

**RESOLUTION APPROVING WAIVER FROM N.J.A.C. 5:97-6.4(d)**

**Middletown Township, Monmouth County**

**COAH DOCKET # 10-2238**

WHEREAS, Middletown Township received third round substantive certification from COAH on October 14, 2009; and

WHEREAS, included in the Township's certified Housing Element and Fair Share Plan was an inclusionary project, known Harmony Glenn, located on Harmony Road (Block 615, Lot 82); and

WHEREAS, the developer received approvals in 2008, for 72 market-rate for-sale units and 18 affordable rental units; and

WHEREAS, to date, 14 market-rate homes have been sold and received certificates of occupancy, and there are also eight other market-rate units that have been sold and are scheduled for municipal inspection; and

WHEREAS, the 18 affordable rental units are proposed to be financed in part through HMFA's 9% Low Income Housing Tax Credits (LIHTC), for which Harmony applied for in May 2010; and

WHEREAS, the LIHTC awards are expected to be announced on July 20, 2010, and if the project does not receive the 9% LIHTC, Harmony intends to apply for the 4% LIHTC; and

WHEREAS, on June 17, 2010, Harmony transmitted to COAH a motion for a waiver on an expedited basis from N.J.A.C. 5:97-6.4(d) to permit a modified phasing schedule in relation to the construction of market rate units and affordable units within an inclusionary development (Harmony Glen) in Middletown Township, Monmouth County; and

WHEREAS, N.J.A.C. 5:97-6.4(d) provides a phasing schedule for inclusionary developments that requires that 10 percent of the affordable units be completed when 25 percent plus one of the market rate units are completed; and

WHEREAS, Harmony states that for its development, by the time 19 market rate homes are completed, two affordable units must be completed; and

WHEREAS, Harmony maintains that it cannot construct the affordable units until it has received the appropriate financing; and

WHEREAS, Harmony maintains that if the project receives the 9% LIHTC in July 2010, the construction of the 18 affordable units would not be complete until October or November 2010; and

WHEREAS, Harmony states that it will need certificates of occupancy for an additional 30 market rate units by December 2010, totaling 52 of the 72 market rate units, or 73 percent. Therefore, Harmony is requesting a modification to the phasing schedule so that at the time that 75 percent of the market rate units are completed, 100 percent of the affordable units must be completed; and

WHEREAS, Harmony states that the phasing schedule in COAH's regulations creates an economic hardship for Harmony as the development would be stalled for several months because the financing for the affordable component takes longer than the market rate component; and

WHEREAS, Harmony maintains that the granting of the waiver will foster the production of affordable housing by assisting with the economic feasibility of the development and is in conformance with the intent of COAH's regulations and affordable housing policy; and

WHEREAS, on July 9, 2010, Harmony submitted a letter stating that they would be willing to post a Letter of Credit to the Township to cover the costs of constructing the affordable units in the event that Harmony does not received HMFA financing for the units in the

amount of \$2.53 million dollars (\$140,697 per unit), which is equal to COAH's estimated construction cost for affordable units in Region 4 in pursuant to N.J.A.C. 5:97-6.4(c); and

WHEREAS, Harmony is willing to set a deadline of June 30, 2011 to receive the HMFA financing; and

WHEREAS, pursuant to N.J.A.C. 5:96-15.2, the Council may grant a waiver from specific provisions of its rules if it determines that strict application of the rules would: (a) create an unnecessary financial, environmental or other hardship; or (b) 1) the waiver fosters the production of affordable housing; and 2) the waiver fosters the intent of, if not the letter of, the Council's rules; and 3) the Housing Element and Fair Share Plan provide a mix of housing options; and

WHEREAS, a COAH task force considered Harmony's waiver request on July 8, 2010; and

WHEREAS, the task force recommends that the waiver request does meet the waiver criteria set forth at N.J.A.C. 5:96-15.2, and that strict application of the COAH rules and denial of the waiver would impose an unnecessary financial hardship on Harmony; and

NOW THEREFORE BE IT RESOLVED that COAH hereby approves the waiver request from N.J.A.C. 5:97-6.4(d) to allow Harmony to modify the phasing schedule for the Harmony Glenn inclusionary development so that at the time that 75 percent of the market rate units are completed, 100 percent of the affordable units must be completed, provided that Middletown Township agrees to the Letter of Credit offered by Harmony in a form and amount acceptable to the Township.

I hereby certify that this resolution was  
duly adopted by the Council on Affordable  
Housing at its public meeting on July 15, 2010

A handwritten signature in cursive script that reads "Renee Reiss". The signature is written in black ink and is positioned above a horizontal line.

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Renee Reiss, Secretary  
Council on Affordable Housing