

HOUSING ELEMENT AND FAIR SHARE PLAN

Township of Bordentown
Burlington County, New Jersey

July 2019

Adopted by the Planning Board August 8, 2019

Prepared By:



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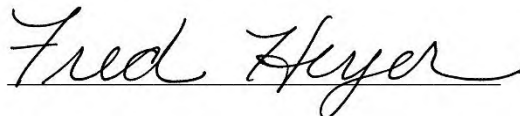
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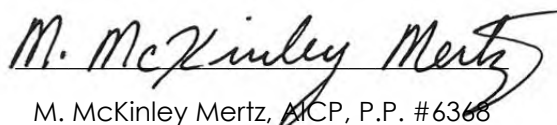
The original of this report was signed and
sealed in accordance with N.J.S.A. 45:14A-12



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PART 1: HOUSING ELEMENT

INTRODUCTION

In the case of Southern Burlington County NAACP v. the Township of Mount Laurel, (commonly known as Mount Laurel I), the New Jersey Supreme Court held that developing municipalities in New Jersey have a constitutional obligation to provide a realistic opportunity for the construction of low- and moderate-income housing in their communities. In its Mount Laurel decision, decided on January 20, 1983 (Mount Laurel II), the Supreme Court expanded the Mount Laurel doctrine by determining that this constitutional responsibility extended to all municipalities in New Jersey. The Court also established various remedies, including the "builder remedy" or court-imposed zoning, to ensure that municipalities affirmatively addressed this obligation.

In response to the Mount Laurel II decision, the New Jersey Legislature adopted the Fair Housing Act in 1985 (Chapter 222, Laws Of New Jersey, 1985). The Fair Housing Act established the Council on Affordable Housing (COAH) as an administrative alternative to the courts. COAH was given the responsibility of dividing the state into housing regions, determining regional and municipal fair share affordable housing obligations, and adopting regulations that would establish the guidelines and approaches that municipalities may use in addressing their affordable housing need. COAH drafted regulations and calculated fair share for Round 1 (1987-1993) and again in Round 2. However the Round 2 methodology was cumulative (1987-1999) and that period is now commonly referred to as the "Prior Round".

In Round 3, COAH adopted regulations in 2004 and 2008 that were ultimately invalidated by the Courts. COAH then attempted to, but failed, to adopt new Round 3 regulations in 2014, which lead to the Supreme Court's decision In re Adoption of N.J.A.C. 5:96 & 5:97 by the N.J. Council on Affordable Housing, 221 N.J. 1 (2015) ("Mount Laurel IV"), in which it held that since COAH was no longer functioning, trial courts were to resume their role as the form of first instance for evaluating municipal compliance with Mount Laurel obligations, and also established a transitional process for municipalities to seek a Judgment of Compliance and Repose ("JOR") in lieu of Substantive Certification from COAH.

This Housing Element and Fair Share Plan for Bordentown Township has been prepared in accordance with applicable law. Moreover, the Township filed a declaratory judgment action pursuant to the above-described transitional protocols established by the Supreme Court in Mount Laurel IV.

BORDENTOWN'S HISTORY OF AFFORDABLE HOUSING

The Township filed a declaratory relief action on July 2, 2015 and simultaneously brought a motion to reaffirm its from exclusionary zoning actions, which was granted by the Court. That immunity order remains in full force effect as of the date of this HEFSP. This immunity was reaffirmed based upon the Prior Round Judgment of Compliance and Repose (JOR) which was entered on August 16, 2000 and the Third Round JOR signed on September 20, 2006.

On July 24, 2006, The Bordentown Planning Board adopted a Third Round Housing Element and Fair Share Plan (2006 Plan). After the Township Committee endorsed the Plan, it filed it with COAH, and pursuant to N.J.S.A. 52:27D-313, the Township brought a declaratory judgment action with the Court seeking approval of the 2006 Plan. On September 20, 2006, the Court entered an Order granting Bordentown Township Third Round immunity. The Township voluntarily remained under the jurisdiction of the Court.

When portions of the Third Round rules were invalidated by the Court in 2007 and new rules promulgated in June 2008, Bordentown complied with the December 31, 2008 deadline for submission of an amended Housing Element and Fair Share Plan. The Bordentown Planning Board adopted an Amended Housing Element and Fair Share Plan for the Third Round (2008 Plan) on December 22, 2008.

On May 3, 2012, the Township, the Planning Board, Fair Share Housing Center (FSHC) and Bordentown Waterfront Community, LLC (BWC) entered into a Consent Order, which among other items, clarified BWC's affordable housing obligation. A new Order was issued on May 9, 2012 by Judge Bookbinder dismissing litigation without prejudice and granting the Township of Bordentown continued immunity and repose from Mount Laurel litigation. The Court concluded that "the Township is fully compliant under the First and Second rounds and has provided a realistic opportunity for a significant number of credits towards its Third Round obligations." (See Appendix A).

In August 2015 Bordentown Development Company was granted intervention into the Township's DJ Action, on the "Ziegler property," found at Block 138.01, Lots 41-43 and is a component of this Plan. In November 2015, FSHC moved for and was granted intervention.

Due to the current uncertainty in the appropriate manner by which to calculate municipal obligations throughout New Jersey, the Township and Fair Share Housing Center (FSHC) agreed that a settlement agreement is in the best interest of the Borough and its residents. Under the supervision of the Special Master, the Township and its professionals entered into negotiations with representatives of FSHC to settle the Township's Declaratory Judgment action and seek Court-

approval for an accepted fair share obligation for the Township. A settlement agreement was ultimately executed on June 26, 2017 (Appendix B).

In September 2017, Mark Bergman filed objections to the Township's settlement agreement. Although the Township met on several occasions in an attempt to resolve the objections, the Township was unable to reach mutually acceptable terms with Mr. Bergman.

An MOU was executed in August 2017 with Nissim Family Investments (Nissim) regarding the development of the property at Block 1.01 Lots 3 and 6 (Appendix C). Additionally, in October 2017 the Township entered into a settlement agreement with Bordentown Development Company (Appendix D).

Subsequently, in April of 2018, KJohnson Enterprises, LLC contacted the Township, expressing interest in redeveloping their property at Block 58 Lot 37 on the Township's Tax Map. On October 9, 2018, the Township entered into a settlement agreement with the entity known as Team Campus Phase II, LLC. The settlement agreement (found in Appendix E) established provisions for the rezoning of Block 58 Lot 37 to develop an age-restricted inclusionary development at the subject property providing 19 age-restricted affordable units.

During the period of time that the Township was negotiating with KJohnson Enterprises, LLC, a Fairness Hearing was held on June 18, 2018, at which point the Court approved the settlement agreement between the Township and FSHC by Order dated June 29, 2018 (see Appendix F).

Thereafter, KJohnson Enterprises, LLC again approached the Township with the desire to redevelop, but this time on a different site located at Block 57 Lot 6 for a proposed mixed-used inclusionary development. The Township entered into new negotiations, and on March 11, 2019, entered into a settlement agreement with an entity known as KJohnson Urban Renewal, LLC (Appendix G). The settlement agreement provided for the rezoning of the subject property for mixed-use, inclusionary development with 26 family, rental affordable units.

Due to the inclusion of the two KJohnson Enterprises, LLC sites, the Township and FSHC entered into an amended settlement agreement in on June 11, 2019 (Appendix B), which modifies and supplements the 2017 FSHC Settlement Agreement.

The Township seeks from the Court approval of this HEFSP and an affirmative declaration of compliance regarding all aspects of its affordable housing obligations.

PLANNING FOR AFFORDABLE HOUSING

Pursuant to both the Fair Housing Act (52:27D-310) and the Municipal Land Use Law (MLUL) N.J.S.A. 40:55D-28, municipalities in New Jersey are required to include a housing element in their master plans. The principal purpose of the housing element is to describe the specific, intended methods that a municipality plans to use in order to meet its low and moderate income housing needs. Further, the housing element is meant to demonstrate the existing zoning or planned zoning changes that will allow for the provision of adequate capacity to accommodate household and employment growth projections, to achieve the goal of access to affordable housing for present and future populations. The statutorily required contents of the housing element are:

- a. An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to low and moderate income households and substandard housing capable of being rehabilitated;
- b. A projection of the municipality's housing stock, including the probable future construction of low and moderate income housing, for ten years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands;
- c. An analysis of the municipality's demographic characteristics, including but not necessarily limited to, household size, income level and age;
- d. An analysis of the existing and probable future employment characteristics of the municipality;
- e. A determination of the municipality's present and prospective fair share for low and moderate income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low and moderate income housing; and
- f. A consideration of the lands that are most appropriate for construction of low and moderate income housing and of the existing structures most appropriate for conversion to, or rehabilitation for low and moderate income housing, including a consideration of lands of developers who have expressed a commitment to provide low and moderate income housing.

MUNICIPAL SUMMARY

The Township of Bordentown is a 9.3 square mile community located in the west-central region of New Jersey in the County of Burlington. The Township borders Florence Township and Mansfield Township to the south; Chesterfield Township to the east; and Hamilton Township to the north. In some areas, the Township's western edge is the Delaware River. Both Fieldsboro Borough and Bordentown City are located between Bordentown Township and the Delaware River. Major roadways through the Township include I-295, the New Jersey Turnpike, and Route 130 and 206.

According to the 2010 Census, Bordentown's population was 11,367, which represents an increase of over 35 percent from 2000. The US Census Bureau 2013-2017 American Community Survey estimates a total population of 11,808 persons. The median age in 2010 was 39.5 years. The average household size increased slightly from the 2000 level of 2.53 persons to 2.67 persons in 2010.

The housing stock of the Township is predominantly single-family detached dwelling units. The housing stock in Bordentown is newer than in some areas. Over 50 percent of the Township's housing structures were built after 1970. According to the guidelines established by COAH, the Township is located in Housing Region 5, a region that consists of Burlington, Camden, and Gloucester counties. Based on 2019 Regional Income Limits,¹ the median income in Region 5 for a four-person household is \$90,000, the moderate-income is \$72,080, the low-income is \$45,050, and the very low-income is \$27,030.

Pursuant to the Court-approved, executed settlement agreement, Bordentown has a Present Need of 11 units, a Prior Round obligation (1987-1999) of 211 units, and a Round 3 Need (1999-2025) of 425 units. The Township proposes to fully address its overall obligation through the following mechanisms;

- Continued participation in the existing County Rehabilitation Program
- Inclusionary Zoning
- Existing Credits
- Group Homes
- 100% Affordable Housing
- Rental Bonuses

¹ Prepared by the Affordable Housing Professionals of New Jersey, 2019

DEMOGRAPHIC CHARACTERISTICS

Population

The population trends experienced in Bordentown Township, Burlington County, and the State of New Jersey from 1930 through 2017 are shown below. Bordentown has experienced steady population growth since 1930 with the largest increase occurring during the 1950s when the population nearly tripled, growing from 2,033 to 5,936. In 2010, there were 11,367 residents in Bordentown, which was an increase of nearly 36 percent from the 2000 population. Both the County and the State have also experienced steady growth since 1930; however, it has slowed down in recent decades.

Population Trends									
Year	Bordentown Township			Burlington County			New Jersey		
	Population	Change		Population	Change		Population	Change	
		Number	Percent		Number	Percent		Number	Percent
1930	818	-	-	93,541	-	-	4,041,334	-	-
1940	1,095	277	33.9%	97,013	3,472	3.7%	4,160,165	118,831	2.9%
1950	2,033	938	85.7%	135,910	38,897	40.1%	4,835,329	675,164	16.2%
1960	5,936	3,903	192.0%	224,499	88,589	65.2%	6,066,782	1,231,453	25.5%
1970	7,303	1,367	23.0%	323,132	98,633	43.9%	7,168,164	1,101,382	18.2%
1980	7,170	-133	-1.8%	362,542	39,410	12.2%	7,364,823	196,659	2.7%
1990	7,683	513	7.2%	395,066	32,524	9.0%	7,730,188	365,365	5.0%
2000	8,380	697	9.1%	423,394	28,328	7.2%	8,414,350	684,162	8.9%
2010	11,367	2,987	35.6%	448,734	25,340	6.0%	8,791,894	377,544	4.5%
2017 Estimates	11,808	441	3.9%	449,192	458	0.1%	8,960,161	168,267	1.9%

Source: U.S. Census Bureau, 2013-2017 ACS 5-Year Estimates

Population Composition by Age

The median age of the residents of Bordentown in 2010 was 39.5 years. Analysis of age group characteristics provides insight into the actual changes in population. This comparison is helpful in determining impacts these changes have on housing needs, community facilities and services for the municipality and the County overall. The age composition of Bordentown has shifted somewhat since 2000. While all age cohorts experienced significant increases, the 55 to 64 age cohort saw by far the largest increase of 82.5 percent, followed by the 15 to 24 age cohort who increased by 60.4 percent.

Population by Age 2000 and 2010, Bordentown Township						
Population	2000		2010		Change, 2000 to 2010	
	Number	Percent	Number	Percent	Number	Percent
Total population	8,380	659.3%	11,367	607.5%	2,987	35.6%
Under 5 years	556	43.7%	838	44.8%	282	50.7%
5 to 14	1,118	88.0%	1,595	85.2%	477	42.7%
15 to 24	839	66.0%	1,346	71.9%	507	60.4%
25 to 34	1,229	96.7%	1,336	71.4%	107	8.7%
35 to 44	1,667	131.2%	1,860	99.4%	193	11.6%
45 to 54	1,271	100.0%	1,871	100.0%	600	47.2%
55 to 64	720	56.6%	1,314	70.2%	594	82.5%
65 and over	980	77.1%	1,207	64.5%	227	23.2%

Source: U.S. Census Bureau

Burlington County experienced population increases as well, but the majority of these increases were seen in older age cohorts. Like Bordentown, the County saw its most significant increase in the 55 to 64 age cohort, which grew by 44.3 percent. This was followed by the 45 to 54 age cohorts, which increased by 25.7 percent. The 35 to 44 and 25 to 34 age cohorts saw moderate decreases of 17.7 percent and 10.5 percent respectively. The County did experience moderate growth in one of the younger cohort groups. The 15 to 24 age cohort grew by 14.9 percent.

Population by Age 2000 and 2010, Burlington County						
Population	2000		2010		Change, 2000 to 2010	
	Number	Percent	Number	Percent	Number	Percent
Total population	423,394	100.0%	448,734	100.0%	25,340	6.0%
Under 5 years	27,172	6.4%	25,964	5.8%	-1,208	-4.4%
5 to 14	61,610	14.6%	58,752	13.1%	-2,858	-4.6%
15 to 24	49,295	11.6%	56,664	12.6%	7,369	14.9%
25 to 34	57,677	13.6%	51,608	11.5%	-6,069	-10.5%
35 to 44	75,817	17.9%	62,411	13.9%	-13,406	-17.7%
45 to 54	60,060	14.2%	75,506	16.8%	15,446	25.7%
55 to 64	38,545	9.1%	55,639	12.4%	17,094	44.3%
65 and over	53,218	12.6%	62,190	13.9%	8,972	16.9%

Source: U.S. Census Bureau

Households

A household is defined as one or more persons, either related or not, living together in a housing unit. In 2010, there was a total of 4,173 households in Bordentown. Over one half of the households (53.2%) were occupied by two persons or less. The average household size in the Township was 2.67, almost exactly that of the County's average of 2.62. Both the Township and the County's largest percentage of households was a two-person household (32.4% and 31.9% respectively) followed by one-person households.

Household Size- Occupied Housing Units, 2010 Bordentown Township and Burlington County				
	Township		County	
	Number	Percent	Number	Percent
Total Households	4,173	100.0%	166,318	100.0%
1-person household	871	20.9%	40,595	24.4%
2-person household	1,350	32.4%	53,027	31.9%
3-person household	787	18.9%	28,961	17.4%
4-person household	789	18.9%	26,266	15.8%
5-person household	251	6.0%	11,467	6.9%
6-person household	86	2.1%	3,962	2.4%
7-or-more-person household	39	0.9%	2,040	1.2%
Average Household Size	2.67		2.62	

Source: US Census Bureau 2010

Family households are defined as two or more persons living in the same household, related by blood, marriage or adoption. They do not include same-sex married couples. Most households in the Township in 2010 were family households, comprising 74.2 percent of all households. The average family size in 2017 was 3.18. Furthermore, the majority of family households were married-couple families with children under the age of 18 (49.1%). One-person households comprised 20.9 percent of all households, of which 57.2 percent were female householders.

In providing more detail of American households, the 2010 Census included the sub-groups of non-traditional households: Other family and Non-family households. "Other" family households made up 16.1 percent of all households, of which 75.8 percent were headed by a female householder with no husband present. Non-family households are defined as households that consist of a householder living alone or sharing the home exclusively with people to whom he/she is not related. Non-family households comprised approximately 4.9 percent of all households in the Township.

Household Size and Type, 2010 Bordentown Township		
	Total	Percent
Total Households	4,173	100.0%
1 person household	871	20.9%
Male householder	373	42.8%
Female householder	498	57.2%
2 or more person household	3,302	79.1%
Family households	3,096	74.2%
Married Couple Family	2,426	78.4%
With own children under 18 years	1,190	49.1%
No children under 18 years	1,236	50.9%
Other Family	670	16.1%
Male householder, no wife present	162	24.2%
With own children under 18 years	65	40.1%
No own children under 18 year	97	59.9%
Female householder, no husband present	508	75.8%
With own children under 18 years	273	53.7%
No own children under 18 year	235	46.3%
Nonfamily Households	206	4.9%
Male householder	113	54.9%
Female householder	93	45.1%
Average Family Size	3.18*	

Source: US Census Bureau 2010, *2013-2017 ACS

Income

As measured in 2017, Bordentown had a higher median income than that of Burlington County and the State of New Jersey. In 2017, the median income in Bordentown was \$85,640, which is \$2,801 more than Burlington County and \$9,165 more than the State's median income.

Per Capita and Household Income		
	2017 Per Capita Income	2017 Median Household Income
Bordentown Township	\$39,824	\$85,640
Burlington County	\$39,528	\$82,839
New Jersey	\$39,069	\$76,475

Source: 2013-2017 American Community Survey 5-Year Estimates

The distribution for household income for Bordentown in 2017 is listed below. The highest percentage of households (18.6%) fall into the \$100,000 to \$149,999 income bracket. This category was followed by those households that earned \$75,000 to \$99,999 (15.8%). In Bordentown, 29.9 percent of the households earned less than \$50,000, compared to 30.7 percent of the County's households.

Household Income Bordentown Township and Burlington County, 2017 Estimates				
	Bordentown		Burlington County	
	Number	Percent	Number	Percent
Total Households	4,382	100.0%	164,659	100.0%
Less than \$10,000	108	2.5%	5,812	3.5%
\$10,000 to \$14,999	69	1.6%	3,975	2.4%
\$15,000 to \$24,999	253	5.8%	10,715	6.5%
\$25,000 to \$34,999	356	8.1%	12,082	7.3%
\$35,000 to \$49,999	526	12.0%	17,958	10.9%
\$50,000 to \$74,999	547	12.5%	27,909	16.9%
\$75,000 to \$99,999	691	15.8%	24,309	14.8%
\$100,000 to \$149,999	816	18.6%	31,872	19.4%
\$150,000 to \$199,999	469	10.7%	15,664	9.5%
\$200,000 or more	547	12.5%	14,363	8.7%
Median Household Income	\$85,640		\$82,839	

Source: 2013-2017 American Community Survey 5-year Estimates

Poverty Status

In 2017, six percent of the Township's residents were living below the poverty level. Of the 692 persons who lived below the poverty level, the majority (75.4%) were between the ages of 18 and 64, while 20.8 percent were under the age of 18. Burlington County saw a similar distribution of those living in poverty but experienced a slightly higher overall percentage with 6.4 percent of its residents living below the poverty level.

Poverty Status Bordentown Township and Burlington County, 2017 Estimates				
	Bordentown		Burlington County	
	Number	Percent	Number	Percent
Total persons	11,495	100.0%	436,937	100.0%
Total persons below poverty level	692	6.0%	28,066	6.4%
Under 18	144	20.8%	8,385	29.9%
18 to 64	522	75.4%	16,494	58.8%
65 and over	26	3.8%	3,187	11.4%

Source: 2013-2017 American Community Survey 5-Year Estimates

Household Costs

The tables below show the expenditures for housing for those who own and rent housing in Bordentown. A large majority of the Township in 2017 lived in homes they owned, with 34.1 percent of owner-occupied households spending 30 percent or more of their household income on housing. Among renter-occupied households, 29.7 percent of households spent more than 30 percent of their household income on housing costs. General affordability standards set a limit at 30 percent of gross income to be allocated for housing costs.

