

**RESOLUTION GRANTING WINDSOR GARDENS, WEST WINDSOR  
TOWNSHIP, MERCER COUNTY,  
A WAIVER OF THE PHASING SCHEDULE REQUIREMENT AT  
N.J.A.C. 5:97-6.4(i)  
COAH DOCKET # 09-2109**

**WHEREAS**, West Windsor Township, Mercer County submitted its Third Round Housing Element and Fair Share Plan (Plan) to the Council on Affordable Housing (COAH or Council) on December 23, 2008; and

**WHEREAS**, the Plan contains the West Windsor Gardens project, a 342 unit project with 69 affordable units, which was approved by West Windsor on February 21, 2007; and

**WHEREAS**, when the project was approved, West Windsor granted the project several waivers from West Windsor's ordinance, two of which were waivers from COAH's standards and were granted subject to COAH's approval; and

**WHEREAS**, West Windsor now moves before the Council seeking a waiver from N.J.A.C. 5:97-6.4(d) and N.J.A.C. 5:97-9.1, the provision of COAH's rules that require inclusionary zoned affordable housing units included in a municipal Fair Share Plan to comply with the Uniform Housing Affordability Controls (UHAC) at N.J.A.C. 5:80-26.3(b)1; and

**WHEREAS**, the resolution passed by West Windsor approving the two projects permits a waiver from West Windsor's ordinance that requires at least 10 percent and no more than 20 percent of the total number of affordable units be efficiency and one bedroom units; and

**WHEREAS**, the requirement in West Windsor's ordinance is based on COAH's Second Round Rules at N.J.A.C. 5:93-1 et seq. and the Township submits that this regulation is applied to the Windsor Garden's development because by court order, the site is treated as a second round site; and

**WHEREAS**, the current UHAC standards at N.J.A.C. 5:80-26.3(b)1 provide that "[A]ffordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that...the combined number of efficiency and one-bedroom units is no greater than 20 percent of the total low- and moderate-income units;" and

**WHEREAS**, COAH's rules at N.J.A.C. 5:97-6.4(d) require inclusionary zoning ordinances to require affordable housing units to be built in accordance with a specific phasing schedule so that affordable units are built as market rate units are created; and

**WHEREAS**, West Windsor also requests a waiver from the phasing schedule because 100 percent of the affordable units in the Windsor Gardens development will not be completed at the time 90 percent of the market units are completed; and

**WHEREAS**, West Windsor states that it is unable to comply with the phasing requirement due to the housing type proposed by Windsor Gardens, where the affordable units are on the first floor and the market units are on the second and third floor of the same building; and

**WHEREAS**, the Township states that there are advantages to affordable households with the building form that is being used, in that it ensures that the affordable units will be uniformly integrated throughout the entire site and that the affordable units are larger (1,400 square feet each) than they would otherwise be; and

**WHEREAS**, West Windsor submits that a portion of the affordable units will be delivered earlier than is required by COAH's rules, which allow 25 percent of the market rate units to be constructed prior to any affordable units being completed; and

**WHEREAS**, West Windsor states that the developer will not abandon the project after finishing the market rate units prior to completing the affordable units because there are affordable units in each building and at any given time 80 percent of the units completed will be market and 20 percent will be affordable; and

**WHEREAS**, no opposition was received; and

**WHEREAS**, a task force convened on April 2, 2009 to discuss West Windsor's waiver request; and

**WHEREAS**, with respect to the waiver request from N.J.A.C. 5:80-26.3(b)1, the task force finds that the Windsor Gardens site is an unbuilt second round site and pursuant to N.J.A.C. 5:97-4.3(a)4, affordable units created and occupied on or after December 20, 2004 shall meet the criteria in N.J.A.C. 5:97-6; and

**WHEREAS**, current UHAC standards only require that no more than 20 percent of the units in a project be one bedroom units and there is no minimum requirement in the rule; and

**WHEREAS**, the task force recommends that the project does not need a waiver from the second round one bedroom requirement and can proceed as approved by West Windsor; and

**WHEREAS**, with respect to the waiver from the phasing schedule at N.J.A.C. 5:97-6.4(d), the task force recommends that the waiver request be granted, finding that West Windsor meets the waiver criteria set forth in COAH's rules and finding that the existing phasing schedule meets the intent of the regulation as affordable units will be constructed proportionately with the market rate units.

**NOW THEREFORE BE IT RESOLVED** that that the Council finds West Windsor has met the waiver criteria set forth at N.J.A.C. 5:96-15.2(a); and

**BE IT FURHER RESOLVED** based on the above, the Council hereby grants West Windsor a waiver of the phasing requirements for the Windsor Gardens project.

I hereby certify that this Resolution was duly adopted by the Council on Affordable Housing at its meeting on 4/8/09.



Renee Reiss  
Council Secretary