

**RESOLUTION GRANTING WALTERS DEVELOPMENT CO. L.L.C., A WAIVER FROM N.J.A.C. 5:97-6.4(d) PERTAINING TO THE WHISPERING HILLS DEVELOPMENT PROJECT IN BARNEGAT TOWNSHIP, OCEAN COUNTY**

**COAH DOCKET #09-2191**

**WHEREAS**, the Walters Development Co., L.L. C. (Walters Development) project known as Whispering Hills, is part of the Township of Barnegat's Third Round Housing Element and Fair Share Plan; and

**WHEREAS**, the Whispering Hills project will provide 52 affordable housing family rental units in an inclusionary development; and

**WHEREAS**, on October 30, 1997, Barnegat Township received a Judgment of Compliance from the Superior Court of New Jersey as to the Township's Second Round Housing Element and Fair Share Plan; and

**WHEREAS**, on December 20, 2005, Barnegat Township filed a Third Round Petition for Substantive Certification with COAH pursuant to N.J.A.C.5:94 and 5:95; and

**WHEREAS**, on December 30, 2008, Barnegat Township filed a Third Round Petition for Substantive Certification with COAH pursuant to N.J.A.C. 5:96 and 5:97, and that Petition for Substantive Certification is presently under review by COAH; and

**WHEREAS**, the Whispering Hills project consists of 208 market rate units and 52 affordable housing family rental units; and

**WHEREAS**, the market rate units are a mix of for-sale townhouses and single family units; and

**WHEREAS**, the affordable housing family rental units are all to be located in seven separate buildings, six of which are two-story buildings and one building is a one-story building; and

**WHEREAS**, the seven buildings are entirely 100 percent affordable housing rental units; and

**WHEREAS**, to date Walters Development has commenced construction or completed up to 37 market rate units; and

**WHEREAS**, Walters Development advises that it is experiencing a slower sales rate of its units than anticipated and is facing financial carrying costs due to the market that were not anticipated; and

**WHEREAS**, Walters Development advises that it needs to complete at least 65% of its market rate units prior to the construction and marketing of the 52 affordable housing family units; and

**WHEREAS**, the Council finds, based upon the certification of Walters Development representative Timothy Regan, that the current economic and market conditions have caused sales prices and absorption rates for market rate units within Whispering Hills to significantly decrease while costs to construct the market and affordable housing units have remained high; and

**WHEREAS**, Walters Development certifies that it anticipated financing the affordable units, in part, with 4% tax credits, which are not available at this time and now needs the capital from additional market-rate units to construct the affordable units; and

**WHEREAS**, Walters Development advises that without a phasing waiver from the provisions of N.J.A.C. 5:97-6.4(d), it will not have the capital needed to construct the affordable housing units, nor will Walters Development be able to comply with the current phasing schedule for the Whispering Hills project and will have to cease construction on the entire project until market conditions improve; and

**WHEREAS**, Walters Development seeks a waiver based upon financial hardship under N.J.A.C. 5:96-15.2(a), to amend the phasing schedule allowing the completion of 136 market rate units (65% plus 1) before Walters Development must complete 26 affordable housing units, and construction of a total of 187 market rate units (90%) before the final 26 affordable housing units are completed; and

**WHEREAS**, Walters Development advises that it can start construction of the affordable housing units only after completion of at least 65% of the market rate units; and

**WHEREAS**, Andrew Bayer Esq., Special COAH Counsel for Barnegat Township, advised that Barnegat Township does not object to the relief sought by Walters Development; and

**WHEREAS**, the Task Force discussed the waiver request on January 5, 2010 and in a second telephonic Task force meeting on January 8, 2010; and

**WHEREAS**, the Task Force seeks to provide phasing relief to the developer to deal with the present economic constraints while maintaining a phasing schedule that insures the creation of affordable housing commensurate with the creation of market rate units to the extent economically feasible; and

**WHEREAS**, the Task Force recommends that the motion for a waiver amending the phasing requirement be granted for the reasons set forth above, including the current weak economic and market conditions and the inability of the project to proceed absent the granting of the waiver request.

**NOW THEREFORE BE IT RESOLVED** the Council finds that a strict interpretation of the phasing schedule pursuant to the provisions of N.J.A.C. 5:97-6.4(d), creates an unnecessary financial hardship upon the developer Walters Development as it pertains to the construction of the Whispering Hills project in Barnegat Township, Ocean County pursuant to N.J.A.C. 5:96-15.2(a); and

**BE IT FURTHER RESOLVED** that the Council hereby grants the waiver to the phasing schedule to allow the Whispering Hills project to be phased as follows:

Percentage of Market Rate Housing Units Completed	Minimum Percentage of Low and Moderate Income Units Completed
50	0
75% plus 1 (157 units)	50% (26 units)
90% (187 units)	100% (26 units)

**BE IT FURTHER RESOLVED** that Walters is required to commence construction of the affordable units once 65% of the market rate units are completed; and

**BE IT FURTHER RESOLVED** that the term “completed” as used in this resolution and in N.J.A.C. 5:97-6.4(d), is defined as the completion of construction warranting a certificate of occupancy.

I hereby certify that this Resolution was  
Duly adopted by the Council on Affordable  
Housing at its meeting on January 13, 2010



Renee Reiss  
Council Secretary