Selected Monthly Owner Costs as a Percentage of Household Income 2017 Estimates				
	Bordentown		Burlington County	
	Number	Percent	Number	Percent
Total Owner-Occupied Housing Units	3,330	100.0%	125,557	100.0%
Less than 15%	859	25.8%	32,669	26.0%
15 to 19%	530	15.9%	21,671	17.3%
20 to 24%	387	11.6%	19,074	15.2%
25 to 29%	419	12.6%	13,675	10.9%
30 to 34%	271	8.1%	8,924	7.1%
35% or more	864	25.9%	29,108	23.2%
Not computed	0	0.0%	436	0.3%

Source: 2013-2017 American Community 5-Year Estimates

Gross Rent as a Percentage of Household Income 2017 Estimates				
	Bordentown		Burlington County	
	Number	Percent	Number	Percent
Total Renter-Occupied Housing Units	828	100.0%	36,598	100.0%
Less than 15%	132	15.9%	3,696	10.1%
15 to 19%	125	15.1%	4,274	11.7%
20 to 24%	218	26.3%	5,178	14.1%
25 to 29%	107	12.9%	3,919	10.7%
30 to 34%	73	8.8%	3,448	9.4%
35% or more	173	20.9%	16,083	43.9%
Not computed	72	8.7%	2,156	5.9%

Source: 2013-2017 American Community 5-Year Estimates

Similar to Bordentown, a large majority of Burlington County residents own their home. Roughly 30 percent of all County owner-occupied homes spent 30 percent or more of their household income on housing, and approximately 53 percent of renter-occupied households spent 30 percent or more of their household income on housing.

EXISTING HOUSING CONDITIONS

Housing Unit Data

According to the 2010 Census, Bordentown had a total of 4,360 housing units. A majority of the units, 78.8 percent, were owner-occupied while 21.2 percent were renter-occupied. Housing construction has remained steady since the 1930s with surges of construction seen during the 1950s and 2000s. Over 50 percent of the Township's housing structures were built after 1970 with the median year of construction landing in 1980.

Housing Data Bordentown Township, 2010		
	Number	Percent
Total Housing Units	4,360	100.0%
Occupied Housing Units	4,173	95.7%
Owner Occupied	3,289	78.8%
Renter Occupied	884	21.2%

Source: 2010 Census

Year Structure Built Bordentown Township, 2017 Estimates		
	Number	Percent
Built 1939 or earlier	185	3.9%
Built 1940 to 1949	192	4.0%
Built 1950 to 1959	1,186	24.7%
Built 1960 to 1969	439	9.2%
Built 1970 to 1979	403	8.4%
Built 1980 to 1989	573	12.0%
Built 1990 to 1999	800	16.7%
Built 2000 to 2009	899	18.8%
Built 2010 to 2013	51	1.1%
Built 2014 or later	65	1.4%
Total	4,793	100.0%
Median Year Structure Built	1980	

Source: 2013-2017 American Community Survey 5-Year Estimates

Housing Type and Size

The majority of the housing stock in Bordentown is single-family detached housing, with most dwellings containing five or more rooms. In 2017, there were 3,135 single-family detached homes representing 65.4 percent of the housing stock. Single-family attached homes were the second most common housing type with 766 units or 16 percent of the Township's housing stock. Multi-family housing (3 or more units) represented 17.5 percent. The median number of rooms within dwellings was 6.3. The largest percent of units has 6 rooms (17.2%).

Housing Type and Size Bordentown Township, 2017 Estimates		
Units in Structure	Total	Percent
Total	4,793	100.0%
1, detached	3,135	65.4%
1, attached	766	16.0%
2	35	0.7%
3 or 4	91	1.9%
5 to 9	221	4.6%
10 to 19	246	5.1%
20 or more	204	4.3%
Mobile home	76	1.6%
Boat, RV, van, etc.	19	0.4%
Rooms	Total	Percent
1 room	0	0.0%
2 rooms	32	0.7%
3 rooms	271	5.7%
4 rooms	689	14.4%
5 rooms	721	15.0%
6 rooms	823	17.2%
7 rooms	663	13.8%
8 rooms	784	16.4%
9 or more rooms	810	16.9%
Median number of rooms	6.3	

Source: 2013-2017 ACS 5-Year Estimates

In terms of residential growth, for the period January 2007 through December 2017, the Township issued building permits authorizing the development of 348 units, which averages to 31.6 units per year. The majority of the Township' building permits were authorized between 2013 and 2015, during which time 215 permits were authorized, an average of 71.7 units per year for these three years.

Housing Units Authorized by Building Permits: 2007-2017 Bordentown Township				
Year	1 & 2 Family	Multi Family	Mixed-Use	Total
2007	1	0	0	1
2008	2	0	0	2
2009	10	0	0	10
2010	14	0	0	14
2011	8	0	0	8
2012	15	0	0	15
2013	52	0	0	52
2014	75	0	0	75
2015	1	87	0	88
2016	7	0	0	7
2017	6	70	0	76
Total	191	157	0	348

Source: State of New Jersey Department of Community Affairs Building Permits: Yearly Summary Data

Occupancy

According to the 2010 Census, of the 4,360 units in Bordentown, 4,173 (95.7%) were occupied while only 187, or 4.3 percent, were vacant. Of those units that were vacant, roughly 58 percent were for rent and not occupied. Another 18.2 percent were for sale, and approximately 5.3 percent were sold but not occupied.

Occupancy Status Bordentown, 2010		
	Total	Percent
Total Housing Units	4,360	100.0%
Occupied	4,173	95.7%
Vacant Housing Units	187	4.3%
For Rent	104	55.6%
Rented, not occupied	5	2.7%
For Sale Only	34	18.2%
Sold, not occupied	10	5.3%
For Seasonal, Recreational or Occasional Use	8	4.3%
Other Vacant	26	13.9%

Source: 2010 Census

Housing Values and Contract Rents

Housing values for owner-occupied housings units and contract rents in 2017 are listed in the table below. In 2017, the median housing value in the Township was \$279,300, with the largest percentage of units valued between \$200,000 and \$299,999 (34.9%). The second most common value range was between \$400,000 and \$499,999 (25.6%), followed by housing values between \$150,000 and \$199,999 (14.4%). Though most units were covered by a mortgage (73.1%), a significant number of units (26.9%) had no mortgage at all. The County's trends mirror that of the Township with more than 64 percent of homes valued at over \$200,000 and 70.9 percent of housing units functioning with a mortgage, contract to purchase, or similar debt. Overall, housing values are slightly higher in Bordentown than in the County at large, as evidenced by the higher median value of owner-occupied housing units.

Value for Owner-Occupied Housing Units Bordentown Township and Burlington County, 2017 Estimates				
	Bordentown		Burlington County	
	Number	Percent	Number	Percent
Total	3,330	100.0%	125,557	100.0%
Less than \$50,000	146	4.4%	3,998	3.2%
\$50,000 to \$99,999	19	0.6%	4,543	3.6%
\$100,000 to \$149,999	77	2.3%	13,467	10.7%
\$150,000 to \$199,999	479	14.4%	22,354	17.8%
\$200,000 to \$299,999	1,161	34.9%	38,415	30.6%
\$300,000 to \$399,999	852	25.6%	23,162	18.4%
\$400,000 to \$499,999	518	15.6%	9,644	7.7%
\$500,000 and greater	78	2.3%	9,974	7.9%
Median Value	\$279,300		\$245,300	

Source: 2013-2017 American Community Survey 5-Year Estimates

Mortgage Status Bordentown Township and Burlington County, 2017 Estimates				
	Bordentown		Burlington County	
	Number	Percent	Number	Percent
Housing units with a mortgage, contract to purchase, or similar debt:	2,435	73.1%	89,006	70.9%
With either a second mortgage or home equity loan, but not both:	551	22.6%	15,364	17.3%
Second mortgage only	52	9.4%	2,520	16.4%
Home equity loan only	499	90.6%	12,844	83.6%
Both second mortgage and home equity loan	9	0.4%	406	0.5%
No second mortgage and no home equity loan	1,875	77.0%	73,236	82.3%
Housing units without a mortgage	895	26.9%	36,551	29.1%

Source: 2013-2017 American Community Survey 5-Year Estimates

According to the 2013-2017 5-year estimates produced by the American Community Survey, the median contract rent in Bordentown in 2017 was \$973. The highest percentage of renters (22.5%) paid between \$900 and \$999 for rent, followed by 21.5 percent of renters who paid between \$1,000 and \$1,499. The County's median contract rent was slightly higher at \$1,121. A majority of the County's renters (57.4%) paid more than \$1,000 for rent, compared to 47 percent of Bordentown's renters.

Contract Rent Bordentown Township and Burlington County, 2017 Estimates				
	Bordentown		Burlington County	
	Number	Percent	Number	Percent
Total Renter Occupied Units	1,052	100.0%	38,754	100.0%
Less than \$200	12	1.1%	674	1.7%
\$200 to \$499	0	0.0%	1,076	2.8%
\$500 to \$699	89	8.5%	3,473	9.0%
\$700 to \$899	220	20.9%	7,735	20.0%
\$900 to \$999	237	22.5%	3,554	9.2%
\$1,000 to \$1,499	226	21.5%	13,348	34.4%
\$1,500 to \$1,999	74	7.0%	4,710	12.2%
\$2,000 to \$2,500	42	4.0%	1,940	5.0%
\$2,500 to \$2,999	87	8.3%	303	0.8%
\$3,000 to \$3,499	0	0.0%	74	0.2%
\$3,500 or more	0	0.0%	73	0.2%
No cash rent	65	6.2%	1,794	4.6%
Median Contract Rent	\$973		\$1,121	

Source: 2013-2017 American Community Survey 5-Year Estimates

Housing Conditions

The following table details the condition of the housing within Bordentown based on heating fuel, overcrowding, plumbing facilities, kitchen facilities, and telephone service. These factors are utilized in determining housing deficiency. In 2017, the majority of occupied homes (85.5%) used utility gas to heat the unit. There were 61 owner-occupied units and 10 renter-occupied units that experienced overcrowding (more than one person per room). Throughout the Township, 0 units lacked complete plumbing facilities, 33 units lacked complete kitchen facilities, and 67 units had no telephone service.

Housing Conditions Bordentown Township, 2017 Estimates		
	Number	Percent
House Heating Fuel-Occupied Housing Units		
Total	4,382	100.0%
Utility gas	3,746	85.5%
Bottled, tank, or LP gas	33	0.8%
Electricity	394	9.0%
Fuel oil, kerosene, etc.	156	3.6%
Coal or coke	0	0.0%
Wood	20	0.5%
Solar energy	0	0.0%
Other fuel	33	0.8%
No fuel used	0	0.0%
Occupants per Room- Occupied Housing Units		
Total	4,382	100.0%
Owner-Occupied (Over 1.0)	61	1.4%
Renter-Occupied (Over 1.0)	10	0.2%
Facilities-Total Units		
Total	4,382	100.0%
Lacking complete plumbing facilities	0	0.0%
Lacking complete kitchen facilities	33	0.8%
No telephone service available	67	1.5%

Source: 2013-2017 ACS 5-Year Estimates

EMPLOYMENT DATA

The following tables detail changes in employment in Bordentown Township, Burlington County, and the State of New Jersey from 2007 to 2017. Employment and the labor force in Bordentown have remained steady over the last ten years. With the exception of a few small dips, both have continued to grow. The unemployment rate remained under 10 percent over this 10-year period, starting as low as 3.6 percent in 2007. Unemployment began to rise, however, in 2008 and saw a decade high of 8.1 percent in 2010. Since 2009 the unemployment rate has fluctuated and begun a new downward trend to 3.5 percent in 2017. Similar unemployment trends were experienced in the County and the State. Bordentown, however, has experienced consistently lower levels of unemployment than Burlington County or the State.

Bordentown Township Employment and Residential Labor Force				
Year	Labor Force	Employment	Unemployment	Unemployment Rate
2007	5,427	5,230	197	3.6%
2008	5,479	5,222	257	4.7%
2009	5,531	5,083	448	8.1%
2010	6,234	5,882	351	5.6%
2011	6,201	5,815	386	6.2%
2012	6,461	5,977	484	7.5%
2013	6,413	5,990	423	6.6%
2014	6,436	6,078	358	5.6%
2015	6,665	6,376	289	4.3%
2016	6,801	6,554	247	3.6%
2017	6,842	6,604	238	3.5%

Burlington County Employment and Residential Labor Force				
Year	Labor Force	Employment	Unemployment	Unemployment Rate
2007	237,634	228,511	9,123	3.8%
2008	239,461	227,696	11,765	4.9%
2009	241,989	221,585	20,404	8.4%
2010	237,039	215,736	21,303	9.0%
2011	235,904	215,373	20,531	8.7%
2012	236,400	215,939	20,461	8.7%
2013	234,288	216,371	17,917	7.6%
2014	230,681	215,869	14,812	6.4%
2015	232,623	220,189	12,434	5.3%
2016	233,255	222,869	10,386	4.5%
2017	234,179	224,582	9,597	4.1%

New Jersey Employment and Resident Labor Force				
Year	Labor Force	Employment	Unemployment	Unemployment Rate
2007	4,441,800	4,251,800	190,000	4.3%
2008	4,504,400	4,264,000	240,500	5.3%
2009	4,550,600	4,138,600	412,100	9.1%
2010	4,555,300	4,121,500	433,900	9.5%
2011	4,565,300	4,138,500	426,800	9.3%
2012	4,588,000	4,160,000	428,000	9.3%
2013	4,548,600	4,173,800	374,700	8.2%
2014	4,527,200	4,221,300	305,900	6.7%
2015	4,537,200	4,274,700	262,500	5.6%
2016	4,530,800	4,305,500	225,300	5.0%
2017	4,518,800	4,309,700	209,100	4.6%

Source: NJ Dept. of Labor & Workforce Development Labor Force Estimates

Employment Status

The 20013-2017 5-year American Community Survey estimates reveal that 66.6 percent of the population age 16 and over in Bordentown is in the labor force. The County's employment status is similar to that of Bordentown and closely reflects the Township's trends. The Township, however, has a slightly lower percentage of residents who are not in the labor force than the County (32.9% and 33.4% respectively).

Employment Bordentown Township and Burlington County, 2017 Estimates				
	Bordentown		Burlington County	
	Number	Percent	Number	Percent
Population 16 years and over	9,547	100.0%	364,927	100.0%
In labor force	6,356	66.6%	244,902	67.1%
Civilian Labor Force	6,326	66.3%	240,681	66.0%
Employed	6,044	63.3%	223,990	61.4%
Unemployed	282	3.0%	16,691	4.6%
Armed Forces	30	0.3%	4,221	1.2%
Not in labor force	3,191	33.4%	120,025	32.9%

Source: 2013-2017 American Community Survey 5-Year Estimates

Class of Worker and Occupation

The majority of workers (77.8%) living in Bordentown Township in 2017 were part of the private wage and salary worker group. This group includes people who work for wages, salary, commission, and tips for a private for-profit employer or a private not-for-profit, tax-exempt or charitable organization. The second largest category was government worker (19.2%), followed by those who were self-employed (3.0%).

Class of Worker Bordentown Township, 2017 Estimates		
	Number	Percent
Total	6,044	100.0%
Private Wage and Salary Workers	4,704	77.8%
Government Worker	1,161	19.2%
Self-Employed Worker	179	3.0%
Unpaid Family Worker	0	0.0%

Source: 2013-2017 American Community Survey 5-Year Estimates

The occupational breakdown shown in the table below includes only private wage and salary workers. Those who worked in the private wage field were heavily concentrated in the management and professional services and the sales and office occupations. Together these two fields account for roughly 72.2 percent of the entire workforce.

Resident Employment by Occupation Bordentown Township, 2017 Estimates		
	Number	Percent
Employed Civilian population 16 years and over	6,044	100.0%
Management, business, science and arts occupations	2,783	46.0%
Service occupations	739	12.2%
Sales and office occupations	1,581	26.2%
Natural resources, construction and maintenance occupations	358	5.9%
Production Transportation and material moving occupations	583	9.6%

Source: 2013-2017 American Community Survey 5-Year Estimates

By industry, 20 percent of the Township's workforce is employed in the educational services, and health care and social assistance sector. The second and third most common industries employing Bordentown residents are professional, scientific, and management, and administrative and waste management services (13.2%), and public administration (13.1%) respectively.

Employment by Industry Bordentown Township, 2017 Estimates		
Industry	Number	Percent
Civilian employed population 16 years and over	6,044	100.0%
Agriculture, forestry, fishing and hunting, mining	0	0.0%
Construction	346	5.7%
Manufacturing	489	8.1%
Wholesale Trade	52	0.9%
Retail Trade	510	8.4%
Transportation and Warehousing, and Utilities	355	5.9%
Information	211	3.5%
Finance and insurance, and real estate and rental and leasing	602	10.0%
Professional, scientific, and management, and administrative and waste management services	795	13.2%
Educational services, and health care and social assistance	1,206	20.0%
Arts, entertainment, and recreation, and accommodation and food services	392	6.5%
Other Services, except public administration	292	4.8%
Public administration	794	13.1%

Source: 2013-2017 American Community Survey 5-Year Estimates

Commuting to Work

In 2017, the mean travel time to work for those who lived in the Township was 30.9 minutes. The vast majority of commuters, 84.8 percent, traveled less than an hour to work, and 58.6 percent have less than a thirty-minute commute.

Travel Time to Work Bordentown Township, 2017 Estimates		
	Number	Percent
Workers who did not work at home	5,795	100.0%
Less than 10 minutes	522	9.0%
10 to 14 minutes	373	6.4%
15 to 19 minutes	1,066	18.4%
20 to 24 minutes	1,091	18.8%
25 to 29 minutes	344	5.9%
30 to 34 minutes	757	13.1%
35 to 44 minutes	263	4.5%
45 to 59 minutes	497	8.6%
60 to 89 minutes	582	10.0%
90 or more minutes	300	5.2%
Mean travel time to work (minutes)	30.9	

Source: 2013-2017 American Community Survey 5-Year Estimates

The largest portion of workers drove to work alone (82.2%), while approximately 8.6 percent carpoolled. Only 4.9 percent of workers commuted via public transportation, and roughly 3.3 percent worked from home.

Means of Commute Bordentown Township, 2017 Estimates		
	Number	Percent
Workers 16 years and over	4,927	82.2%
Car, truck, van- Drove Alone	515	8.6%
Car, truck, van- Carpooled	296	4.9%
Public Transportation	19	0.3%
Walked	38	0.6%
Other Means	197	3.3%
Worked at home	5,992	100.0%

Source: 2013-2017 American Community Survey 5-Year Estimates

Covered Employment ²

There is currently very limited information available on actual job opportunities within municipalities. The Department of Labor collects information on covered employment, which is employment and wage data for private employees covered by unemployment insurance. The tables below provide a snapshot of private employers located within Bordentown Township. The first table reflects the number of jobs covered by private employment insurance from 2007 through 2017. The second table reflects the disbursement of jobs by industry and salaries in 2017.

According to data from the New Jersey Department of Labor and Workforce Development, the highest number of covered jobs in the Township in the last ten years was in 2017, when 4,677 jobs were covered by unemployment insurance. Private employment has fluctuated somewhat since 2007 with the lowest number of covered jobs occurring in 2012 (3,405).

Private Wage Covered Employment 2007-2017 Bordentown Township			
Year	Number of Jobs	# Change	% Change
2007	3,727	-	-
2008	3,827	-84	-2.1%
2009	3,862	35	0.9%
2010	3,604	-258	-6.7%
2011	3,590	-14	-0.4%
2012	3,405	-185	-5.2%
2013	3,479	74	2.2%
2014	3,746	267	7.7%
2015	3,804	58	1.5%
2016	4,258	454	11.9%
2017	4,677	419	9.8%

Source: NJ Dept. of Labor & Workforce Development Labor Force Estimates

² These numbers may include employment from other communities with a Bordentown Township mailing address.

In-Township Establishments and Employees by Industry: 2017³

The following table depicts the average annual number of establishments and employees by industry sector that exist within the Township, as grouped by North American Industry Classification System (NAICS). In 2017, the Township had an annual average of 266 establishments employing on average 4,677 persons. The most predominant sectors employing Bordentown residents in 2017 were retail trade (15.4%) and accommodations and food service (13.2%), followed by professional and technical services and other services, which employ 10.5 percent each.

