware Township, Hunterdon County, received second round certification of a Housing Element and Fair Share Plan from COAH; and

WHEREAS, Delaware's second round affordable housing obligation was 50 units, comprising 27 rehabilitation units and 23 new construction; and

WHEREAS, Delaware subsequently received extended substantive certification on July 27, 2005; and

WHEREAS, on December 22, 2005, Delaware petitioned COAH with its third round Housing Element and Fair Share Plan; and

WHEREAS, Delaware's third round plan proposes to meet the Township's 23-unit prior round obligation through a six-bedroom group home, an eight-unit RCA with Lambertville, one age restricted unit, six rental units and four corresponding bonus units and a buy down program; and

WHEREAS, Perimeter Properties ("Perimeter"), owner and developer of the Hockar Tract which is the site for the six affordable rental units in Delaware's plan, objected to Delaware's plan; and

WHEREAS, Delaware proposed that 16 units of residential housing be built on the Perimeter property, 6 which would be affordable family rental units and 10 market rate units; and

WHEREAS, on April 18, 2007, Perimeter and Delaware Township entered into an agreement which changed the prior approvals granted to allow for 11 market rate single family detached units, two market rate attached duplex units, six low and moderate income attached apartments, and two open space lots; and

WHEREAS, the Agreement between Perimeter and Delaware states that the parties shall cooperate and act in good faith including the issuance of timely permits and approvals as needed; and

WHEREAS, the six affordable units on the Perimeter site are constructed and occupied; and

WHEREAS, Delaware is proposing to replace its buy down program with an additional group home to be purchased by Allies, Inc. ("Allies") for use as supportive and special needs housing to low income households, creating up to nine bedrooms; and

WHEREAS, the proposed Allies group home project is in neither Delaware's Fair Share Plan nor in its spending plan and the Township has not received third round substantive certification; and

WHEREAS, in a motion dated February 14, 2008, Delaware seeks a waiver from COAH pursuant to N.J.A.C. 5:95-14.1, from the requirements of N.J.A.C. 5:94-6.1(a) and 6.2(c), asserting that its affordable housing obligation would be more fully met by the Township participating in a group home housing project with Allies; and

WHEREAS, N.J.A.C. 5:94-6.1(a) requires that funds generated by the collection of development fees are to be applied directly toward implementation of a municipality's Fair Share Plan and N.J.A.C. 5:94-6.2(c) states that no municipality under the Council's jurisdiction shall spend development fees unless the Council has approved a plan for spending such fees and the municipality has received substantive certification; and

WHEREAS, Delaware asserts that these waivers are necessary because the affordable housing development on which Delaware wishes to spend affordable housing trust funds is not in the Township's proposed third round Housing Element and Fair Share Plan; and

WHEREAS, the proposed expenditures are not included in the proposed spending plan submitted with the Township's third round petition on December 22, 2005; and

WHEREAS, Delaware is proposing to use affordable housing trust funds to assist Allies in purchasing an existing single family residence for conversion to a group home for low income households; and

WHEREAS, the Township is seeking waivers in order to provide funds in the amount of \$35,000 per bedroom toward the acquisition and development of the property for the Allies group home; and

WHEREAS, as part of the Township's motion, Delaware submitted the certification of Deputy Mayor Kristin McCarthy 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 up to nine units of affordable group home housing; and

WHEREAS, Delaware's third round spending plan projects spending in the amount of \$1.7 million; and

WHEREAS, Delaware states that Allies is considering several properties that have recently come on the market as sites for the affordable group home housing and Delaware states that it must act quickly as the Township's ability to participate in the project is a crucial element in the contract negotiations between Allies and the sellers of the property in Delaware Township; and

WHEREAS, Perimeter opposes Delaware's motion, stating that Delaware should be dismissed from COAH's administrative process or, in the alternative, be prohibited from spending any development fee funds until Delaware has developed a comprehensive plan to address its third round and prior round obligations; and

WHEREAS, Perimeter asserts that Delaware has violated its agreement with Perimeter and as a result, Perimeter should be relieved of its obligation to provide six affordable rental units; and

WHEREAS, Perimeter also requests that it should be limited to providing a 20% setback and further, should be entitled to development fee funds to subsidize its development as a result of Delaware's conduct and its effect on the economic viability of Perimeter's site; and

WHEREAS, Perimeter asserts its development is a necessary component of Delaware's affordable housing plan and the alleged impediments imposed by the Township on Perimeter's development are contrary to the Mt. Laurel doctrine; and

WHEREAS, Perimeter asserts that Delaware should not be granted a waiver to spend development fees on sites that are not part of the Township's Housing Element and Fair Share Plan; and

WHEREAS, a task force met on April 28, 2008, and requested that additional information be provided by the Township and Perimeter as to why Perimeter was applying for amended preliminary and final site plan approval from Delaware; and

WHEREAS, in response to the task force's request, Perimeter stated that on February 26, 2007, it was notified that it was required to redesign the stormwater management system for its site due to incorrect drainage calculations and that the amended application will be reviewed by Delaware on June 4, 2008; and

WHEREAS, the COAH task force finds that the waiver is necessary for Delaware 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 of COAH's rules; 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, Delaware 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 May 1, 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.

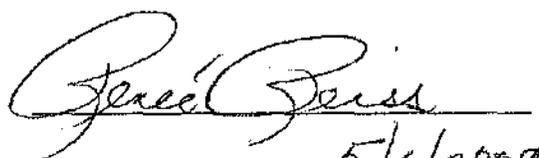
NOW THEREFORE BE IT RESOLVED that that the allocation of affordable housing trust funds for the Allies group home development is consistent with the goal of promoting affordable housing in Delaware Township; and

BE IT FURTHER RESOLVED that the waivers requested by Delaware Township are consistent with the waiver criteria under N.J.A.C. 5:95-14.1(b) 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. Delaware Township must, within 45 days, adopt a resolution committing to petition COAH with an amended third round HEFSP and spending plan that includes the Allies group home development, according to the timetable established upon adoption of COAH's revised third round rules; and
2. These waivers permit Delaware to expend \$35,000 per bedroom, up to a maximum of nine bedrooms toward the acquisition and development of the current Allies group home property only. If Allies acquires additional properties for affordable group home units in Delaware, the Township may submit a new waiver request to COAH.

3. Delaware shall provide the Council with documentation within the next 45 days demonstrating that the Township is complying with the approval process for the Perimeter site.


5/6/2008

Renee Reiss, Council Secretary

Council on Affordable Housing