

**RESOLUTION GRANTING FRANKLIN BOROUGH, SUSSEX COUNTY A
WAIVER TO EXCLUDE A REPLACEMENT UNIT FROM INCURRING A
GROWTH SHARE OBLIGATION**

COAH 08-2012

WHEREAS, Franklin Borough, Sussex County, received second round certification of a Housing Element and Fair Share Plan from the Council on Affordable Housing (COAH) on January 5, 1999 and extended substantive certification on July 27, 2005; and

WHEREAS, COAH approved Franklin Borough's development fee ordinance on April 1, 2004; and

WHEREAS, Franklin Borough petitioned COAH with its third round Housing Element and Fair Share Plan on September 20, 2005; and

WHEREAS, a single-family residence located at 424 Rutherford Avenue, Franklin, suffered substantial destruction as a result of a fire on March 19, 2008 leading to the subsequent demolition of any remains of the structure, including any remnants of the pre-existing foundation, which were removed due to poor structural conditions; and

WHEREAS, the property owners, who are also residents of the subject property, applied to the Franklin Borough Zoning Board of Adjustment for relief from bulk variances required to rebuild the single-family dwelling destroyed by fire; and

WHEREAS, the Franklin Borough Zoning Board of Adjustment granted relief from the variances requested on August 6, 2008 and memorialized the resolution granting these approvals on September 3, 2008; and

WHEREAS, a condition of the approval granted by the Franklin Zoning Board of Adjustment is that the property owners comply with the requirements of the Borough's affordable housing ordinances, including the payment of a growth share contribution and/or developer's fee, unless one of the following occurs:

- 1) Applicable COAH rules, in effect on the date on which the certificate of occupancy for the proposed dwelling is issued, exempt the dwelling from the calculation of Franklin's growth share obligation; or
- 2) The Borough Council agrees to waive compliance by the property owners with its affordable housing ordinances.

WHEREAS, the proposed dwelling will be of generally the same building footprint, in the same location on the lot as the previous structure and the property owners intend to reside in the proposed dwelling; and

WHEREAS, in a motion dated September 3, 2008, Franklin Borough seeks a waiver to exclude a replacement unit for a single-family, owner-occupied residence that was destroyed by fire from incurring a growth share obligation where the replacement unit does not change the use or intensity of use; and.

WHEREAS, the Borough's affordable housing ordinance requiring a payment in lieu fee of \$17,750 is in violation of COAH's rules at N.J.A.C. 5:97-6.4(b)8 which became effective June 2, 2008; and

WHEREAS, COAH's regulations provide that inclusionary zoning ordinances must contain a development size threshold below which affordable units must not be required; and

WHEREAS, the threshold must be based on whether or not the density and set-aside required by the zoning ordinance could result in the provision of at least one affordable unit on-site and that sites falling below the threshold may be subject to a development fee ordinance, and must not be required to provide affordable housing or make a payment in lieu contribution; and

WHEREAS, the methodology employed by the Council to establish statewide affordable housing need recognized that replacement units are a significant factor in determining overall housing demand; and

WHEREAS, 40 N.J.R. 2731 states that "replacement units reflect the net removal of existing homes, through intentional demolition as well as due to disasters such as storms or fires. This component is the number of housing units required to replace units lost, over and above the new units required to accommodate household growth" on vacant land, and includes a redevelopment component; and

WHEREAS, DCA's Division of Codes and Standards, which collects data on demolitions, does not collect information as to which demolitions may be the result of fire or natural disaster; and

WHEREAS, DCA's Division on Fire Safety, which records data on fires, does not collect information as to which demolitions may be the result of fire; and

WHEREAS, pursuant to N.J.A.C. 5:96-15.2, COAH's review of a waiver request shall consider whether the strict application of the rule would create an unnecessary hardship; that such a waiver fosters the production of affordable 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, by not granting the waiver, the Borough argues that counting units replaced as a result of loss from fire is a hardship because "the unique and tragic circumstances of the catastrophic loss suffered in this case impose severe hardship," and that "although Franklin can waive a developer's fee the obligation generated by the replacement unit would be passed on to the taxpayers"; and

WHEREAS, no replies in opposition to Borough's waiver request were received by COAH; and

WHEREAS, COAH staff has prepared a report dated September 22, 2008 (attached and incorporated as Exhibit A), recommending that the waiver to exclude a replacement unit for a single-family, owner-occupied residence that was destroyed by fire from incurring a growth share obligation where the replacement unit does not change the use or intensity of use be granted.

NOW THEREFORE BE IT RESOLVED that the waiver to exclude a replacement unit for a single-family, owner-occupied residence that was destroyed by fire from incurring a growth share obligation where the replacement unit does not change the use or intensity of use be approved; and

BE IT FURTHER RESOLVED that COAH grants the waiver for Franklin with the following conditions:

1. The Borough shall revise its development fee and growth share ordinances to comply with COAH's revised third round rules within 45 days, and refund any fees charged to any homeowner; and
2. Franklin must, within 45 days, adopt a resolution committing to petition COAH by December 31, 2008 with a revised third round Housing Element and Fair Share Plan or in accordance with the deadline established for municipalities opting in to the Highlands Regional Master Plan pursuant to a Memorandum of Understanding (MOU) to be executed by the Highlands Council and COAH.

Date: September 22, 2008



Renee Reiss, Council Secretary
Council on Affordable Housing