Average Number of Establishments and Employees by Industry: 2017		
Industry	2017 Average	
	Units	Employment
Agriculture	.	.
Construction	27	96
Manufacturing	6	425
Wholesale Trade	7	1,483
Retail Trade	41	591
Transp/Warehousing	11	65
Information	.	.
Finance/Insurance	12	74
Real Estate	8	25
Professional/Technical	28	200
Admin/Waste Remediation	.	.
Education	.	.
Health/Social	25	513
Arts/Entertainment	.	.
Accommodations/Food	35	529
Other Services	28	182
Private Sector Totals	266	4,677
Local Government Totals	8	482

Source: NJ Dept. of Labor & Workforce Development Labor Force Estimates

³ These numbers may include employment from other communities with a Bordentown Township mailing address.

Probable Future Employment Opportunities

The Delaware Valley Regional Planning Commission (DVRPC) is the federally designated Metropolitan planning Organization (MPO) for the Greater Philadelphia Region. The DVRPC serves nine counties, including Burlington, and estimates that during the period 2010 to 2045 the Region will experience an increase in employment growth of 11.5 percent. Employment in Burlington County is forecasted to increase by 9.4 percent by 2045, and in Bordentown Township by 8 percent.⁴

It is reasonable to presume that future employment opportunities within Bordentown will occur along the Route 130 corridor and 206 as well as the industrially zoned areas of the Township due to its accessibility to I 295 and the New Jersey Turnpike.

⁴ Delaware Valley Regional Planning Commission, Analytical Data Report: Regional, County, and Municipal Employment Forecasts, 2010-2040, January 2013, p. 4.

PART 2: FAIR SHARE PLAN

INTRODUCTION

The following Fair Share Plan (the Plan) details Bordentown's Present Need, Prior Round obligation (1987-1999), and Third Round obligations (1999-2025). This Plan proposes mechanisms for which the Township can realistically provide opportunities for affordable housing for moderate-, low-, and very low- income households.

The need for affordable housing in New Jersey is divided into three components:

- *Present Need* – The present need, or rehabilitation share, represents the number of existing housing units that are both deficient and occupied by low- and moderate- income households. This number is derived from review and analysis of housing conditions reported in the U.S. Census and American Community Survey.
- *Prior Round Obligation* – The Prior Round obligation is the cumulative 1987-1999 fair share obligation determined by 2014 COAH regulations. The First Round and the Second Round are mutually referred to as the "Prior Round."
- *Third Round- Gap + Prospective Need*– July 1, 1999 - June 30, 2025. On January 18, 2017, the Supreme Court decided In Re Declaratory Judgment Actions Filed by Various Municipalities, County of Ocean, Pursuant To The Supreme Court's Decision In In re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) ("Mount Laurel V"). It held that need having accrued during the gap period (1999-2015) should be calculated as part of the present, not prospective need. More specifically, the Supreme Court held that there is an obligation with respect to that period for households that came into existence during that gap that are eligible for affordable housing, that are presently (as of 2015) in need of affordable housing, and that are not already counted in the traditional present need.

Bordentown has the following affordable housing obligation:

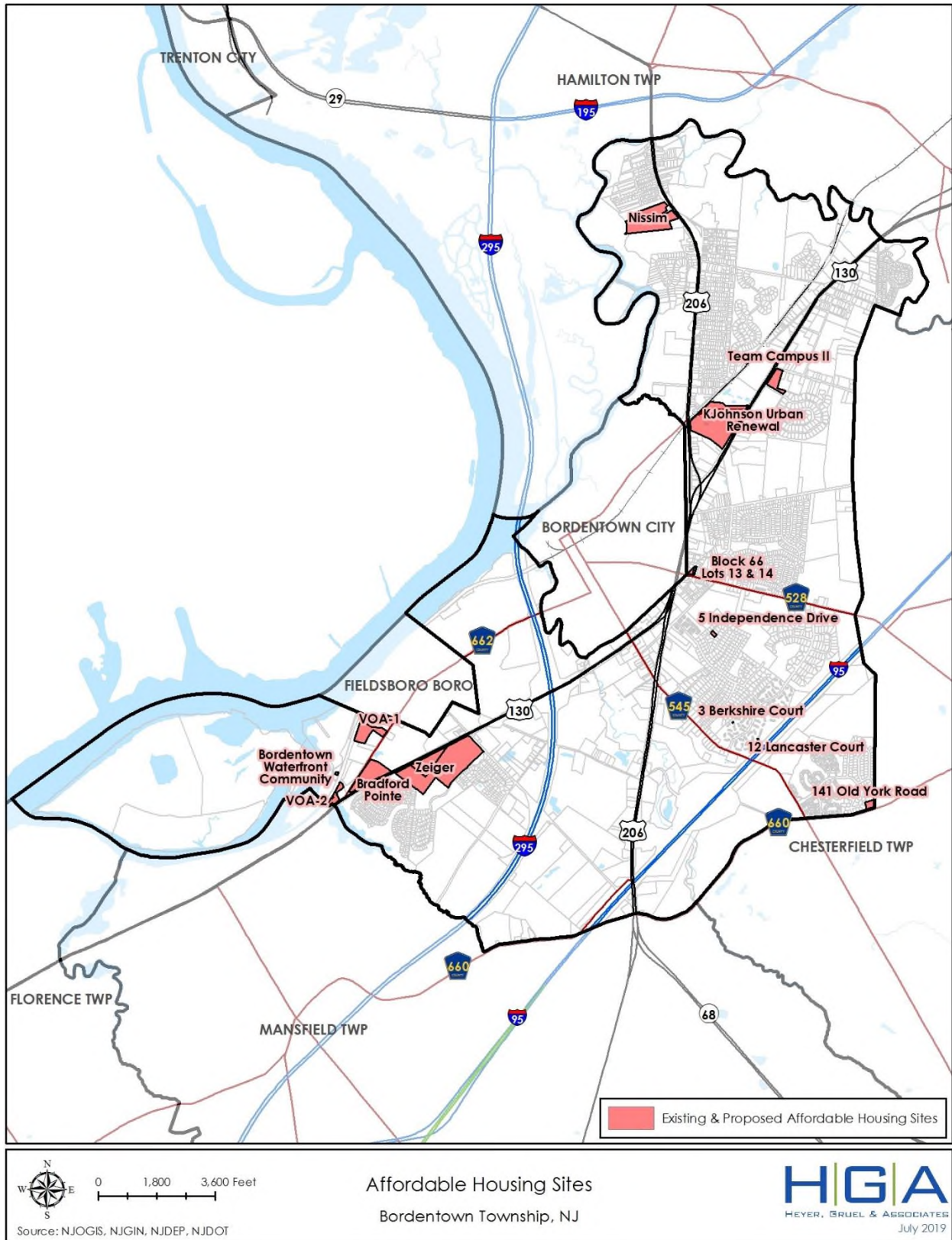
Present Need	11
Prior Round (1987-1999)	211
Third Round (1999-2025)	425

SUITABILITY ANALYSIS

Pursuant to N.J.A.C. 5:93-1.3, sites that are designated to produce affordable housing shall be available, approvable, developable, and suitable according to the following criteria:

- “Available site” means a site with clear title, free of encumbrances which preclude development for low- and moderate-income housing. N.J.A.C. 5:93-1.3.
- “Approvable site” means a site that may be developed for low- and moderate-income housing in a manner consistent with the rules or regulations of agencies with jurisdiction over the site. A site may be approvable although not currently zoned for low- and moderate-income housing. Ibid.
- “Development site” means a site that has access to appropriate water and sewer infrastructure, and is consistent with the applicable area wide water quality management plan (including the wastewater plan) or is included in an amendment to the area wide water quality management plan submitted to and under review by the DEP. Ibid.
- “Suitable site” means a site that is adjacent to compatible land uses, has access to appropriate streets and is consistent with the environmental policies delineated in N.J.A.C. 5:93-4. Ibid.

In addition to the above qualifications, it is also sound planning for sites to be consistent with the State Development and Redevelopment Plan. Sites that are located in Planning Area 1: Metropolitan or Planning Area 2: Suburban of the State Development and Redevelopment Plan, or are located in an existing sewer service area, are the preferred location for municipalities to address their fair share obligation. This Plan analyses each site that is proposed for affordable housing in light of the above criteria. All sites identified in this Plan are located within the Planning Area 1: Metropolitan and Planning Area 2: Suburban, both of which encourage growth.



REHABILITATION SHARE/ PRESENT NEED

The term Present Need, as used in COAH's Prior Round Rules (N.J.A.C. 5:93), meant the sum of a municipality's indigenous need (the deficient housing units in the municipality occupied by low- and moderate-income households), and the reallocated present need, which is the portion of the housing region's present need that is redistributed to other municipalities throughout the housing region. Under the Prior Round rules, evidence of deficient housing included: year structure was built, persons per room, plumbing facilities, kitchen facilities, heating fuel, sewer service, and water supply.

The Third Round rules reduced the number of criteria used as evidence of deficient housing to three: pre-1960 over-crowded units, which are units that have more than 1.0 persons per room; incomplete plumbing; and incomplete kitchen facilities. This reduction in the number of criteria was found by the Appellate Division to be within COAH's discretion and was upheld in the Supreme Court's decision In re N.J.A.C. 5:96 & 97.

The previously discussed Mount Laurel IV decision agreed under the Appellate Division that reallocated Present Need is no longer a component in the determination of the Present Need. Therefore, Present Need now equates only to the indigenous need, the obligation based on deficient housing as determined by pre-1960 over-crowded units, incomplete plumbing, and incomplete kitchen facilities, generated within the Borough itself, now refined as the Rehabilitation Share/Present Need.

Per the Court-approved settlement agreement between Bordentown and FSHC, the Township has a Present Need obligation of 11 units. The Township has 5 rehabilitated units since April 1, 2010, and therefore is entitled to 5 credits against its 11-unit present need. The Township intends to address the remaining 6 units through continued participation in Burlington County's rehabilitation programs. These programs are funded through the Community Development Block Grant (CDBG) and the Home Investment Partnership Program (HOME). The CDBG program is available to homeowners, and the HOME program is available to both rental and owner projects. Documentation for the 5 rehabilitated units as well as qualifying information for the CDBG and HOME programs can be found in Appendix H.

PRIOR ROUND (1987-1999)

Bordentown has a Prior Round obligation of 211 units. The Township has fully satisfied its Prior Round obligation as follows:

Bradford Pointe

The Bradford Pointe apartments are located on Bradford Court on the western edge of the Township on Block 139, Lot 11 of the Township's official tax map. The development was approved in 2001 and constructed in 2002 to satisfy the conditions of the August 16, 2000 Judgement of Compliance and Repose ("2000 JOR"), issued by the Honorable Ronald Bookbinder. Bradford Pointe received Low Income Tax Credit (LITC) financing through HMFA and contains 168 family affordable rental units. The Developers Agreement between the Township and American Bordentown Affordable L.P. dated April 7, 1998 required affordability controls of at least 35 years. All 168 units are credit worthy according to the Township's 2000 JOR. In addition, Bradford Pointe is eligible for rental bonus credits under the Prior Round rules (N.J.A.C. 5:93-5.15) of 53 credits. Therefore, the 211-unit Prior Round obligation is fully satisfied. The surplus of 10 affordable family rental credits will be applied to the Township's Third Round obligation. Documentation can be found in Appendix I.

Prior Round Obligation	211
Bradford Point	168
Bonus Credits	43
Total	211 credits

ROUND 3 (1999-2025)

Under the Settlement Agreement between the Township and FSHC, Bordentown has a Third Round obligation of 425 units. The Township has fully addressed its Third Round obligation through the following:

Bradford Pointe

The remaining 10 units as well as the remaining 10 bonus credits from the Bradford Pointe development will be applied to the Township's Third Round obligation.

Bordentown Waterfront Community

Bordentown Waterfront, LLC (BWC) proposed a Planned Unit / Transit Oriented Development consisting of 580 housing units in the Township's Waterfront Development Area. Planned housing types range from multifamily apartments to townhouses and "manor type townhouses." As per Bordentown's development regulations for designated Redevelopment Areas, the project was required to provide a 15% set-aside for new affordable housing units. On September 10, 2009, the Township Planning Board granted preliminary site plan approval for the construction of the BWC Redevelopment Project as an inclusionary mixed-use development. Amended preliminary and final site plan approval and preliminary and final subdivision approvals were granted on January 14, 2010 and January 12, 2012, respectively. To ensure the 15% affordable set-aside was retained, the Planning Board sought a Court Order to confirm the 15% set-aside requirement in May 2012. The Court Order, dated May 3, 2012 (found in Appendix A), confirmed that 15% of the total number of units approved, provided on or off-site, shall be deed restricted for very-low, low- and moderate-income households for a period at least 30 years. BWC is required, therefore, to produce 87 affordable units.

In 2016, BWC filed an application with the Planning Board for amended site plan and subdivision approval. The Planning Board resolution of approval dated July 14, 2016, reaffirmed BWC's compliance with the Court order regarding affordable housing (Appendix A). BWC is expected to appear before the Planning Board in July 2019 for an extension of all their 2016 approvals.

As part of BWC's 87-unit obligation, BWC collaborated with Volunteers of America (VOA) to develop a 69-unit on-site senior/special needs 100% affordable rental development. The remaining 18 affordable units required of the BWC site will be produced on-site as either family or senior rental. The Township will apply these 18 units to its Third Round obligation.

The site meets the suitability criteria as follows:

- *Available:* The BWC development has been offered by its owner to support affordable housing units within an inclusionary development and by VOA as a 100% affordable development. The site has no easements or title issues preventing its development.
- *Suitable:* The site is adjacent to several residential developments, including the Bradford Pointe apartments. Additionally, a portion of the BWC has already been constructed, called Rivergate Bordentown, providing 159 rental units. The site is within Planning Area 2: Suburban Planning Area, which encourages growth.
- *Developable:* The portion of the site slated for development has a potable water source, is within the sewer service area, and has access to appropriate public streets. Route 130 provides access to Burlington Road. Internal roadways will extend from these two public roadways. Although the site is located within the 100-year floodplain, it was deemed by the Court to be an appropriate site for multi-family development.
- *Approvable:* The site is within the Waterfront Village Redevelopment Area. The regulatory standards of the Redevelopment Plan require provisions for the development of affordable housing consistent with the Court order.

VOA-1 (Volunteers of America)

As previously stated, BWC worked with Volunteers of America to develop 69 affordable units at Block 140 Lot 3.02. Sixty-four (64) of which are age-restricted rental and 5 are special needs housing. VOA received 9% tax credits from the New Jersey Housing and Mortgage Finance Agency (HMFA) in 2015. The development was recently completed, and tenants are occupying units. The Township will gain 3 bonus credits from this development. See Appendix J for documentation.

Zeiger / Bordentown Redevelopment Company (BDC)

The Zeiger property is located in the southern portion of the Township, consisting of 46.9 total acres on Block 138.01, Lots 41-43 of the official Township tax map. Of the property's 46.9 acres, approximately 29 acres are suitable for development, with the remaining land encumbered by wetlands. Subsequent to the Township's filing of a declaratory judgment action (DJ Action) to the Superior Court of New Jersey, the owners of Block 138.01, Lots 41-43 ("Zeiger") intervened as an intervenor-defendant in the DJ Action. The Township entered into negotiations with Zeiger in an effort to develop mutually agreeable re-zoning in relation to the Township's affordable housing obligations. The parties executed the agreement on September 7, 2017, which included a draft ordinance and concept plan.

The executed settlement agreement stipulates that 10 acres on the property's northeast corner will be dedicated as a "commercial lot." The remaining developable land (19 acres) will consist of an inclusionary development. The inclusionary project will contain a total of 227 units (168 apartments and 54 townhomes), 36 of which will be affordable family rental units (26 apartments and 10 townhomes).

In an ordinance adopted July 23, 2018 (Ordinance 2018-21) the subject property was rezoned to the AH-1 Affordable Housing Zone, and on January 10, 2019, the Planning Board voted to approve the proposed development. The Township will apply the 36 family-rental affordable units produced from this site to its Third Round obligation. See Appendix D for all documentation.

The site meets the suitability criteria as follows:

- *Available:* The Zeiger property has been offered by its owner for an inclusionary development. The site has no easements or title issues preventing its development.
- *Suitable:* The site is located directly north of an established residential neighborhood. This residential neighborhood also extends southwest of the Zeiger property. The property is within Planning Area 2: Suburban Planning Area, which encourages growth.
- *Developable:* The site has a potable water source. The portion of the site to be developed for inclusionary development is within the sewer service area and has access to appropriate public streets. The property has frontage on Route 130 as well as Rising Sun Road. While a portion of the site is constrained by wetlands and the 100-year floodplain, these constraints are not on the portion of the site designated for the development of the inclusionary project.
- *Approvable:* A settlement agreement was executed between the developer and Township in September 2017. The units will be deed restricted for a period no less than 30 years. The site has been rezoned to permit the proposed inclusionary development. The proposed development received preliminary and final major site plan and subdivision approval from the Planning Board in January 2019.

Nissim

The Nissim property is located in the northern section of the Township, consisting of 22.3 total acres on Block 1.01, Lot 3 of the official Township tax map. The site has access from Route 206. An inclusionary development is proposed for the Nissim property that will consist of 272 total units with a mandatory affordable set-aside. The mandatory set-aside will result in 40 affordable, family rental units. The Township will apply the 40 units to its Third Round obligation. A Memorandum of

Understanding was executed between the Township and Nissim on August 18, 2018, and a redevelopers agreement was executed on September 10, 2018.

The Nissim property is a component of the Redevelopment Area that consists of Block 1.01, Lots 3-9, and 20. The area was designated as an “area in need of redevelopment” by the Township Committee in 2003. The Redevelopment Plan was adopted on April 24, 2018 and includes two land use districts: the Affordable Housing District and the Commercial District. The Commercial District will comprise the portion of the site that fronts directly on Route 206. The Affordable Housing District will be accessed by an existing roadway off Route 206 and will be located behind (to the west) of the Commercial District.

All documentation, including the adopted Redevelopment Plan and a concept plan, for the Nissim property can be found in Appendix C.

The site meets the suitability criteria as follows:

- *Available:* The Nissim property has been offered by its owner for an inclusionary development. The site has no easements or title issues preventing its development.
- *Suitable:* The site is located directly south of an established residential neighborhood and is within close proximity to a number of other residential areas. The area also has access to commercial services. The site is within Planning Area 1: Metropolitan Planning Area, which encourages growth.
- *Developable:* The site has a potable water source, is within the sewer service area, and has access to appropriate public streets. The property has frontage on Route 206, and the portion of the site designated for residential development is accessed by Nissim Avenue. Wetlands exist along the western perimeter of the site, adjacent to the Crosswick Creek. This portion of the property, however, is not within the developable area of the site.
- *Approvable:* The Memorandum of Understanding between the Township and Nissim was executed on August 21, 2018, followed by an executed redevelopment agreement on September 10, 2018. A Redevelopment Plan for the site was adopted on April 23, 2018. The Plan contains standards for the Nissim site regarding affordable housing.

VOA II

The VOA II site (Block 140.1, Lots 1.02, 2.01) has frontage along the east side of Route 130 across from the Bordentown Waterfront Community development. The VOA is proposing the construction of a 66-unit family rental 100% affordable project using 9% Low Income Tax Credits. VOA is a non-

profit that has developed numerous low-income tax credit projects, including the recently completed VOA I project in Bordentown. Documentation can be found in Appendix K.

The site meets the suitability criteria as follows:

- *Available:* The VOA property has been offered by the owner and VOA for a 100% affordable development. In 2018, VOA wrote a letter to the Township confirming that an Agreement of Sale had been executed between VOA and BWC for the subject property and that VOA intended to construct 66 family affordable units on the site.
- *Suitable:* The approximately 3-acre lot is adjacent to the recently constructed Quick Chek and backs up to the railroad. Access is proposed from an existing driveway from Route 130. The property is within Planning Area 2: Suburban Planning Area, which encourages growth.
- *Developable:* The site is serviced by public water and sewer. A small portion of the site is constrained by wetlands and is within the 100-year floodplain. These sections, however, are not part of the property's developable area.
- *Approvable:* VOA received preliminary major site plan approval from the Planning Board on June 14, 2018. VOA will be submitting an application for HMFA LITC this month.

