

RESOLUTION GRANTING WHIPPANY CAR WASH
A WAIVER OF THE NOVEMBER 12, 2008 SCARCE RESOURCE RESTRAINT
ON HIGHLANDS MUNICIPALITIES
HANOVER TOWNSHIP, MORRIS COUNTY
COAH DOCKET #09-2145

WHEREAS, on November 12, 2008, the Council on Affordable Housing (COAH) passed a “Resolution Granting Extension of Time to File Third Round Petition for Substantive Certification and Imposing Scarce Resources Restraint” (Restraint); and

WHEREAS, pursuant to the Restraint, Hanover Township (Hanover or Township), submitted to COAH a Notice of Intent to Petition in accordance with the Highlands Council’s Plan Conformance Guidelines and a duly adopted resolution notifying COAH of its intent to petition COAH for substantive certification of Hanover’s housing element and fair share plan no later than December 8, 2009; and

WHEREAS, as a result of submitting the required documents, Hanover received an extension from COAH of the December 31, 2008 third round petition deadline; and

WHEREAS, Restraint applies to any and all municipal actions associated with development approvals, water allocation and wastewater allocation so that scarce land, water, and sewer resources are reserved for the production of affordable housing; and

WHEREAS, Whippany Car Wash, LLC (WCW) submitted a waiver request on July 20, 2009, stating that it is ready to apply for construction permits for a new car wash, which was recently approved by the Hanover Board of Adjustment and which has also received other municipal, county and state approvals; and

WHEREAS, WCW states that it began the process of acquiring and developing property located at 691 Route 10 East, Hanover, NJ (Block 8803m Lot 6.01) on November 1, 2006, and that the approval process for the site lasted for approximately 21 months, from October 2007 until May 2009; and

WHEREAS, WCW argues that the Restraint will not, in this case, accomplish its objective of preserving land, water and sewer resources for affordable housing as evidenced by an attached letter from Michael C. Wynne, P.E., Executive Director of the Hanover Township Sewerage Authority, stating that the Authority’s reserve capacity is vast, “even allowing for the projected COAH obligation”; and

WHEREAS, WCW further argues that in no event would the site be used for affordable housing, relying on the Planning and Zoning Analysis report prepared by Adrian P. Humbert, P.P., AICP, dated January 2008, stating that the site is a narrow through lot located on Route 10, which at this location is a four lane road with a concrete divider; and

WHEREAS, the report further states that topography on the site is irregular, and the site is adjacent to a diner and a gasoline station and that while the rear of the site abuts residential and commercial properties, the residential uses are preexisting non-conforming uses and the zone prohibits residential construction; and

WHEREAS, WCW further argues that the scarce resource restraint on the site imposes an unnecessary financial hardship on WCW as it has expended approximately \$417,000 on the car wash project as of July 13, 2009 and for each month that WCW is prevented from seeking building permits, it must expend \$2,200 in taxes and payments to the Sellers of the site. The payments will not be applied to the purchase price or refunded if there is no closing on the property; and

WHEREAS, COAH staff requested that WCW provide additional information regarding the water demands of the care wash; and

WHEREAS, WCW provided information stating that the proposed car wash will have an average water demand 2,470 gallons per day (gpd), resulting in a peak demand of .00741 million gallons per day (MGD) and that the car wash will recycle almost all the water used in daily operations; and

WHEREAS, WCW states that Hanover's COAH obligation is 310 affordable units, which based on RSIS requires 99,200 gpd of water, resulting in a peak demand of 0.2976 MGD and that assuming connection of both the proposed car wash facility and all COAH units, the estimated peak daily demand will be as follows:

$$12.8396 \text{ MGD} + 0.00741 \text{ MGD} + 0.2976 \text{ MGD} = 13.14461 \text{ MGD}; \text{ and}$$

WHEREAS, WCW further states that since the water authority's total system firm capacity for water service is 19.24 MGD, Southern Morris County Municipal Utilities Authority has sufficient capacity to serve both Hanover Township's COAH obligation and the proposed car wash with more than 30% of its firm capacity remaining; and

WHEREAS, no opposition was received; and

WHEREAS, a task force convened on August 22, 2009 and October 26, 2009 to discuss WCW's waiver request; and

WHEREAS, the task force recommended that the waiver request be granted, finding WCW will not be occupying a site likely to be used for affordable housing and

WHEREAS, the task force also recommends that WCW will not be depleting sewer or water resources to the extent that Hanover will be unable to meet its affordable housing obligation.

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

BE IT FURTHER RESOLVED WCW will not be using land water or sewer resources that would otherwise be used for the production of affordable housing due to the fact that Hanover Township has enough water and sewer capacity to meet its COAH obligation even with this application being granted a waiver; and

BE IT FURTHER RESOLVED COAH has calculated the actual growth that has occurred in Hanover from January 1, 2004 until July 1, 2009. The actual total growth share for this period is 96 units of affordable housing and the projected growth share obligation for the entire 1999-2018 certification period is 310 units of affordable housing. Thus far, Hanover has reached 31% of its projection, and thus is in line with COAH's growth estimates; and

BE IT FURTHER RESOLVED based on the above, the Council hereby grants WCW a waiver of the November 12, 2008 Scarce Resource Restraint.

I hereby certify that this Resolution was duly adopted by the Council on Affordable Housing at its meeting on November 12, 2009



Renee Reiss
Council Secretary