Team Campus Phase II, LLC

Team Campus Phase II, LLC is the owner of a vacant parcel located at Block 58 Lot 37 on the Township's Tax Map, along Route 130. Subsequent to the Township executing the settlement agreement with FSHC, the Township and Team Campus Phase II, LLC began negotiations regarding the potential to construct age-restricted affordable housing on the subject property. The Township and Team Campus Phase II, LLC entered into a settlement agreement, dated October 9, 2018, that details the terms for development of the property. Pursuant to the settlement agreement, the subject property would be rezoned to permit development of 92 total age-restricted units, 19 of which will be affordable age-restricted units. Each affordable unit shall be developed in accordance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. ("UHAC") and will be deed restricted for a period of at least 30 years from initial occupancy. The 19 age-restricted units will be applied to the Township's Third Round. All documentation can be found in Appendix E.

The developer submitted an application for development to the Township and has been deemed complete. The application will be heard at the Planning Board during their August 2019 meeting.

The site meets the suitability criteria as follows:

- *Available:* The subject property was offered by its owner for an inclusionary age-restricted development. The site has no easements or title issues preventing its development.
- *Suitable:* The property is approximately 4.1 acres in size and has access to Route 130. The site is adjacent to established residential neighborhoods and is within State Planning Area 1: Metropolitan, which encourages growth. The property is within Planning Area 2: Suburban Planning Area, which encourages growth.
- *Developable:* The site is serviced by public water and sewer. There are no environmental constraints that limit development.
- *Approvable:* A settlement agreement was executed between the property owner and the Township on October 9, 2018. The settlement agreement additionally included a concept plan of the proposed development. The subject property was rezoned to the AR-AH Age-Restricted Affordable Housing Zone on November 19, 2018 via Ordinance 2018-28.

KJohnson Urban Renewal LLC (KJUR)

KJohnson Urban Renewal LLC (KJUR) is the owner of a parcel located at Block 57 Lot 6 on the Township's Tax Map, along Route 130. Subsequent to the Township executing the settlement agreement with FSHC, KJUR expressed interest to develop the property with a mixed-use inclusionary development. The Township entered into negotiations with KJUR in an effort to develop mutually agreeable rezoning for the subject property. As a result, the Township and KJUR entered into an agreement to rezone the property to permit the construction of up to 130 residential units in a mixed-use context, with a required 20% affordable set-aside, yielding up to 26 family affordable rental units. The Township and JKUR executed a settlement agreement on March 11, 2019. Each affordable unit shall be developed in accordance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. ("UHAC") and will be deed restricted for a period of at least 30 years from initial occupancy. The 26 units from the KJUR site will be applied to the Township's Third Round.

The subject property is part of the Agway (Growmark)/Yates Redevelopment Area. The Redevelopment Area was designated as an "area in need of redevelopment" in 2003 and a Redevelopment Plan was adopted in October 2007. The redevelopment Area consists of Block 57, Lots 1.02, 1.06, and 6 (the subject property). The overall purpose of the Redevelopment Plan is to provide mechanisms that support the revitalization of the former copper-foil manufacturing plant, old warehouses and grain silos. Since the Redevelopment Plan was adopted, a majority of

unconstrained portion of the Area has been developed with medical buildings, office space, and recreational facilities, all under the organization known as Team 85 Fitness & Wellness.

The proposed inclusionary development at Lot 6 is located on the northern side of the Redevelopment Area, abutting the train tracks and the adjacent property. This section of the Area is currently developed with old grain silos. The area designated for development is approximately 5 acres and is proposed to consist of two residential buildings and one mixed-use building. Access to the buildings will be through the existing developed site. A concept plan can be found in the settlement agreement, found in Appendix G.

The site meets the suitability criteria as follows:

- *Available:* The KJUR site has been offered by its owner for an inclusionary, mixed-use development. The site has no easements or title issues preventing its development.
- *Suitable:* The property has access to Route 130, and is within State Planning Area 1: Metropolitan, which encourages growth.
- *Developable:* The site is serviced by public water and sewer. There are no environmental constraints that limit development. A portion of the site in the southwest corner of the property is within the 100-year floodplain. The same area is also constrained by wetlands. These environmentally constrained areas are not within the developable portion of the site.
- *Approvable:* A settlement agreement was executed between the property owner and the Township on March 11, 2019. The settlement agreement directs the rezoning of the property for inclusionary, mixed-use development with 30-year deed restrictions on the affordable units. A concept plan was also attached to the settlement agreement. The subject property is within the Agway (Growmark)/Yates Redevelopment Area. The Redevelopment will be amended to accommodate the inclusionary, mixed-use development at the subject site.

Market to Affordable

Pursuant to N.J.A.C. 5:97, municipalities may implement a market-to-affordable program for both for-sale and for-rent units with a limit of 10 units or 10% of the fair share obligation, whichever is greater. The Township will utilize trust fund dollars to subsidize the conversion of 14 apartments into affordable, deed restricted units that will comply with COAH's regulations and the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. ("UHAC") including to affirmative marketing regulations, low/moderate-income split, and other terms, with the exception of requirements

related to very low income units and bedroom distribution. To the extent insufficient funds exist in the trust fund, the Township will adopt a resolution of intent to bond. The proposed 14 units is considerably less than 10% of the Township's obligation.

The existing housing within the Township lends itself to a market-to-affordable program. Of the Township's 1,052 existing rental units, the median contract rent is \$973 per month. Approximately 43% of renter-occupied units pay between \$700 and \$900 per month.⁵ The upper monthly rental limit (including utilities for a 1.5-person moderate-income household (1-bedroom unit) in Region 5 is \$1,352. The upper monthly rental limit for a 3-person moderate-income household (2-bedroom unit) is \$1,622 in Region 5. The median contract rent of \$973 more closely parallels the rental limit of low-income households as follows. The upper monthly rental limit (including utilities) for a 1.5-person low-income household (1-bedroom unit) is \$845 per month. The upper monthly rental limit for a 3-person low-income household (2-bedroom unit) is \$1,014.⁶

Much of the existing rental housing stock is available at rents at or close to the affordability limits for low- and moderate-income households. As a result, the Township is particularly suitable for a viable market-to-affordable program. The following are examples of existing rental apartment complexes that may be feasible candidates for implementing a market-to-affordable program:

Name	Address	Year	Units	1BR	2BR
Southgate and Rydal Apartments	272 Ward Avenue	1962	316	\$995 - \$1,200	\$1,200
Pointe Breeze Apartments LLC	710 Hwy 206	1966	100	\$1,200 - \$1,395	\$1,360 - \$1,625
Laurel Run Village Apartments	1021 US-206	1964	59	\$1,125 - \$1,175	\$1,375 - \$1,450

Existing Supportive and Special Needs Housing

The Township will apply 16 credits from four existing supportive and special needs facilities to its Third Round obligation. Documentation for the following facilities can be found in Appendix L.

Oaks Integrated Care – 3 Berkshire Court

Oaks Integrated Care operates two facilities within the Township. One is located at 3 Berkshire Court, Block 92.06 Lot 22.035 on the Township's tax map, and is a supportive two-bedroom shared housing facility that contains two bedrooms, occupied by very low-income households.

⁵ 2013-2017 American Community Survey 5-Year Estimates

⁶ Numbers are derived from the Moderate-Income Limit for Region 5 in 2019, pursuant to the income limits released by the Affordable Housing Professionals of New Jersey (AHPNJ). 30% of the moderate-income was utilized to determine the upper limit of what could be spent on housing before a household becomes cost burdened.

Oaks Integrated Care - 12 Lancaster Court

The second facility Oaks Integrated Care operates is located at 12 Lancaster Court, Block 92.05 Lot 22.191 on the Township's tax map. This facility is a supportive shared housing facility Care that contains two bedrooms, occupied by very low-income households.

5 Independence Drive

The facility at 5 Independence Drive, Block 101 Lot 13 on the Township's tax map, is a licensed group home that contains five bedrooms, serving those with traumatic brain injuries. The facility is operated by Mentor ABI.

141 Old York Road

The facility at 141 Old York Road, Block 93 Lot 1.02 of the Township's tax map, is a licensed group home operated by Catholic Charities, Diocese of Trenton. The facility contains 3 bedrooms, occupied by very low-income households, and 4 bedrooms that are occupied by low-income households.

Block 66 Lots 13 and 14

On June 24, 2019, the Township passed Ordinance 2019-10 (see Appendix M) approving the purchase of Block 66 Lots 13 and 14 (179 and 181 Crosswicks Road) for affordable housing for \$250,000, provided from the Township's Affordable Housing Trust Fund. An additional \$50,000 from the Trust Fund will be utilized to demolish the existing structures. It is anticipated Habitat for Humanity will be the "developer" of the two sites, which will produce a minimum of 4 affordable units.

The Township has fully satisfied its 425-unit Third Round obligation:

Third Round Obligation	425	Rental Bonus Credit
Bradford Point	10	10
BWC	18	-
VOA-I	69	5
Zeiger	36	36
Nissim	40	40
VOA II	66	66
Team Campus Phase II, LLC (senior)	19	-
KJohnson Urban Renewal LLC KJUR	26	-
Market to Affordable	14	-
Supportive and Special Needs Housing	16	16
Block 66 Lots 13 and 14	4	-
Total Units	318	-
Total Rental Bonus Credits	-	107
TOTAL	424 credits	

SUMMARY OF FAIR SHARE COMPLIANCE

Present Need	11	
Rehabilitated units since April 1, 2010 through the Burlington County HOME Program	6	
Proposed rehabilitated units through continued participation in the County HOME program	5	
<i>Present Need Total</i>	<i>11 credits</i>	
Prior Round Obligation	211	Rental Bonus Credit
Bradford Point	168	43
<i>Prior Round Total</i>	<i>211 credits</i>	
Third Round Obligation	425	Rental Bonus Credit
Bradford Point	10	10
BWC	18	-
VOA-1	69	5
Zeiger	36	36
Nissim	40	40
VOA II	66	66
Kevin Johnson (senior)	19	-
Kevin Johnson (family)	26	-
Market to Affordable	14	-
Supportive and Special Needs Housing	16	16
Block 66 Lots 13 and 14	4	-
Sub-Total	318	
Rental Bonus Credits*	107	107
<i>Third Round Total</i>	<i>425 credits</i>	

*425 x 0.25 rental bonus cap = 107 (rounded up)

Unit-breakdown

Income Breakdown Analysis - Bordentown Affordable Housing								
Development	# of Total AH Units	VL	Low	Mod		Rental	Family	Senior
Bradford Pointe (constructed prior to 7/1/2008)	168	-	At least 84	No more than 84		168	168	-
BWC	18	2	At least 7	No more than 9		18	18	-
VOA I	69	9	At least 26	No more than 34		69	5	64
Zeiger	36	5	13	18		36	36	-
Nissim	40	9	11	20		40	40	-
VOA II	66	9	At least 24	No more than 33		66	66	-
Team Campus	19	2	At least 7	No more than 9		19	-	19
KJUR	26	4	9	13		26	26	-
Market to Affordable	14	2	At least 5	No more than 7		14	14	-
Supportive need	16	16	-	-		16	16	-
Block 66	4	unknown	unknown	unknown		unknown	unknown	unknown
TOTALS	476	58	At least 186	No more than 227		285	221	83

Very-Low Breakdown:

Total Affordable Units Constructed After 7/1/2008:	308		
		Required	Proposed
13%:		40	58
50% Required to be Family:		20	52

Senior Breakdown:

Total Affordable Units:	476		
		Permitted	Proposed
25% cap on Senior:		119	83

ADDITIONAL REQUIREMENTS

Very Low-Income Requirement: The Township will ensure that 13% of all of the affordable units, with the exception of units constructed as of July 1, 2008 and units subject to preliminary or final site plan approval prior to that date, will be affordable to very low-income households. Half of the very low-income units will be made available to families.

Rental Bonus Credits: All rental bonus credits claimed in this plan have been applied in accordance with N.J.A.C. 5:93-5.15(d).

Low/Moderate Income Split: At least half of the units addressing the Township's obligation shall be affordable to very-low income and low-income households, and the remaining will be affordable to moderate-income households.

Rental Requirement: At least 25% of the Township's obligation will be met through rental units, and at least half of these units will be available to families.

Round 3 Family Requirement: At least half of the units addressing the Township's obligation will be available to families.

Age Restricted Cap: The Township agrees to comply with COAH's Round 2 age-restricted cap of 25%. The Township is not requesting a waiver to exceed the age-restricted cap.

Spending Plan: The Township will prepare a Spending Plan. The Township will ask the Court to approve the Spending Plan so that the Township's Affordable Housing Trust Fund monies can be expended.

Affirmative Marketing: The individual developers will be responsible to ensure that proper affirmative marketing of all of the affordable units is properly implemented.

UHAC: All affordable units created through the provisions of this Plan shall be developed in conformance with the Uniform Housing Affordability Controls (UHAC) pursuant to N.J.A.C. 5:80-26.1 et seq. with the exception of the very-low income requirement as described above.

APPENDIX A

Bordentown Waterfront Community (BWC)

- 2012 Order Dismissing Litigation Without Prejudice and Granting Immunity and Repose (May 3rd and May 9th Orders)
- 2016 Planning Board Resolution (P-2016-16) approving development
- 2018 Approved Site Plan

LAW OFFICE OF PETER C. LANGE
ATTORNEY AT LAW

(609) 654-6300

150 Himmelein Road
Medford, NJ 08055

(609)654-5919 fax

June 1, 2012

Bordentown Township Planning Board
Attn: Frank Nucera, Acting Administrator
1 Municipal Drive
Bordentown, NJ 08505

Re: In the Matter of the Application of the Township of Bordentown
Docket Nos.: BUR-L-2454-06

Dear Mr. Nucera:

Pursuant to our telephone conversation and your direction I have distributed the Site Suitability information required by the Courts May 3, 2012 Order in the above-referenced matter.

Of course, it is necessary to comply with that Order in order to continue the immunity afforded the Township from inclusionary housing or builder remedy suits. The Order establishes compliance for the Township pursuant to the Third Round Methodologies and Rules adopted by the New Jersey Council on affordable Housing.

In addition to the Suitability information related to the Affordable Housing obligation generated by the Bordentown Waterfront Community Development, the May 9, 2012 Order of the Court requires that the Township demonstrate its ongoing participation under the Interlocal Services Agreement entered into by and between the Township and Burlington County for participation in the Burlington County Home Improvement program. Thus, I am requesting that you provide me with a copy of the Township's ongoing Interlocal Services Agreement to that effect immediately as the Court Order originally called for provision of this material by May 11, 2012.

I have attached copies of both Orders for your convenience and review. Should you have any questions or concerns regarding this matter please do not hesitate to contact me directly.

Thank you for the opportunity to be of service to Bordentown Township.

Sincerely,

Peter C. Lange, Jr.

PETER C. LANGE, JR.

PCL/tas

Encs.

cc: Colleen Eckert, Township Clerk (w/encs.)

FILED with the Court

MAY - 9 2012

Ronald E. Bookbinder, A.J.S.C.

FAIR SHARE HOUSING CENTER, INC.
510 Park Boulevard
Cherry Hill, NJ 08002
(856) 665-5444
Adam M. Gordon, Esq

**IN THE MATTER OF THE
APPLICATION OF THE
TOWNSHIP OF BORDENTOWN**

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
BURLINGTON COUNTY

DOCKET NO. BUR-L-2454-06
CIVIL ACTION (MT. LAUREL)

**ORDER DISMISSING LITIGATION
WITHOUT PREJUDICE AND GRANTING
IMMUNITY AND REPOSE**

WHEREAS, the Township of Bordentown ("Township" and/or "Bordentown Township") prepared and filed a third round Housing Element and Fair Share Plan (collectively "Compliance Plan") in 2008 based upon the third round methodologies and rules adopted by the New Jersey Council on Affordable Housing ("COAH") both of which were intended to be reviewed by the Court at a Compliance Hearing upon adequate notice to the public; and

WHEREAS, the Appellate Division in In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing (Appellate Docket No. A-582-07T3, argued December 1, 2009, decided October 8, 2010) invalidated COAH's growth share rules and methodologies and COAH has yet to promulgate new third round rules or announce revised third round fair share numbers which impacts Bordentown Township's ability to understand what its third round affordable housing obligations are and/or prepare a revised third round Compliance Plan; and

WHEREAS, the Appellate Division in In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, supra, “decline[d] to issue a blanket stay of proceedings before COAH or in the courts pending completion of a remand to COAH” in view of “the fact that more than ten years have now elapsed since expiration of the second round rules”;

WHEREAS, the Supreme Court granted five petitions for certification appealing the Appellate Division’s rule invalidation decision on March 31, 2011 and there is no indication at present as to when the matters will be disposed of by the Court; and

WHEREAS, Bordentown Township is fully compliant under the First and Second Rounds and the units called for in those Rounds have actually been constructed; and

WHEREAS, the Township has at least 10 surplus credits beyond its First and Second Round obligations available for crediting towards Third Round obligations; and

WHEREAS, on May 7, 2012, the parties entered into a consent order allowing the Township Planning Board, Bordentown Waterfront Community (“BWC”) and Fair Share Housing Center (“FSHC”) to intervene in the matter and amend the resolutions relating to BWC, to clarify the language relating to affordable housing in order to provide a realistic opportunity for additional affordable units (fifteen (15%) percent – currently 101 affordable units of the total of 671 units approved) towards Third Round obligations; and

WHEREAS, the Township also continues to pursue additional opportunities to address its Third Round obligations; and

WHEREAS, Bordentown Township has a Rehabilitation obligation of 21 units and has made progress towards meeting this obligation, by entering into an agreement with Burlington County to participate in the County’s Owner-Occupied Rehabilitation Loan Program, with

potentially 8 completed units pursuant to that Program, and establishing a schedule for implementing the remaining 13 units; and

WHEREAS, Bordentown Township provided public notice of a Fairness Hearing in this matter on April 2, 2012 via publication in the *Burlington County Times* on April 2, 2012 and through actual notice to all parties and the organizations specified in the May 7, 2012 Consent Order with an opportunity for any interested party to submit comments concerning the dismissal of this matter and continued immunity for the Township; and

WHEREAS, a Fairness Hearing was held before this Court on May 7, 2012; and

WHEREAS, in light of the aforementioned circumstances, including the credits that exist and are creditable toward the Township's Third Round obligation, the Township's fulfillment of its Prior Round obligation in full, the Township's plan to meet its rehabilitation obligation, and conditioned on the execution of the consent order dated May 7, 2012 and the amendment of the Planning Board Resolutions to clarify the affordable units that BWC is obligated to provide as discussed therein, the trial court has determined that further proceedings at this time, in accordance with In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, supra, are not necessary or appropriate and thus has elected to dismiss the within third round declaratory judgment proceedings without prejudice and provide the Township with continued immunity and repose against exclusionary zoning challenges and builder's remedy suits until new third round fair share numbers have been announced and new ^{9th} third round rules are in place.

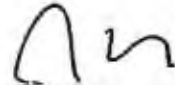
IT IS on this ^{9th} day of May, 2012 ORDERED:

1. Bordentown Township is fully compliant under the First and Second Rounds and has provided a realistic opportunity for a significant number of credits towards its

Third Round obligations and as such, the within declaratory judgment proceedings shall be dismissed without prejudice upon the final amendment of the Planning Board resolutions as provided for in the consent order dated May 7, 2012.

2. The Township shall continue to cooperate with any and all needed approvals, permits, and other reasonable and customary governmental actions necessary to complete the BWC development.
3. The Township shall provide the Special Master with a copy of Township's ongoing Interlocal Services Agreement with the County for participation in the Burlington County Home Improvement Program by May 11, 2012.
4. The Township shall market the Burlington County Home Improvement Program by including flyers on the County program with the Township's property tax bills and by providing information on the County's rehabilitation program on its Township webpage.
5. The Township shall provide the Court, Special Master and Fair Share Housing Center with annual status reports reporting on its progress in addressing the Third Round including the County rehabilitation program, the BWC affordable units and any other affordable housing compliance efforts with the first status report due on June 1, 2013.
6. The Township is granted immunity from litigation through the time for submission of a Third Round compliance plan, once established by regulation, statute, or decision of a court with appropriate jurisdiction.

7. The Township shall include the affordable units resulting from a fifteen (15%) percent affordable housing setaside (currently 101 affordable units of a total of 671 units approved) at BWC in its Third Round compliance plan and the additional opportunities that it is pursuing once it is required to adopt such a plan pursuant to regulation, statute, or decision of a court with appropriate jurisdiction.
8. Mary Beth Lonergan, P.P., A.I.C.P. shall remain as Special Master for the Township during the period to which the Township executes the terms, conditions and directives of this Order.
9. Counsel shall file a copy of this Order with the Court's Master and COAH or its successor agency within five (5) days of receipt.



Ronald E. Bookbinder, A.J.S.C.

FAIR SHARE HOUSING CENTER, INC.
510 Park Boulevard
Cherry Hill, NJ 08002
(856) 665-5444
Adam M. Gordon, Esq.

FILED with the Court
MAY - 3 2012

Ronald E. Beckhinder, A.J.S.C.

IN THE MATTER OF THE
APPLICATION OF THE
TOWNSHIP OF BORDENTOWN

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
BURLINGTON COUNTY

DOCKET NO. BUR-L-2454-06
CIVIL ACTION (MT. LAUREL)

CONSENT ORDER ESTABLISHING
INTERVENTION OF PARTIES AND
HEARING UPON BORDENTOWN
TOWNSHIP'S APPLICATION FOR
DISMISSAL AND CONTINUED IMMUNITY

This matter having come to the Court in response to the Court's instructions to the Special Master to determine what steps are necessary to dismiss this matter and provide continued immunity to the Township of Bordentown ("Township" and/or "Bordentown") based on the Township's demonstrating compliance with the Mount Laurel doctrine; and

WHEREAS, the Township prepared and filed a third round Housing Element and Fair Share Plan (collectively "Compliance Plan") in 2008 based upon the third round methodologies and rules adopted by the New Jersey Council on Affordable Housing ("COAH") both of which were intended to be reviewed by the Court at a Compliance Hearing upon adequate notice to the public; and

WHEREAS, the Appellate Division in In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 416 N.J. Super. 462 (App. Div.

ENTERED

2010), invalidated COAH's growth share rules and methodologies and neither COAH or a successor agency has yet to promulgate new third round rules or announce revised third round fair share numbers which impacts Bordentown's ability to understand what its third round affordable housing obligations are and/or prepare a revised third round Compliance Plan; and

WHEREAS, the Appellate Division in In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing supra, 416 N.J. Super. at 512, "declin[d] to issue a blanket stay of proceedings before COAH or in the courts pending completion of a remand to COAH" in view of "the fact that more than ten years have now elapsed since expiration of the second round rules";

WHEREAS, the Supreme Court granted five petitions for certification appealing the Appellate Division's rule invalidation decision on March 31, 2011 and there is no indication at present as to when the matters will be disposed of by the Court; and

WHEREAS, the Township now seeks to demonstrate compliance with its Prior Round and Rehabilitation obligations and to demonstrate that it has met part of its Third Round obligation, in order to secure the dismissal of this action without prejudice and continued immunity and repose against exclusionary zoning challenges and builder's remedy suits until new third round fair share numbers have been announced and new third round rules are in place, and to seek a Fairness Hearing for that purpose; and

WHEREAS, after the Township adopted its Housing Element and Fair Share Plan in December 2008, the Township granted preliminary site plan approval to Bordentown Waterfront Community, LLC ('BWC') for Block 140, Lot(s) 5-16 and 19 and Block 141, Lot(s) 4, located at U.S. Route 130 and CR 662 on September 10, 2009; amended preliminary and final site plan approval and preliminary and final subdivision site plan approval for improvements to Block

140, Lot(s) 5-8; and amended preliminary site plan approval for Block 140, Lot(s) 10-19, and Block 141, Lot(s) 4, located at US Route 130 and CR 662 on January 14, 2010; and

WHEREAS, in the September 10, 2009 Resolution for preliminary site plan approval, applicant BWC proposed in paragraph 5 as a condition of receiving preliminary site plan approval to "construct a total of 648 dwelling units in various configurations. Applicant proposes 358 units of rental housing and 290 condominiums/townhouses. Applicant proposes an affordable housing component of 97 units to be provided on site"; and

WHEREAS, the preliminary site plan approval also states "The applicant is required as a condition of this approval to meet the obligation generated by the development in effect at the time the applicant receives its final certificate of occupancy. The applicant further agrees that the affordable housing requirement will be distributed evenly among all uses and phases of the entire project except to the extent that Applicant coordinates the number of disabled and senior affordable housing units in Building 5 of Phase I, which shall also be determined at Final Site Plan approval"; and

WHEREAS, in the January 14, 2010 resolution for amended preliminary and partial final site plan approval of BWC, the total number of units on the site was increased from 648 to 674, with no change to the total number of affordable units. The resolution restated that "The applicant is advised that the development will result in a required contribution for affordable housing in accordance with the standards set forth in Regulations adopted by the New Jersey Council on Affordable Housing (C.O.A.H.). The applicant is required as a condition of this approval to meet the obligation generated by the development in effect at the time the applicant receives its final certificate of occupancy. The applicant further agrees that the required percentage of affordable housing will be met as final site plans are approved." The resolution

further provided, consistent with the preliminary approval, that in granting final site plan approval for Phase I that "applicant shall provide sixty one (61) COAH units which shall be deed restricted. Applicant is permitted one (1) management unit, that when it ceases to be a management unit, if ever, it shall be deed restricted to become a COAH unit"; and

WHEREAS, in a November 2011 resolution for amended preliminary site plan approval of BWC, the total number of units was decreased from 674 to 671, with no change to the total number of affordable units;

WHEREAS, BWC constitutes a feasible near-term site in the Township to meet a substantial portion of its future Third Round obligations, and the Township and the Planning Board of the Township of Bordentown seek to clarify the above-quoted language to demonstrate that that site presents a realistic opportunity for low- and moderate-income housing in order to secure dismissal of this action without prejudice and continued immunity;

WHEREAS, in order to demonstrate a realistic opportunity on the BWC site the court has deemed it appropriate to grant intervention in this matter with the Township's consent to the Planning Board of the Township of Bordentown, a municipal entity of the state of New Jersey; BWC, a limited liability company of the state of Delaware with principal offices at 19 Longview Drive, Princeton, NJ 08540-5636; and Fair Share Housing Center ("FSHC"), a nonprofit corporation of the State of New Jersey with principal offices at 510 Park Blvd., Cherry Hill, NJ 08002.

IT IS on this ^{May} 3 day of ~~April~~, 2012 ORDERED:

1. The Planning Board of the Township of Bordentown, BWC, and FSHC are hereby granted intervention in this matter.

2. Within 30 days of the entry of this order, the Planning Board shall modify the preliminary site plan approval for Bordentown Waterfront Community, LLC ("BWC") granted on September 10, 2009 and the amended preliminary site plan approval for BWC and final site plan approval and preliminary and final subdivision approval for Phase I of BWC granted on January 14, 2010 in order to clarify the affordable housing provisions of said approvals and ensure a realistic opportunity for fifteen percent (15%) of the total number of units approved to be set aside as affordable housing. The modification shall contain the following language as new conditions of said approvals:

- a. The applicant, regardless of any future changes in law even if such changes may require a lower or higher affordable housing obligation generated by such development or do not require any affordable housing obligation attributable to any particular development, shall provide fifteen percent (15%) of the total number of units approved (currently 101 affordable units of the total 671 units approved) of affordable housing on site or off-site (as described below) which shall meet all standards of the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et. seq. and provide deed restrictions for use by very-low, low, and moderate-income households of at least 30 years.
- b. 61 of those units shall be provided on-site in the senior development referred to as Building 5 in Phase 1. The remaining required affordable units shall be provided on- or off-site and distributed evenly among all uses and phases of the entire project that follow Phase 1 as a requirement of final site plan approval and integrated into those phases consistent with the tenure and age

restriction, or lack thereof, of the market rate units in each phase pursuant to the phasing schedule noted below in 2(c) and, provided that if units are to be provided off-site notice shall be provided to the Special Master and all parties who have previously appeared in In the Matter of the Application of the Township of Bordentown and the units may only be provided off-site if the Special Master, after a 15-day comment period after receipt of notice from all parties, finds that the units so provided present a realistic opportunity on a suitable site for the same number of units of affordable housing satisfying a new construction obligation that would have been provided on-site. Any party may appeal the decision of the Special Master within a 15-day period to the Superior Court, Law Division, Burlington County, provided that absent such an appeal being filed the determination of the Special Master will be final.

c. Construction and completion of required on-site or-off-site affordable housing shall take place simultaneously with the development of the market-rate units, in accordance with the following construction and completion phasing schedule, and as such any phase that pursuant to this schedule does not require affordable units shall not be required to have affordable units provided in that phase:

Maximum Percentage of
Market-Rate Units Completed
and Certificates of Occupancy Issued

Minimum Percentage of
Low- and Moderate-Income
Units Completed and
Certificates of Occupancy
Issued

25%
25%+1
50%
75%
90%

0
10%
50%
75%
100%

- d. The applicant further agrees that the required percentage of affordable housing will be met as final site plans are approved.
3. The Court will conduct a hearing, upon adequate notice to the public with respect to this matter on May 7, 2012 at 3:30 a.m./p.m.
4. The form of notice attached hereto as Exhibit A is hereby approved as to content and sufficiency upon insertion of the time and date of the hearing as specific in Paragraph 3 (above). Further, the notice shall specify that all written comments, concerns or objections to the affordable housing plan and proposed judgment must be filed with the Court and all parties set forth in the notice no later than May 2, 2012. The notice will be published in the newspapers as set forth below by the Bordentown Township Municipal Clerk forthwith.
5. The Municipal Clerk of Bordentown Township shall make all previously adopted affordable housing plans, including all attachments, and all adopted Planning Board and Township Council resolutions concerning the BWC site that discuss its affordable housing obligations, available for public inspection and photocopying as of the date that the notice is published. The clerk shall also make a copy of this order available.
6. A copy of the said hearing notice shall be published in the *Burlington County Times* newspaper and in the *Courier Post* newspaper at least 30 days prior to the deadline for the submission of written comments, objections and concerns set forth in Paragraph 4 (above), with copies likewise being mailed on or prior to publication by certified mail, return receipt requested to all parties to this action or any consolidated action, any entity that owns property that is affected by the within action and the following agencies and/or affordable housing advocacy groups:

New Jersey Council on Affordable Housing/Department of Community Affairs
101 South Broad Street
PO Box 813
Trenton, NJ 08625-0813

Burlington County Planning Board
P.O. Box 6000
Mount Holly, NJ 08060

Jeffrey B. Albert
Bordentown Waterfront Community, LLC
Princewood Properties
19 Longview Drive
Princeton, NJ 08540

Michael Gross, Esq.
Giordano, Halleran, & Ciesla
P.O. Box 190
Middletown, NJ 07748-0190

Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002

Moorestown Ecumenical Neighborhood Development Corporation
99 East Second Street
P.O. Box 828
Moorestown, NJ 08057

Burlington County Community Action Program
718 Route 130 South
Burlington, NJ 08016

Family Service
770 Woodlane Road, Suite 63
Mount Holly, NJ 08060

7. Counsel for the Township shall file proofs of publication, posting and mailing five (5) days prior to the hearing.
8. The Court-appointed master, Mary Beth Lonergan, PP, AICP, will furnish to the Court and all parties of record a copy of her master's letter report reviewing the

Township's request for a third round stay. Such letter report will be submitted as well as placed on file with the Bordentown Township's Clerk prior to the hearing date set forth in Paragraph 3.

9. Counsel shall file a copy of this Order with the Court's Master and COAH or its successor agency within five (5) days of receipt.



Ronald E. Bookbinder, A.J.S.C.

The undersigned hereby consent to the form and entry of this order.

Anthony T. Drollas, Jr., Esq.
Counsel for Bordentown Township

Adam M. Gordon, Esq.
Counsel for Fair Share Housing Center

Peter Lange, Esq.,
Counsel for Bordentown Township Planning Board

Michael Gross, Esq.
Counsel for Bordentown Waterfront
Community, LLC

Jul 30 2001 1:54

P.11

05/01/2012 TUE 12:20 FAX 8566638182 FAIR SHARE HOUSING CTR

010/013

EXHIBIT A

NOTICE OF MOUNT LAUREL COMPLIANCE HEARING FOR THE TOWNSHIP OF BORDENTOWN, COUNTY OF BURLINGTON

NOTICE IS HEREBY PROVIDED that the Township of Bordentown in the County of Burlington has requested the Superior Court of New Jersey to dismiss, without prejudice, Docket No. BUR-L-2454-06, a declaratory judgment action filed by Bordentown Township for purposes of meeting its obligation to provide a realistic opportunity to satisfy its rehabilitation and prior cycle "fair share" of the regional need for housing affordable to low and moderate income households pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., the substantive regulations of the former New Jersey Council On Affordable Housing ("COAH"), and other applicable laws. The Township and its Planning Board seek a prior round Judgment of Compliance and Repose, a temporary stay for satisfying further third round obligations, and a dismissal without prejudice of the Township's Mount Laurel declaratory action pending further determination of the Township's third round affordable housing obligations.

The Township has previously met its 211-unit Prior Round fair share obligations with the already-constructed Bradford Pointe development, and proposes to meet its 21-unit Rehabilitation fair share obligation through rehabilitation of units through Burlington County's Owner-Occupied Rehabilitation Loan Program, and to meet a share of its Third Round obligation through the 15 percent affordable housing set-aside (currently 101 units) in the Bordentown Waterfront Community, LLC site, including 61 homes to be developed by Lutheran Social Ministries to assist lower-income senior citizens as part of Phase I in that project.

All of the Township's second and third round Housing Element and Fair Share Plans (collectively "Affordable Housing Plan") and relevant documents regarding the Bordentown Waterfront Community, LLC site have been filed with the Court previously and copies of same are available for public inspection and photocopying at the Office of the Bordentown Municipal Clerk, 1 Municipal Drive, Bordentown, New Jersey 08505 during normal business hours.

NOTICE IS FURTHER PROVIDED that the Honorable Ronald E. Bookbinder, A.J.S.C. will conduct a hearing on May 7, 2012 at ____ a.m./p.m. in his 7th Floor Courtroom in the Burlington County Courts Facility, 49 Rancocas Road, P.O. Box 6555, Mount Holly, New Jersey 08060 to review and evaluate the Township's satisfaction of its fair share obligations for all three housing cycles pending the adoption of revised Third Round obligations. All interested parties are hereby given an opportunity to appear and be heard at this Compliance Hearing to present any position on this matter. Any party that

seeks to appear and be heard is directed to file written comments, concerns or objections with the Court no later than May 2, 2012 with duplicate copies being forwarded to the attention of the following:

Coleen M. Eckert, Clerk
Bordentown Township
1 Municipal Drive
Bordentown, NJ 08505

Anthony Drollas, Esquire
Capehart & Scatchard, P.A.
142 West State Street
Trenton, NJ 08608

Jeffrey Albert
Bordentown Waterfront Community, LLC
Princewood Properties
19 Longview Drive
Princeton, NJ 08540

Michael Gross, Esq.
Giordano, Halleran, & Ciesla
P.O. Box 190
Middletown, NJ 07748-0190

Peter Lange, Esq. Law
Office of Peter C. Lange
150 Himmelein Road
Medford, NJ 08055

Mary Beth Lonergan, PP, AICP
Clarke Caton Hintz
100 Barrack Street
Trenton, NJ 08608

Adam M. Gordon
Fair Share Housing Center
510 Park Blvd.
Cherry Hill, NJ 08002

The Court-appointed master, Mary Beth Lonergan, PP, AICP, will furnish to the Court and all parties of record a copy of her master's letter report reviewing the Township's request for a third round stay. Such letter report will be submitted as well as placed on file with the Bordentown Township's Clerk prior to the hearing date.

This Notice is intended to inform all interested parties of the Township's submission of its compliance documents detailing its compliance with its Rehabilitation Share and Prior Round obligations

and its Third Round stay request to the Court for review. This Notice does not indicate any view by the Court as to the present adequacy of the Township's affordable housing efforts.

Anthony Drollas, Esquire
Capehart & Scatchard, P.A.
142 West State Street
Trenton, New Jersey 08608

**PLANNING BOARD
TOWNSHIP OF BORDENTOWN**

**Application No.: PB 2016-0036
Resolution No.: P-2016-16**

ON THE APPLICATION OF BORDENTOWN WATERFRONT COMMUNITY, LLC. FOR APPROVAL OF AN AMENDED PRELIMINARY AND FINAL MAJOR SITE PLAN WITH VARIANCES AND FOR APPROVAL OF A MAJOR SUBDIVISION FOR THE PROPERTY IDENTIFIED ON THE TAX MAP OF THE TOWNSHIP OF BORDENTOWN AS BLOCK 140, LOTS 5-8, 10-16, 18 AND BLOCK 141, LOT 4, MORE COMMONLY KNOWN AS THE BORDENTOWN WATERFRONT COMMUNITY (PHASE II)

WHEREAS, Bordentown Waterfront Community, LLC (“the Applicant” or “Bordentown Waterfront Community” or “BWC”) owns the subject property and has filed an Application for approval of Amended Preliminary and Final Major Site Plan and for approval of Preliminary and Final Major Subdivision Plan with certain variances from certain setback requirements and design variances as more specifically described herein as well as a design waiver as to the size of the parking stalls; and

WHEREAS, the property is located within the Waterfront Village Redevelopment Zone (WV) and the underlying Research Engineering and Office (REO) Zone; and

WHEREAS, the within Application seeks the Board’s approval of the Applicant’s proposed Amended Site Plan and a Subdivision Plan in which the total number of proposed residential units as part of this Amended Preliminary and Final Subdivision Application is reduced to a total of 361 units; and

WHEREAS, the Board found that all jurisdictional requirements of the Bordentown Township Code (“Code”) with respect to notice have been satisfied and that the modification sought with respect to the submission requirements has been modified or waived by affirmative

vote of the Board, in which the Board deemed the Application complete on May 12, 2016, subject to three submission waivers; and

WHEREAS, the Board found that that all procedural requirements of the Code have been either satisfied or waived by the Board; and

WHEREAS, the Applicant submitted an affidavit of mailing and publication to the Board demonstrating that notice of the hearing on the application was provided in a manner which complies with the applicable notice requirements under the Municipal Land Use Law (“MLUL”); and

WHEREAS, the Applicant was represented by Paul Schneider, Esq. of Giordano, Halleran & Ciesla; and

WHEREAS, the Board has considered the Application, the testimony presented, the documents presented and marked into evidence, and considered the arguments submitted by the Applicant’s counsel, Paul Schneider, Esq., having appeared on behalf of the Applicant on May 12, 2016 and July 14, 2016, as well as having heard and considered the representations and testimony of the Applicant’s authorized representatives that the Applicant agreed to certain conditions for approval; and

WHEREAS, the Board has considered the recommendations and comments of its professional staff, namely the comments in the report letters dated June 7, 2016 and July 8, 2016 by the Board’s Traffic Engineer, James L. Kochenour, P.E., P.P., as well as the report letter of June 6, 2016 and July 8, 2016, by the Board’s Professional Planner, Jack Carman, P.P., as well as the report letter of June 6, 2016 and July 11, 2016 by the Board’s Professional Engineer, Frederick J. Turek, II, P.E., P.P., C.M.E., as well as the joint completeness review letter dated May 5, 2016 submitted by both the Board’s Professional Planner and the Board’s Professional

Engineer, and the comments and recommendations made by each of the professionals at the hearings; and

WHEREAS, the testimony and representations made by authorized representatives of the Applicant at the hearing during which the Applicant agreed to the conditions imposed by the Board that were stated in support of the Application having been made on the record, considered by the Board, are material to the Board's consideration of the matter and are all incorporated herein; and

WHEREAS, the Board held a hearing on this Application in two sessions on May 12, 2016 and July 14, 2016, in which the Board reviewed the Application and the variances sought, and on May 12, 2016 found the Application to be complete; and

WHEREAS, during the hearings on this application the Board reviewed the Application and the following documents, testimony and submissions were presented:

Section 1. Submissions and Testimony of Record at the Hearings. In reaching its decision, the Board relied on the submissions, exhibits, and witness testimony identified below:

a. *The Applicant's submissions:*

- Completed Application form with Amended Preliminary and Final Site Plan and attachments consisting of Site Preparation Plan, Overall and Phasing Plan, Layout and Dimensioning Plan, Grading Plan, Utility Plan, Soil Erosion and Sediment Control Plan, Landscape Plan A, Landscape Plan B, Landscape Plan C, Lighting Plan A, Lighting Plan B, Landscape Details, Profiles, Soil Erosion and Sediment Control Details, Construction Details, Construction Details by Others, Foundation Plan- Part A, Final Subdivision Plat, and Amended Stormwater Management Report;

b. *Reports from Board professionals.* The Board considered the following reports from its Professionals in addition to their comments at the hearing:

- Review letters of June 6, 2016 and July 8, 2016 from Design for Generations, LLC, Jack Carman, FASLA, LLA, P.P.
- Review letters of June 6, 2016 and July 11, 2016 from Turek Consulting, LLC, Frederick J. Turek, II, P.E., P.P., C.M.E.
- Review letters of June 7, 2016 and July 8, 2016 by the Board's Traffic Engineer, James L. Kochenour, P.E., P.P.

- A joint completeness review letter dated May 5, 2016 submitted by both the Board's Professional Planner and the Board's Professional Engineer,

c. *Exhibits marked and accepted into evidence during the public hearings:*

May 12, 2016:

- Exhibit A-1: Aerial photograph from 2015 with superimposed proposed landscape.
- Exhibit A-2: Prior preliminary approval.
- Exhibit A-3: Reduced version of Exhibit A-1.
- Exhibit A-4: Comparison of units- Proposed versus Prior Approval.
- Exhibit A-5: Aerial photograph of Amphitheater prototype dated 05/06/2016.
- Exhibit A-6: Color rendering of Amphitheater and stage area.
- Exhibit A-7: Plans for Building A
- Exhibit A-8: Plans for Building B
- Exhibit A-9: Floor plans for corner two-bedroom unit; one-bedroom; and one-bedroom with den.
- Exhibit A-10: Architectural rendering of exterior with elevations for Building A.
- Exhibit A-11: Building B.
- Exhibit A-12: Colored rendering of townhomes.
- Exhibit A-13: Colored rendering of apartments.
- Exhibit A-14: Floor Plans with elevations.

July 14, 2016:

- Exhibit B-1: Site Rendering dated 07/14/2016.
- Exhibit B-2: Parking Summary Plan
- Exhibit B-3: Snow Storage
- Exhibit B-4: Clubhouse of Rivergate West
- Exhibit B-5: Preliminary draft of floor plan for potential leasing office.
- Exhibit B-6: Proposed Signage for Rivergate West- Phase II.
- Exhibit B-7: Reply report dated 06/17/2016.
- Exhibit B-8: 30 foot setback design adjustments (01/25/2016).
- Exhibit B-10: Floor Plan
- Exhibit B-11: Photos of architectural features in Bordentown.
- Exhibit B-12: Architectural Renderings (revised).

- Exhibit PB-1: Report of Susan Gruel dates 06/07/2016.

d. *Testimony of the Witness:* The following sworn testimony was presented by the Applicant and considered by the Board:

May 12, 2016

- Jeffrey Albert provided sworn testimony regarding the project to date, including the 9.5 million dollars invested in infrastructure improvements such as: new signaling, new

pump station, and force main portion of Rivergate Boulevard constructed. Additionally, he testified that the first phase of apartments and recreational facilities are constructed and 100% leased with 90% occupied. He further testified that the Quick Chek site plan has been approved by the Township, but is awaiting County approval for certain roadway design aspects leftover from Phase I. As a condition for Phase II approval, the Applicant will comply with County requests for the Route 130 intersection, where the Quick Chek will be, as the County wants modification of the island and radius for Southbound Route 130. With no final or complete review letters from the professionals yet, the Board and Mr. Albert held a discussion regarding the process. Mr. Albert also testified that the proposed Site Plan before the Board, compared with the Preliminary Site Plan approval of the site from 2009 results in a lesser impact on units, impervious coverage, and traffic. In his testimony he explained that there were 159 apartments built, with two-thirds of them being two-bedroom units and one-third of them being one-bedroom units. At present, there were 8 kids residing in the units.

- William Hamilton, LPP, LLA, AICP, provided an overview of the proposal and described the differences and improvements from the Preliminary approval. He also introduced Exhibit A-1, Aerial Photos from 2015 with superimposed proposed landscape. He testified that there would be 361 units and 9750 sq. ft. of retail space, and a pedestrian park with amphitheater on the waterfront, adjacent to the river. Mr. Hamilton testified that the three-bedroom homes would have a 2 car garage. Mr. Hamilton further testified that after reviewing feedback from the Township Committee at a May 9, 2016 meeting, the Applicant has changed the orientation of the mixed use building to North/South, and it will now have 37 parking spaces. He testified that the Boulevard is under construction, there is a pump station proposed, the main townhouse area will be constructed in three phases with a clubhouse, pool, and open space for both passive and active

recreation. He also testified that there will be 176 apartment units that will be housed in 5 buildings with a clubhouse, pool, garage and driveway parking, and a recreation area between buildings A-4 and A-5. He testified there will also be walking trails, benches, grills, and a bikeway from clubhouse to the apartments to Rivergate Boulevard that will connect to Township bikeways. Mr. Hamilton testified that Phases A and B will consist of building 50 townhome units and 176 Apartment units. In his testimony, Mr. Hamilton also described the phasing of improvements how and when it will provide an emergency access route to connect to VOA project. He testified that for the Preliminary approval in 2009, 450 units were approved. He also testified that there would be a mixed use building consisting of 9750 sq.ft. of commercial space with 18 apartments; 158 three (3) bedroom townhouses 176 apartment units. It was noted that the previous plan had 450 units, which the proposed design has 352 units. Mr. Hamilton testified the current Application is only proposing 361 units as opposed to 450 units previously approved and so therefore the storm-water and traffic impacts are reduced. Mr. Hamilton introduced Exhibit A-2, the prior Preliminary approval; Exhibit A-3, a reduced version of Exhibit A-1; and Exhibit A-4, a comparison of units- those currently proposed versus those previously approved. Those previously approved included: 0 studios; 64 one-bedroom; 234 two-bedrooms; and 152 three-bedrooms, for a total of 988 bedrooms. The proposed units include: 24 studios, 67 one-bedroom; 103 two-bedrooms; and 167 three-bedrooms, for a total of 798 bedrooms. Mr. Hamilton testified as to the reasons for changes in the number of bedrooms. In his testimony he explained that there is an Eagle foraging area and wetland and Riparian buffers that will require additional planting along the waterfront. He also testified that this will result in less impervious coverage due to unit design, a reduction in driveways, and more open space within the units. He further testified that a 35 acre lot was being dedicated to the Township. Mr. Hamilton testified

that the commercial space is not changing as to size other than changing direction to provide shared parking and make it more visible from the street, which will be more attractive to retailers.

- Jeffrey Albert further testified that the Applicant has agreed to work with the Division of Public Works Director regarding maintenance for the Township facilities in the plan as per the presentation to the Township Committee.

- William Hamilton presented Exhibit A-5, Aerial view of the Amphitheater prototype, dated May 6, 2016; and Exhibit A-6, a colored rendering of the Amphitheater and storage area. Mr. Hamilton discussed the concern that the Amphitheater with 300 seats doesn't work. Mr. Hamilton also testified that there is a fishing pier next to the waterfront walkway with access from the public park.

- Jeffrey Albert described in his testimony the genesis of the fishing pier in view of DEP requirements for a buffer from the Eagle foraging area and the DEP requirements for the walkway. He testified the DEP rejected the marina proposal. He also testified that the DEP waterfront development permit restricted the colors of the development and the Applicant would provide that permit.

- William Hamilton continued his testimony that there will be no restrooms at the park facility and indicated the Applicant does not have the maintenance costs for the township yet. In his testimony, Mr. Hamilton referred to Exhibit A-3 as to parking and testified there will be a parking area located along the rail road track with room for 100 cars in the lot, which is also adjacent to the mixed use building that can be used for overflow parking. He further testified that there is a pathway across the tracks for bikes and pedestrians. The Board questioned

whether the 100 car parking lot will be needed for transit parking if a transit stop was introduced at this location.

▪ David J. Minno, an architect with Minno & Wasko, described the proposed architecture for the apartment buildings, specifically the 5 buildings on the northern end of the site. He introduced Exhibit A-7, the Plans for Building A, and testified that the ground floor plan includes 14 garages. He further used his testimony to describe the access from the garage parking to the stairways and units. He testified that there are also storage units for the apartments. Mr. Minno testified by providing a description of the upper floor, which has two-bedroom units on the ends with a mix of studios and one-bedroom units in the center. He introduced Exhibit A-8, the Floor Plans for Building B, which has a ground floor with 8 garages and dwelling units. In his testimony he also described the units on the upper and lower floors. He presented Exhibit A-9, the Floor Plans for the three-bedroom corner unit, the one-bedroom unit, and the one-bedroom with a den unit. He introduced Exhibit A-10, the Architectural Renderings of the Exterior with elevations of Building A, and described the shape of the building, the color scheme, the materials, and windows. He then introduced Exhibit A-11, Building B, a smaller building, and described in his testimony the layout, materials, and view from the units to the water. He also testified there will be a 3500 sq. ft. clubhouse for this area. The Board asked about the units with dens and whether there will be a restriction to prevent the den from being used as a 2nd bedroom. Mr. Minno testified that there are only 6 total one-bedroom with den units and they are only on the ground floor of the “A” buildings. In his testimony, Mr. Minno described the den as being used for the single person who wants a home office or workout equipment. The Board requested a Deed restriction and/or restriction to be

stated in the HOA rules, the Lease Agreement and the Agreements of Sale. The Applicant agreed to this restriction and to have the restriction stated explicitly in those documents.

- Greg Lingo, a residential for sale home builder, testified that he will purchase the town house units from the developer for sale. He introduced Exhibit A-12, a colored rendering of Townhomes; Exhibit A-13, a colored rendering of Apartments; and Exhibit A-14, the floor plans with elevations. Mr. Lingo testified the Applicant will determine the elevation for the buildings and the percentage that will be full brick and partial brick. In his testimony he also described the floor plan and layout of the units. Mr. Lingo testified that decks will be an add-on option for certain units. He further testified that they will have architectural features and design restrictions, per HOA. Mr. Lingo testified that there is no option for a basement and the occupants will not need flood insurance as the buildings will be built above the 100 year flood level.

- Christy Flynn of Flynn Land Development, testified as to the clubhouse size and utilization and other design features and enhancements of the communal use facilities.

- Jeffrey Albert in his testimony described the Quiet Zone designation; what a Quiet Zone is; and how to meet the criteria for that designation. He further testified with a description of the grade crossing for Quiet Zone and how it is designed for pedestrian crossing, so the Township can apply for and obtain the Quiet Zone designation. He further testified that to his knowledge, a developer cannot request the designation; the Township has to make the request. He also testified that if approved, the developer will install safety features to prevent crossing.

July 14, 2016:

▪ William Hamilton, LPP, LLA, AICP testified on behalf of the Applicant providing an overview of the design details of the project. He further testified that the number of townhomes has been reduced from 167 to 158 for a total of 352 units in Phase 2, where the Applicant was originally approved for 450 units. He introduced Exhibit B-1, a Site Rendering dated 07/14/2016, and described the reconfiguration of parking with the reduction of units to meet parking standards. He testified this has been reconfigured and removed an RSIS exception. He also testified that the Applicant has made the access for the pedestrian walkway between the clubhouse and recreation area, and added an adult exercise station. Mr. Hamilton testified that one end unit from 4 buildings was removed, which added more parking. Mr. Hamilton also introduced Exhibit B-2, a parking summary plan, and described the parking available for the townhomes, the mixed use, and the commercial areas. He further testified that the parking is closer to the units, which will utilize parking. He testified that if the visitor parking does not meet the requirements for this phase, the Applicant agreed to pave a portion of Phase C temporarily and will add 4 spaces in the next phase, which will eliminate a need for a variance as to parking. Mr. Hamilton introduced Exhibit B-3, Snow Storage (3 sheets), that identified areas for plow storage after plowing and he described the three pages of the rendering. Mr. Hamilton also agreed to provide the calculation of snow storage capacity to Board Engineer. He introduced Exhibit B-4, the Clubhouse of Rivergate West, and described the fitness room, club room, men and woman's room, leasing office, and pool equipment room. He also introduced Exhibit B-5, a Floor Plan, with preliminary drafts of potential leasing office. He introduced Exhibit B-6, the proposed way finder signage for Rivergate West- Phase II, and described the signs, design, purpose, and details for signs. Mr. Hamilton testified that there will be 5 brick pillars at the entrance to the townhomes and is seeking directional signage from 4 sq. ft. to 9 sq.

ft., which would allow for greater visibility due to the size of the development. Mr. Hamilton testified that the Applicant has submitted proposed Block and Lot numbers to the Tax Assessor and submitted a plan to the Fire Marshal. As a condition of approval, Mr. Hamilton testified that the Applicant agrees to meet with the Board Engineer regarding the radii of streets for emergency access.

▪ Eric Tazelaar, of Richard B. Reading Associates, testified as to the Community Impact Statement and Applicant's Response. Mr. Tazelaar testified that there has been a reduction in number of housing and specifically mentioned that in Phase 2, the proposed 450 housing units has been reduced by 98 units for 352 total units. In his testimony, Mr. Tazelaar addressed issues raised by Susan Gruel, PP, in her report dated June 7, 2016, and entered into evidence as PB-1. His testimony addressed the different nature of housing stock and how it changes the multipliers for people/children for this project. Mr. Tazelaar also notes in his testimony that the existing results for comparable units in the current development resulted in much lower impact than projections predicted, including 8 children versus the 15 predicted. He further noted that families are getting smaller now and testified that loft and den conversion rates would be addressed via condominium or HOA rules and deed restriction. In his testimony, he discussed school enrollment by grade and described the impact by various grade levels, including K-8 and 9-12. He further testified that age of resident is not an accurate predictor of whether an age group of owners will have households which will include school-aged children. Mr. Tazelaar introduced Exhibit B-7, reply report dated June 17, 2016, and Exhibit PB-1, the report of Susan Gruel dated June 7, 2016. Mr. Tazelaar agreed on behalf of the Applicant to include a restriction/prohibition on converting garages and dens to a living area, which could increase occupancy.

▪ Lee D. Klein, Traffic Engineer, testified that he performed an updated traffic analysis with trip generator data. He testified that the February 24, 2016 report by Hamilton has Table 1, a trip generator table. He further described in his testimony the methodology and statistics regarding the number of trips generated based upon the lower number of residential units. Mr. Klein did a study for AM, PM, and Saturday trips with better results, including acceptable results for intersections affected to address the concerns of the Board's Traffic Engineer. He testified that for the intersection of Route 130 and Rivergate Boulevard, the level of service at intersection meets standards, level C, for State Highway. Based on Mr. Klein's calculations, he does not think there would be a "stacking" of traffic at the intersection due to train crossing. Board Traffic Engineer agrees with Mr. Klein and does not foresee a problem. The Board asked questions regarding the effect of the train stop and train crossing on the Route 130 intersection.

▪ Mr. Hamilton testified again as to the variance relief sought. He testified as to the reasons for the Applicant seeking relief from certain setback requirements and design standards of the Redevelopment Plan. As to the relief requested for the distances between garages and the curb, Mr. Hamilton introduced Exhibit B-8, a 30 foot setback adjustment dated January 25, 2016, and then described and demonstrated how the buildings would have to be revised or moved to meet the setback requirements of the Ordinance. He further testified that with respect to the negative criteria, this is a minor deviation from the ordinance in that the Applicant is requesting setbacks of 26 feet and 28 feet where 30 feet are required. He also testified as to his opinion that granting this deviation would not impair the Master Plan or the zoning or negatively impact the neighborhood. Mr. Hamilton also testified that the required size of a commercial parking space is 10 ft. x 20 ft., but the Applicant is seeking a waiver from that requirement and proposing 9 ft.

x 18 ft. for a portion of mixed use, some 10 ft. x 18 ft. in front of retail. He testified that this this change promotes interests of the “positive criteria” for granting variances and waivers by promoting the general welfare and free flow of traffic and indicated the parking could be made larger but would reduce the area to drive vehicles within the development. As to the negative criteria, Mr. Hamilton testified that there is no impairment to the zoning plan. Mr. Hamilton testified regarding the General Ordinance Requirements and the location of inlets. He further testified about the fencing surrounding the detention basin and explained that, according to the DEP, it can be worse to fence it in under some circumstances, for instance, in this location, the DEP indicates the Applicant would be re-creating a marsh. The Board members made comments indicating that the Board would require fencing around such basins for safety.

Mr. Hamilton introduced Exhibit B-9, the Water Quality Basin drawings and testified as to its purpose, water levels, and the guidelines for fencing the detention basin.

- R. Michael McKenna, Site Civil Engineer, addressed his testimony to the detention basin design and explained it was 6 inches deep for water with sedimentation basins on both ends, and fish and frogs in the marsh. Mr. McKenna further testified as to the capacity of the basin with floods, overflow, 100 year storm, tides, and with various rain events. He also testified that the Plan was approved by the State of New Jersey. As a condition for approval, the Applicant agreed to make a 3-sided fence in areas described by the Engineer where people and kids are present and might go. The Applicant further agreed to work with the Engineer regarding the design.

Mr. Hamilton testified that the Applicant is seeking a waiver regarding roadways on minor collectors, including between Road L and the Boulevard, which has distance of less than 150 ft. and between Road G and Road F has a distance of less than 120 ft. He explained that it

provides for a better plan. The Board's Engineer and Traffic Engineer discussed the centerline of Road I and Road B and the reverse curve of 60 ft. which is constrained by environmental concerns. With respect to signage, Mr. Hamilton testified that the positive criteria included the increased size that will assist in wayfinding and visibility. He also testified that there was no negative impact on the zoning plan, Master plan, or character of the neighborhood. He testified that the Applicant is seeking a sidewalk variance to only have a sidewalk on one side of the street. In his testimony, he explained that there are areas where there is a sidewalk on both sides of the street, but in lower traveled areas, the Applicant is seeking to install a sidewalk on only one side of the street. He testified that this decreases impervious coverage, is aesthetically better, and does not impact pedestrian safety. He also testified that there is no negative impact on the zoning plan or the Master plan. In his testimony he also describes the area where the sidewalks are and run to the bikeway and how pedestrian travel flows. Mr. Hamilton testified that in Phase E, the Applicant's design has four (4) parking spaces fewer than required if it were a "stand-alone" area. However, he testified that based upon an analysis using shared parking, parking could be shared and used from other mixed use building areas on "off" hours so that it was his opinion that parking needs would be met. He further testified as to his opinion that the positives outweigh the negatives for sharing parking between the commercial uses with residential uses in that when one area is used for parking, the other area of use generally has less of a parking demand so that the two uses would be compatible for shared parking. There was a discussion with the Traffic Engineer as to the number of extra parking spaces in which Mr. Kochenour noted that there would be 20 extra parking spaces for/from the commercial use. Mr. Hamilton testified that the Applicant agreed to the Township having Title 39 (traffic enforcement) jurisdiction as a condition of approval.

▪ Christy Flynn, sworn previously, introduced Exhibit B-10, Floor Plan, and testified as to the area where trash and recycling can fit. She also testified that there is still an adequate area to fit 1 or 2 vehicles, depending on the size of the vehicle. She introduced Exhibit B-11, photos of the architectural features in Bordentown City; and Exhibit B-12, architectural renderings, revised. Ms. Flynn testified that the Applicant can revise the design or color of the garage doors for variety and to assist with home identification. Mr. Cann commented regarding Building #4 and requested the building be reduced by one end unit due to the tight turn-around and safety issues. The Applicant agreed to remove one end unit from the northern end of Building #4 to address these concerns. Mr. Hamilton testified regarding the Boardwalk and indicated the boardwalk will be built from trex materials, not wood. She further testified that there will be hand rails on both sides of the boardwalk and will get the details to the Board Engineer. He also testified that the Applicant will get the Board Engineer details on the fishing pier. Mr. Cann inquired regarding the phasing and timing of the public improvements. Mr. Hamilton testified that the bus shelters, emergency road access, recreational fishing pier, and parking for the public parks will be built with their corresponding phase. He also testified that the public improvements will be done before or with the phase being built. He agreed on behalf of the Applicant that it will be a condition for approval to build the parking for the park at the transit field together with the construction of the park with a minimum of 25 parking spaces. Mr. Chidley also inquired about the public road, Rivergate Boulevard, and Mr. Hamilton agreed that the road will be constructed for greater durability. Mr. Hamilton also testified the Applicant will comply with COAH in compliance with the Court Order. Finally, Ms. Flynn testified that the Applicant agreed to the condition that the fee simple lots can be fenced in with approval of the HOA so long as they meet a pre-approved design and allow for back access to the property and

confirmed that the Applicant will work with input provided by the Board's Engineer and Planner.

e. *Public Comment:* There were no comments made by the public on this Application.

f. *Comments and Recommendations of the Board's Professionals and revisions agreed to by the Applicant:* Based upon the comments and recommendations of the Board's Professionals, the Applicant's representatives testified that the following revisions were agreed to by the Applicant, which modifications were considered by the Board as material factors in making its decision:

1. To the extent that design or plan modifications have not already been incorporated and submitted, the Applicant agreed to incorporate certain specific changes as cited in testimony at the hearing and also the comments which were noted on the Board's Engineer's report letter relating to additional design plan notes, design revisions and additional submissions consistent with Mr. Turek's Review Letter of July 11, 2016 (RSIS Comments at # 6; Subdivision comments 1-5; Phase A Townhouse Comments 1, 2, 9, 11-13; Phase B, Comments #1, 6, 7, 18-21; Phase D Comment # 3; Phase E, address Comments #1 and 4; Phase F, Comment # 1; Public Use Comments Comments #2, 3, 5, 6, 8, 10, 12, 13, 17, 24, and 28 will be addressed at the next phase; address Comment #1; 17, 22-23 and 26; General Comments # 2-4, 10, 11, 14, 18, 19, 22, 25, 27, 29,30; Comments # 32-35, 40-42, 48-57, 59 and 60 will be addressed at the next phase; and the Board's Planner's report letter of July 8, 2016 (Carman, General Comment #4; Design Standards, Comment #1; Architecture Comments #3-5; Signs-Comment #2; Fences-Comments #1-5; Landscape Plan Comments #4, 5 and 9; Recreation/Open Space Comment # 4, 8, 13 and 15; Circulation-#7; Phasing-2-4 and Miscellaneous Comments #2-5); and address the Board's Traffic Engineer's report letter of July 8, 2016 (Kochenaur Comments 5B3, 6, 7a-d, and 8a-d) and from Table 4.6, #6 as to delivery and trash truck turning radius information and as to additional road details to be included on the final design plans) and as otherwise discussed and agreed to at the hearing of this matter.

2. The Applicant agreed to revise the plans to include proposed lot and block numbers and will submit a Certification by the Tax Assessor. (Turek, Subdivision Plan # 3)

3. The Applicant agreed to provide the utility easements and landscape easements along the private streets as they extend into individual lots. (Turek, Subdivision Plan # 4)

4. The Applicant agreed to clearly identify or show easements on the plans, including blanket easements and areas between the rear yards to ensure access to the inner properties. (Turek, Subdivision Plan # 5)

5. The Applicant will work with the Construction Office and Board Engineer to address any adjustments necessary for vehicular access for maintenance and emergency vehicles, including revisions to the right angle intersection at the access path. (Turek, Phase A (Townhouses) # 2).

6. The Applicant agreed to provide a truck circulation plan utilizing the single unit vehicles and Fire Department Vehicle templates in coordination with the Bordentown Township Fire Official. (Turek, Phase B (West Village Apartments) # 1).

7. The Applicant agreed to coordinate with the Board Engineer to address the design and/or replacement areas of the proposed 24" HDPE on Road "B", which should be replaced with RCP. (Turek, Phase E (Townhouses) #4).

8. The Applicant will provide truck turning template movements to access the loading zone on the plans. The Applicant will also provide Fire Department turning templates to show access to the parking area. (Turek, Phase F (Mixed Use/Retail) #1).

9. The Applicant will provide the Planning Board with a schedule of the proposed timing of improvements for the public space which will be addressed in detail at the next phase. (Turek, Public Use (Village Green, Amphitheater, and Waterfront) #1).

10. As a condition for the approval granted, the Applicant will submit the draft documents for the Home Owners' Association ("HOA") as well as any easements required to the Board's Solicitor for her review and approval of the documents.

11. The Applicant agreed that the maintenance of the landscape improvements within the Rivergate Boulevard islands will be maintained by an Home Owners' Association ("HOA"), similar to the agreement required in the previous resolution for Rivergate Boulevard on the east side of the project. (Turek, Public Use (Village Green, Amphitheater, and Waterfront) #4).

12. As a condition for the approval granted, the Applicant agreed to ensure the Pedestrian access path will conform to ADA standard areas with a 5% slope and should have a rest area or break in grade. (Turek, Public Use (Village Green, Amphitheater, and Waterfront) #22).

13. The Applicant also agrees to provide an ADA compliant railing along the length of the Boardwalk area. (Turek, Public Use (Village Green, Amphitheater, and Waterfront) #26).

14. The Applicant agreed that the Bordentown Township Director of Emergency Management, Fire Official, and Police Department should all review the project. (Turek, General #2).

15. The Applicant will ensure that required easements for utilities are depicted on the design plans and are approved by the Board's Engineer. (Turek, General #13).

16. The Applicant agreed that the Township shall have Title 39 traffic enforcement jurisdiction. In accordance with that enforcement capability, the Applicant agreed to submit street plans along with an official request to the Township Police Department for Title 39 enforcement. (Turek, General #29).

17. The Applicant agreed to include a Stormwater "Management Plan," that addresses ownership and maintenance of the storm-water basin will be provided as an obligation of the HOA and that obligation will be set forth in the HOA documents and on design plans in accordance with NJDEP Stormwater Management Rules. (Turek, General #32).

18. The Applicant further agreed to provide an O&M Manual for the basin area to ensure Stormwater basin access is provided for future maintenance, repairs, or emergency response. (Turek, General #33).

19. The Applicant agreed that the proposed fences on location protecting heights of 4 feet or greater will be reviewed by the Construction Official. (Turek, General #58).

20. The Applicant agreed that the recreational improvements within each phase are installed within each phase of development. Specifically, the pool, clubhouse, and other Phase A amenities shall be installed and completed before the last certificate of occupancy is issued for this phase. Likewise, the pool, clubhouse, and open space amenities in Phase B shall be installed and completed before the final certificate of occupancy is issued for the apartment building in this phase. This will apply to the other remaining phases. (Carman, Phasing Schedule #3).

21. The Applicant agreed to include the maintenance of the traffic islands in the roadways as a maintenance obligation of the HOA and that obligation is to be included as such in the HOA documents. (Carman, Miscellaneous Conditions #3).

22. The Applicant agreed to meet with the Planning Board Engineer regarding the turning radii of the streets for emergency access.

23. The Applicant agreed to incorporate a Deed Restriction and restriction in the HOA/Condominium documents, including Sales, Rental and/or Lease Agreements and the Agreements of Sale, prohibiting all owners or occupants from converting the garage and den to a living area, so as to enable the residential occupancy of the unit to be increased.

24. The Applicant agreed to work with the Planning Board's Engineer on a design to have a 3-sided fence in the areas around the detention basin as described by the Engineer which may be susceptible to trespassing.

25. The Applicant agreed to build parking for the park at the transit field together with the construction of the public use park. The Applicant agreed that parking for that area will have a minimum of 25 parking spaces.

26. The Applicant agreed to comply with the COAH requirements in compliance with the Court order.

27. The Applicant agreed that the owners of Fee Simple lots can fence in their backyard with the approval of the HOA and pre-approval of a design that allows for back access based upon input from the Board's Engineer and Planner.

28. The Applicant agreed that the HOA documents will have approved design features and options for all decks or patios as well as design and size restrictions. The HOA standards for an approved design shall prohibit enlargement of decks. To the extent that fences are permitted, only wrought iron style fencing will be permitted in front yards and HOA documents will include that restriction.

29. As a condition for Phase II approval, the Applicant agreed to comply with Burlington County Planning Board's requirements for the Route 130 intersection, where the Quick Chek development is to be constructed, to comply with the County's desired modification of the design of the island and radius for Southbound Route 130.

Section 2. Findings of Fact and Conclusions.

WHEREAS, the Board has made the following findings of fact and conclusions:

1. The Applicant, Bordentown Waterfront Community, LLC, owns the subject property and filed the within Application seeking approval of a Preliminary and Final Major Site Plan and Preliminary and Final Major Subdivision, with the following variances sought:

- a) Variance relief is sought from the Redevelopment setback standard for the "Garage Face to Street" curb in that setbacks proposed for the Townhouses range from 26 to 30 feet for areas without sidewalk and 28 to 30 feet for areas with concrete sidewalks where a 30 foot setback is required;
- b) Variance relief is required from Ordinance §25:502F.4 which provides that the use of one inlet in the radius is not allowed; that inlets shall be placed at or near the tangent points of both ends of the radius and the Applicant is requesting relief from this requirement for the private streets.
- c) Variance relief is required from the minimum intersection curb radius requirements of RSIS in that a "collector" roadway (Road "A") 25-foot radii is proposed where a 30-foot curb radii is required.
- d) Variance relief is required for Road "A" for the minimum centerline radius requirements, for the centerline tangent between curves and the minimum distance between intersections in that RSIS requires a minimum centerline radius of 150 feet whereas lesser radii of 132 feet were proposed.
- e) Variance relief is required from RSIS standards as to the requirement of a concrete sidewalk on both sides of the street at locations where a sidewalk is proposed on one side of the road.
- f) Variance relief is required for the standard distance for the Garage Face to curb for the Mid-Rise buildings (A1, A2, A3, A4, and A5), for the distance between the garage and the curb in which where a 30 foot setback is required and a distance of 20 feet is proposed.
- g) Variance relief is required from RSIS standards for two residential access streets, Road I/K and Road B, have centerline radii less than 100' where a minimum of 100' for a residential street is required. An additional variance is required for the centerline radii

along Road A, a minor collector street that requires a radius of 150', where less than the minimum 150' RSIS recommended radii is proposed.

- h) Variance relief is required from the RSIS recommended minimum tangent length for Road A as to the required minimum tangent length between reverse curves of 100' for a minor collector street and the proposed design does not meet the RSIS standard.
- i) Variance relief is required from the RSIS standard for a centerline radius for both "turns" along Road B where the centerline radius for the southerly segment of Road B has not been provided.
- j) Variance relief is required from Ordinance §25:502H which requires the use of a four (4) foot high chain link fence with a self-latching gate, in that the Applicant agreed to fence the detention area on three sides.
- k) Variance relief from Ord. §25:508.5(a) in the form of a design waiver as to the dimensions of some of the parking stalls and the lack of hair-pin striping in that non-residential parking is required to be 10 feet by 20 feet and utilize hairpin striping. Of the forty-nine spaces provided, twelve are proposed at 10' by 18' and the remainder are 9' by 18' spaces.

2. The within Application seeks the Board's approval of the Applicant's proposed Amended Site Plan and a Subdivision Plan in which the total number of proposed residential units as part of this Amended Preliminary and Final Subdivision Application is reduced to a total of 351 units.

3. The Application was deemed complete by the Board by affirmative vote taken on May 12, 2016.

4. The Application was heard in two sessions, on May 12, 2016 and July 14, 2016, at which time, the Board heard testimony and considered certain proposed changes and conditions for approval which were suggested by the Board's professionals and which were accepted by the authorized representatives of the Applicant.

5. The Board found that all requirements necessary to grant Approval for the Amended Preliminary and Final Major Site Plan and Preliminary and Final Major Subdivision with variance relief, subject to the findings of fact, conclusions, and conditions as cited herein

above at items # 1-29 of Section 1f. (Comments and Recommendations of the Board's Professionals and revisions agreed to by the Applicant) which are incorporated herein and expressly made conditions of this approval.

6. The Board found that as to the amendment of the previously approved Preliminary and Final Major Site Plan, the Applicant has met the burden of proof for approval of the Application, based upon the factual findings cited herein, the modifications agreed to by the Applicant and the findings of fact by the Board. The Board further found that the Applicant has met the burden of proof for approval of the proposed Preliminary and Final Major Subdivision and the variances sought as part of this Application.

7. The Board finds from the record of this Application that the variance relief requested as stated herein, in the form of the setback variances for the distance for the Garage Face to curb; variances sought as to the curb radius, the roadway center-line radius; variance relief as to the number of parking spaces for Phase E (which requires 16 spaces where 12 spaces are provided); relief from the requirement to have a concrete sidewalk on both sides of the roadway; and a variance from the requirement of a four (4) foot high chain link fence with a self-latching gate for the detention basin (where the Applicant agreed to fence the detention area on three sides) was supported by competent and persuasive testimony and that the Applicant met the burden of proof as to the variance relief sought.

8. Specifically, the Board finds that based upon the testimony presented, the Applicant met the burden of proof as to the request for a variance from the requirement for the size of the parking spaces reasonable in that a deviation was not sought for every parking space. Also, the Applicant presented testimony to show that the proposed revision is an enhancement to the design and promotes better flow of traffic as a reasonable basis for seeking this variance.

9. The Board finds that based upon the testimony presented and the totality of the record of the proceedings, that the purposes of the MLUL would be advanced by the requested deviation from the Zone Plan and Redevelopment Plan ordinance requirements and that the benefits of the deviation would substantially outweigh any detriment, such that good cause exists for the grant of a variance under the record in this instance.

10. The Board finds based upon the testimony presented and the totality of the record, that the variance relief sought can be granted without substantial detriment to the public good. The Board further finds based upon the totality of the testimony presented that granting the variance relief requested will not impair the intent or purpose of the Township zone plan or zoning Ordinance and is consistent with the goals and intent of the Redevelopment Plan for this area.

11. The Board also finds that the purposes of the MLUL will be furthered by granting the relief in that doing so will advance creative development and further the specific goal of this Redevelopment of providing for a mix of compatible commercial and residential uses along with recreational and wellness opportunities within the Township, all of which is of benefit to the public.

12. The Applicant, through the Applicant's authorized representatives, agreed to certain changes, revisions and conditions as set forth above in the section detailing the testimony and detailing the revisions and conditions expressly agreed to by the Applicant's authorized representatives at the hearing. The aforesaid changes, conditions and revisions are deemed material and incorporated into the Approval granted by the Board for the various forms of relief requested.

13. The Applicant, through the Applicant's authorized representatives, agreed to comply with all other usual and customary conditions as may be required by the Board, with respect to required approvals by other agencies with jurisdiction, payment of all required fees, submission of plans and timely payment of escrows.

Section 3. **Determination with Conditions.**

NOW THEREFORE, BE IT RESOLVED BY the Planning Board for Bordentown Township, County of Burlington, and State of New Jersey as follows:

1. The Application of Bordentown Waterfront Community, LLC for approval of an Amendment to the Preliminary and Final Major Site Plan as set forth in the Application submitted and as testified to at the hearing on this Application is hereby GRANTED subject to the conditions as set forth in Section 1f (#1-29).

2. The requested approval of the proposed Preliminary and Final Major Subdivision is hereby GRANTED.

3. The Application seeking variance relief as to the following variances is hereby GRANTED as follows:

- a) Variance relief is sought from the Redevelopment setback standard for the "Garage Face to Street" curb in that setbacks proposed for the Townhouses range from 26 to 30 feet for areas without sidewalk and 28 to 30 feet for areas with concrete sidewalks where a 30 foot setback is required;
- b) Variance relief is required from Ordinance §25:502F.4 which provides that the use of one inlet in the radius is not allowed; that inlets shall be placed at or near the tangent points of both ends of the radius and the Applicant is requesting relief from this requirement for the private streets.
- c) Variance relief is required from the minimum intersection curb radius requirements of RSIS in that a "collector" roadway (Road "A") 25-foot radii is proposed where a 30-foot curb radii is required.
- d) Variance relief for Road "A" for the minimum centerline radius requirements, for the centerline tangent between curves and the minimum distance between intersections in

that RSIS requires a minimum centerline radius of 150 feet whereas lesser radii were proposed.

- e) Variance relief from the RSIS standard as to the requirement of a concrete sidewalk on both sides of the street at locations where a sidewalk is proposed on one side of the road.
- f) Variance relief is required from RSIS standard as to the distance from the Garage Face to curb for the Mid-Rise buildings (A1, A2, A3, A4, and A5), for the distance between the garage and the curb in which where a 30 foot setback is required and a distance of 20 feet is proposed.
- g) Variance relief is required from the RSIS standard for two residential access streets, Road I/K and Road B, have centerline radii less than 100' where a minimum of 100' for a residential street is required. An additional variance is required for the centerline radii along Road A, a minor collector street that requires a radius of 150', where less than the minimum 150' RSIS recommended radii is proposed.
- h) Variance relief from the RSIS recommended minimum tangent length for Road A as to the required minimum tangent length between reverse curves of 100' for a minor collector street and the proposed design does not meet the RSIS standard.
- i) Variance relief from the RSIS standard for a centerline radius for both "turns" along Road B where the centerline radius for the southerly segment of Road B has not been provided.
- j) Variance relief from Ordinance §25:502H which requires the use of a four (4) foot high chain link fence with a self-latching gate, in that the Applicant agreed to fence the detention area on three sides.
- k) Variance relief from Ord. §25:508.5(a) in the form of a design waiver as to the dimensions of some of the parking stalls and the lack of hair-pin striping in that non-residential parking is required to be 10 feet by 20 feet and utilize hairpin striping. Of the forty-nine spaces provided, twelve are proposed at 10' by 18' and the remainder are 9' by 18' spaces.

4. In connection with the Application, at the time of the public hearings on this Application, the Applicant (through its authorized representative, its counsel, and its professionals) agreed to certain conditions, changes, limitations and revisions as previously outlined herein. In particular, the Applicant agreed to the specific conditions for approval as cited above in Section 1f, items # 1-29.

3. The Board finds that it is appropriate and consistent with the law and the best interests of the Township that the approval of this Application be conditioned upon the inclusion

of those agreed upon revisions, limitations and conditions, such that the conditions as set forth herein and as agreed to on the record are hereby incorporated as conditions to the Approval of this Application.

4. The Board further finds that the Applicant has met its burden of proof by producing competent testimony that the relief requested should be granted, subject to the conditions agreed to and the changes recommended by the Board's Engineers and Planner, and as agreed to by the Applicant and as otherwise set forth herein and as set forth in the record of the proceedings.

5. The approval of the relief sought in this Application is granted subject to the specific conditions, items #1-29 of Section 1f and the following additional general conditions:

A. Engineers and Planner's Review letters. Except as noted elsewhere within this Resolution, the Applicant has agreed to comply with all of the terms and conditions of the Board's Planner's review letters of June 6, 2016 and July 8, 2016; the Engineer's review letters of June 6, 2016 and July 11, 2016; the joint review letter dated May 5, 2016 by Jack Carman and Frederick J. Turek; and the Traffic Engineer's review letter of July 8, 2016, submitted by the Board's Professionals during the review process, except as otherwise noted in testimony at the hearing. Such terms and conditions remain in full force and effect unless waived or modified by other provisions of this Resolution.

B. Compliance with local code standards. As a condition to this approval applicant is required to comply with its inspection fee and the escrow agreement with Bordentown Township. No plan shall be processed and no permit issued unless and until all outstanding professional fees and taxes are paid and an appropriate escrow created to pay for future sums due.

C. *Representations made at public hearing.* The Applicant has submitted certain plans, drawings, depictions and other tangible things or documents which were accepted by the Planning Board as part of its application. Further, its representatives and/or witnesses have made certain representations, provided testimony, agreed to modifications to the plans, drawing and other features, all of which were made at the public hearings and all of which has been relied upon by the Planning Board in making its findings and determinations. Should there be any material deviation from said documents, plans, representations, agreements made, testimony, modifications agreed to or from any conditions contained herein and/or otherwise agreed to, then the failure to comply with those representations, changes and/or agreements shall be deemed a violation of the approvals granted and the Planning Board may, upon notice to the Applicant and an opportunity to be heard, elect to rescind its approval.

D. *Other approvals required.* The Applicant shall obtain the required permits noted from any other County, State or municipal agency having jurisdiction over the application as is required under law unless specifically and otherwise expressly waived.

ROLL CALL ON THE MOTION: On July 14, 2016:

Yes - 8 No - 0 Absent - 3 Abstain - 0 Not Voting - 0

Cann, Committeeman - yes
Benowitz, Deputy Mayor - yes
Chidley, Chairman - yes
Grybowski - absent
Fairlie - yes
D'Angelo (Alt. #2) - yes

Popko - yes
Plew - yes
Hirschfeld, Vice-Chairman - yes
Concannon - absent
Nyzio (Alt. #1) - absent

ROLL CALL ON MEMORIALIZATION: On August 11, 2016:

Yes - No - Absent - Abstain - Not Voting -

Cann, Committeeman - yes
Benowitz, Deputy Mayor - yes
Chidley, Chairman - absent

Popko - yes
Plew - yes
Hirschfeld, Vice-Chairman - yes

Grybowski - yes
Fairlie - yes
D'Angelo (Alt. #2) - yes

Concannon - yes
Nyzio (Alt. #1) - absent

PLANNING BOARD OF THE
TOWNSHIP OF BORDENTOWN

Dated: 8/11/16

By:

George Chidley, Chairman

KEVIN A. HIRSCHFELD

ATTEST:

Brian Johnson

Brian Johnson, Board Secretary

CERTIFICATION

The undersigned, Secretary of the TOWNSHIP OF BORDENTOWN Planning Board, does hereby certify that the foregoing Resolution was adopted by said Board at its meeting held on August 11, 2016. This Resolution memorializes the formal action taken by the Board at its regular meeting held on July 14, 2016.

Brian Johnson

8/11/16

Brian Johnson, SECRETARY

PLANNING BOARD SECRETARY



Turek Consulting LLC

220 North Coles Avenue
Maple Shade, NJ 08052

Phone: 856-770-4755
Fax: 856-663-2245
E-mail: fturek@turekconsultingllc.com

March 2, 2018

Township of Bordentown
1 Municipal Drive
Bordentown, NJ 08505

Attn: Mr. Brian K. Johnson, P.E., Director of Community Development

Re: Township of Bordentown
Bordentown Waterfront Community, Phase II
Plan Approval – Affordable Housing Location Plan
Block 140, Lots 5-8, 10-16, 18 & 19/Block 141, Lot 4
Bordentown Twp # PB-2016-0036
TC Project # 0304P038

Dear Mr. Johnson:

Enclosed, please find four (4) copies of the amended plan sheet 4 of 38, stamped “approved”, for the referenced project. This plan has been resubmitted by the developer to clarify the location of the remaining eighteen (18) affordable housing units of the Bordentown Waterfront Community. The affordable housing apartment units will be constructed above the retail space within Phase “F”. Sheet 4 of 38 was prepared, signed, and sealed by R. Michael McKenna, P.E., Bowman Consulting Group, Ltd., 303 West Main Street, Suite 350, Freehold, New Jersey 07728, (732) 665-5500, last revised 9-15-17.

If you should have any questions, please feel free to contact our office.

Sincerely yours,

TUREK CONSULTING, LLC

Frederick J. Turek II, P.E., P.P. C.M.E.
NJ Professional Engineer No. 42279

FJT/lat
Enclosures

cc: Michael Theokas, Administrator; Colleen Eckert, Township Clerk; Bordentown Waterfront Community, LLC; Michael McKenna, P.E.; Heyer, Gruel & Associates (w/ enclosures)

APPENDIX B

Settlement Agreements between the Township of Bordentown and Fair Share Housing Center

- 2017 Settlement Agreement
- 2019 Settlement Agreement (amendment to 2017 Agreement)

AGREEMENT TO RESOLVE ISSUES BETWEEN THE TOWNSHIP OF BORDENTOWN AND FAIR SHARE HOUSING CENTER CONCERNING THE TOWNSHIP'S MOUNT LAUREL FAIR SHARE OBLIGATIONS AND THE MEANS BY WHICH THE TOWNSHIP SHALL SATISFY SAME.

In the Matter of the Application Township of Bordentown, County of Burlington, Docket No.: BUR-L-1620-15

THIS SETTLEMENT AGREEMENT ("Agreement") made this 20th day of June, 2017, by and between:

TOWNSHIP OF BORDENTOWN, a municipal corporation of the State of New Jersey, County of Burlington, having an address at One Municipal Drive, Bordentown, NJ 08505 (hereinafter the "Township" or "Bordentown");

And

FAIR SHARE HOUSING CENTER, having an address at 510 Park Boulevard, Cherry Hill, New Jersey 08002, (hereinafter "FSHC");

WHEREAS, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), the Township filed the above-captioned matter on July 2, 2015 seeking, among other things, a judicial declaration that its amended Housing Element and Fair Share Plan (hereinafter "Fair Share Plan"), as may be further amended, satisfies its "fair share" of the regional need for low and moderate income housing pursuant to the Mount Laurel doctrine; and

WHEREAS, the Township simultaneously sought and ultimately secured an Order protecting Bordentown from all exclusionary zoning lawsuits while it pursues approval of its Fair Share Plan; and

WHEREAS, the immunity secured by Bordentown remains in force as of the date of this Agreement; and

WHEREAS, the trial court appointed Mary Beth Lonergan, A.I.C.P., P.P., as the Special Court Master in this case as is customary in Mount Laurel matters; and

WHEREAS, with the Court Master's assistance, Bordentown and FSHC have engaged in good faith negotiations and have reached an amicable accord on the various substantive provisions, terms and conditions delineated herein; and

WHEREAS, through that process, the Township and FSHC agreed to settle the litigation and to present that settlement to the trial court, recognizing that the settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for lower-income households; and

WHEREAS, at this time and at this particular point in the process resulting from the Mount Laurel IV decision, when fair share obligations have yet to be definitively determined, it is appropriate for the parties to arrive at a settlement regarding a municipality's Third Round present and prospective need, instead of doing so through plenary adjudication of the present

and prospective need.

NOW, THEREFORE, in consideration of the promises, the mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereto, each binding itself, do hereby covenant and agree, each with the other, as follows:

Settlement Terms

The Township and FSHC hereby agree to the following general terms, subject to any relevant conditions set forth in more detail below:

1. Bordentown's "Rehabilitation" obligation is 11.
2. Bordentown's "Prior Round" obligation is 211.
3. Bordentown's allocation of the Round 3 regional need is 425. For the purposes of this agreement, this allocation shall be referenced as "Prospective Need" and/or Third Round (1999-2025) fair share obligation and shall be deemed to include the gap period present need, which is a measure of households formed from 1999-2015 that need affordable housing, as recognized by the Supreme Court in its January 18, 2017, decision in In re Declaratory Judgment Actions Filed by Various Municipalities, 227 N.J.508 (2017).
4. FSHC and the Township agree that Bordentown does not accept the basis of the methodology or calculations proffered by FSHC's consultant, David N. Kinsey, PhD, P.P., F.A.I.C.P. The Parties agree to the terms in this agreement solely for purposes of settlement of this action. Although the Township does not accept the basis of the methodology or calculations proffered by FSHC's consultant, FSHC contends, and is free to take the position before the court, that the 425-unit obligation should be accepted by the court because it is based on the Prior Round methodology and reflects a 32-percent reduction of Dr. Kinsey's May 2016 calculation of the Township's Third Round (1999-2025) fair share obligation.
5. Satisfaction of Rehabilitation Obligation: The Township has a 11-unit rehabilitation obligation, and shall satisfy that obligation as follows:
 6. The Township has at least 6 credits from the Burlington County Rehabilitation Program for units rehabilitated in the Township since April 1, 2010, which credits are subject to confirmation during the compliance phase of this matter, and the Township will continue to work with that program with respect to the remaining 5 rehabilitation units, which is available with regard to units that are occupied by homeowners and renters. During the compliance phase, the Special Master will determine whether a rental rehab program is appropriate and warranted and both parties stipulate to defer to the Master's recommendation in this regard.
7. Satisfaction of Prior Round Obligation: The Township has a 211-unit Prior Round obligation, and has satisfied that obligation as follows:

- a) The Bradford Pointe Court development was approved in 2001 and constructed in 2002 to satisfy the conditions contained in the August 16, 2000 Judgment of Compliance and Repose and the entirety of the Township's Prior Round obligation. The site is identified as Block 139, Lot 11 on the official tax map of the Township.
 - b) The 168 affordable housing units were eligible for additional credits based on the language contained in the Judgment of Repose.
 - c) The Township documented a rental bonus of 53 dwelling units.
 - d) Thus, the project plus the rental units provided a total of 221 unit credits towards the Township's prior round obligation, which creates a 10-unit surplus towards Round III.
8. The Township has a Round 3 settlement number of 425 units, which shall be satisfied as follows:

<u>Project Name</u>	<u>Description</u>	<u>Type</u>	<u>Units</u>	<u>Rental Bonus Credit</u>
Surplus Credits (Round 2)	Residual Credits resulting from Bradford Point	Family Rental	10	10
VOA - 1		Senior Rental (64)/Special Needs (5)	69	5
BWC Residual Credits	Entire Project located at Block 140 – Lots 5-16, 19 and Block 141, Lot 4. 92.7 Net Acres	Family or Senior Rental	18	
Zieger	Block 138.01, Lots 41-43. 19 Net Acres (46.9 total). The Project will be 227 units (168 apartments, 54 Townhome footprints), 36 of which will be affordable.	Family Rental	36	36
Nissam	Block 1.01, Lot 3. 17.4 net acres (22.3 total). The proposed project will consist of roughly 230 total units, 40 of which will be affordable and over 13% of which will be affordable to very low income families	Family Rental	40	40
Group Home (Bedrooms)		Special Needs	20	16
Market to		Family Rental	59	

Affordable				
VOA - 2		Family Rental	66	
Subtotal			318	
Bonus			107	
Total			425	

- a) Nissam has agreed to provide at least two units in excess of its total obligation to provide very low income units. These will be very low income family units such that the Township will provide a total of 13% of all post-2008 new affordable housing units (13% of 308 units) as very low income. The Township and Nissam shall reduce the agreement to an MOU at least 30 days prior to the compliance hearing.
- b) BWC's total affordable housing obligation is 15% of its final approvals. At the time of that agreement, that obligation was 101 units. 15% of its total approvals, however, ends up being 87 units, not 101 units. 69 of those units have been satisfied through the development of 69 affordable units at VOA1. The remaining 18 units required to be produced as part of BWC remain the obligation of BWC.
- c) The Township is in the process of providing crediting information on existing group home. The Township has identified 12 qualifying bedrooms to date and anticipates it has at least a total of 20 creditworthy existing group home bedrooms. In the event there are less than 20 creditworthy existing group homes, the Township will provide for the shortfall by creating additional group home bedrooms, as further addressed in this agreement. At least 30 days prior to the compliance hearing in this matter, the Township will provide all necessary documentation to the Special Master and FSHC regarding existing group homes and provide a detailed plan for the creation of additional units, if needed, in accordance with the terms of this agreement.
- d) The Township and Zieger will enter into a Settlement Agreement within 30 days after the fairness hearing in this matter.

9. The Township/Borough will provide a realistic opportunity for the development of additional affordable housing that will be developed or created through means other than inclusionary zoning in the following ways:

- a) VOA1: VOA1 received 9% tax credits from the HMFA in 2015 and is a fully funded project. VOA owns the site and the project has been approved by the Township.
- b) VOA2: VOA2 sits adjacent to VOA1, and the Volunteers of America, a reputable non-profit, will apply for 9% tax credits as its primary funding mechanism. The Township shall adopt a resolution of intent to bond for a shortfall in the event of a failure of the project to obtain tax credits. VOA is the contract purchaser of the proposed site.
- c) Market to Affordable: The Township will utilize trust fund dollars to subsidize the conversion of apartments into affordable, deed restricted units that will comply fully with the Uniform Housing Affordability Controls, including with regard to affirmative marketing, low/moderate-income split and other terms, with the exception of requirements related to very low income units and bedroom

distribution. To the extent insufficient funds exist in the trust fund, the Township will adopt a resolution of intent to bond. No more than 30% of the market to affordable bedrooms shall be one bedroom units. D

- d) Group Homes: To the extent new group homes are required to provide a total of 20 affordable, they will be funded through available state and federal funding. To the extent insufficient funding is available, the Township shall make trust fund dollars available and shall adopt a resolution of intent to bond for shortfalls.

In accordance with N.J.A.C. 5:93-5.5, the Township recognizes that it must provide evidence that the municipality has adequate and stable funding for any non-inclusionary affordable housing developments. The municipality is required to provide a pro forma of both total development costs and sources of funds and documentation of the funding available to the municipality and/or project sponsor, and any applications still pending. In the case where an application for outside funding is still pending, the municipality shall provide a stable alternative source, such as a municipal resolution of intent to bond, in the event that the funding request is not approved. The Township meets this obligation as follows as set forth above.

In accordance with N.J.A.C. 5:93-5.5, for non-inclusionary developments, a construction or implementation schedule, or timetable, shall be submitted for each step in the development process: including preparation of a site plan, granting of municipal approvals, applications for State and Federal permits, selection of a contractor and construction. The schedule shall provide for construction to begin within two years of court approval of this settlement, except that with respect to VOA2 or other tax credit projects, the applicant shall be provided sufficient time to make at least three tax credit applications even if the period of time to do so is greater than two years. The municipality shall indicate the entity responsible for undertaking and monitoring the construction and overall development activity. The above timetables and/or schedules and other information shall be provided at least 30 days prior to Township's compliance hearing in this matter.

10. The Township agrees to require 13% of all the affordable units referenced in this plan, with the exception of units constructed as of July 1, 2008, and units subject to preliminary or final site plan approval as of July 1, 2008, to be very low income units (defined as units affordable to households earning 30 percent or less of the regional median income by household size), with half of the very low income units being available to families.

11. The Township shall meet its Third Round Prospective Need in accordance with the following standards:

- a) Third Round bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d).
- b) At least 50 percent of the units addressing the Third Round Prospective Need shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.
- c) At least twenty-five percent of the Third Round Prospective Need shall be met through rental units, including at least half in rental units available to families.
- d) At least half of the units addressing the Third Round Prospective Need in total must be available to families.

- e) The Township agrees to comply with an age-restricted cap of 25% and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the municipality claim credit toward its fair share obligation for age-restricted units that exceed 25% of all units developed or planned to meet its cumulative prior round and third round fair share obligation.

12. The Township and/or its administrative agent shall add the following entities to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5): FSHC, 510 Park Blvd, Cherry Hill, NJ; the Latino Action Network, PO Box 943, Freehold, NJ 07728; Willingboro NAACP, Ms. Kyra Price, PO Box 207, Roebling 09854, Southern Burlington County NAACP, PO Box 3211, Cinnaminson, NJ 08077; the Supportive Housing Association, 15 Alden St # 14, Cranford, NJ 07016; and the New Jersey Housing Resource Center. As part of its regional affirmative marketing strategies during implementation of its fair share plan, the Township and/or its administrative agent, and any developers or owners that affirmatively affordable housing, shall also provide notice of all available affordable housing units to the above-referenced organizations.

13. All affordable housing units created pursuant to the measures set forth in this Agreement shall comply with the Uniform Housing Affordability Controls ("UHAC"), N.J.A.C. 5:80-26.1 et. seq. or any successor regulation, with the exception that in lieu of 10 percent of affordable units in rental projects being required to be affordable to households earning at or below 35 percent of the regional median household income by household size, 13 percent of affordable units in such projects shall be required to be affordable to households earning at or below 30 percent of the regional median household income by household size subject to paragraph 13 herein, and all other applicable law. All new construction units shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-311a and -311b and all other applicable law. The Township, as part of the Housing Element and Fair Share Plan that will be prepared, adopted and endorsed as a result of this Agreement, shall adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied. The Housing Element and Fair Share Plan, along with a Spending Plan, and adopted versions of all ordinances required to be adopted as part of this Agreement shall be submitted to the Court and the Special Master no later than 120 days of the entry of an order by the Court at a Fairness Hearing approving this Agreement.

14. Upon full execution of this Agreement, Bordentown shall apply to the Court for scheduling of a "Fairness Hearing" seeking judicial approval the terms of this Agreement pursuant to the legal standard set forth in Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), *aff'd o.b.*, 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. City of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). Notice of the Fairness Hearing shall be published at least 30 days in advance of the Hearing. Bordentown shall also apply to the Court for scheduling a "Compliance Hearing" seeking judicial approval of Bordentown's Housing Element and Fair Share Plan, once same is prepared, adopted and endorsed. The Fairness and Compliance Hearings will be held sequentially. Although it is expected that the Special Master will provide the majority of the required testimony, Bordentown shall also make its consulting planner and any other relevant witnesses available for testimony at the Hearing(s). FSHC shall not challenge the validity of any of the documents attached hereto, or the validity of the Township's Fair Share Plan provided it conforms to this terms of this agreement. If the Fairness and Compliance Hearing(s) result in approval of this Agreement and the Township's Fair Share Plan, the parties agree that the Township will be entitled to either a "Judgment of Compliance and Repose" ("JOR") or the

"judicial equivalent of substantive certification and accompanying protection as provided under the FHA," 221 N.J. at 6, which shall be determined by the trial judge. Each party may advocate regarding whether substantive certification or repose should be provided by the court, with each party agreeing to accept either form of relief and to not appeal an order granting either repose or substantive certification. Among other things, the entry of such an Order shall maintain Bordentown's immunity from all Mount Laurel lawsuits through July 2, 2025.

15. Subsequent to the signing of this Agreement, if a binding legal determination by the Judiciary, the Legislature, or any administrative subdivision of the Executive Branch determines that Bordentown's Round 3 obligation for new construction is decreased by 20% or more (from 425 units to 340 units or less for new construction), with any relevant appeal periods having passed, the Township may file a proposed form of Order, on notice to FSHC and the Township's Service List, seeking to reduce its Round 3 obligation accordingly. Such relief shall be presumptively granted. Notwithstanding any such reduction, the Township shall be obligated to implement the Fair Share Plan prepared, adopted and endorsed as a result of this Agreement, including by leaving in place any site specific zoning adopted or relied upon in connection with the Plan approved pursuant to this settlement agreement; maintaining all mechanisms to continue to address the remaining portion of the Township's Prior Round need and allocation of the Round 3 regional need; and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the Township's obligation below that established in this agreement does not provide a basis for seeking leave to amend this agreement or the fair share plan adopted pursuant to this agreement or seeking leave to amend an order or judgment pursuant to R. 4:50-1. If the Township prevails in reducing its prospective need for Round 3, the Township may carry over any resulting surplus credits to Round 4.

16. The Township shall prepare a Spending Plan which shall be approved by the Court during, or prior to, a duly-noticed Compliance Hearing. FSHC reserves its right to provide any comments or objections on the Spending Plan to the Court upon review. Upon approval by the Court, the Township and Fair Share Housing Center agree that the expenditures of funds contemplated in the Township's Spending Plan shall constitute the "commitment" for expenditure required pursuant to N.J.S.A. 52:27D-329.2 and -329.3, with the four-year time period contemplated therein commencing in accordance with the provisions of In re Tp. Of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563). Upon approval of its Spending Plan the Township shall also provide an annual Mount Laurel Trust Fund accounting report to the New Jersey Department of Community Affairs, Council on Affordable Housing, Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services.

17. The Township will ensure that the sum of \$5,000.00 is conveyed to Fair Share Housing Center within 10 days of the approval of this Agreement by the Court following a Fairness Hearing. By separate agreement between the Township and Zieger, this fee is to be paid by Zieger. In the event Zieger does not pay the fees to FSHC within 30 days of the approval of this Agreement by the Court following a Fairness Hearing, the Township agrees to pay that amount to FSHC within 10 days of a request being made by FSHC to the Township for the funds.

18. On the first anniversary of the execution of this Agreement, and every anniversary thereafter through the end of this Agreement, the Township agrees to provide annual reporting of the status of all affordable housing activity within the municipality through

posting on the municipal website with a copy of such posting provided to FSHC, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC. In addition to the foregoing, the Township may also post such activity on the CTM system and/or file a copy of its report with the Council on Affordable Housing or its successor agency at the State level.

19. The Fair Housing Act includes two provisions regarding action to be taken by the Township during the ten-year period of protection provided in this agreement. The Township agrees to comply with those provisions as follows:

- a) For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Township will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether the mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether the mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the court regarding these issues.
- b) For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of this agreement, and every third year thereafter, the Township will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such posting shall invite any interested party to submit comments to the municipality and Fair Share Housing Center on the issue of whether the municipality has complied with its very low income housing obligation under the terms of this settlement.
- c) In addition to the foregoing postings, the Township may also elect to file copies of its reports with the Council on Affordable Housing or its successor agency at the State level.

20. This agreement may be enforced by the Township or FSHC through a motion to enforce litigant's rights or a separate action filed in Superior Court, Burlington County. If FSHC determines that such action is necessary, the Township consents to the entry of an order providing FSHC party status as an intervenor solely for purposes of its motion to enforce litigant's rights.

21. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement. However, if an appeal of the Court's approval or rejection of the Settlement Agreement is filed, the Parties agree to defend the Agreement on appeal, including in proceedings before the Superior Court, Appellate Division, and New Jersey Supreme Court, and to continue to implement the terms of the Settlement Agreement if the Agreement is approved by the trial court unless and until an appeal of the trial court's approval is successful, at which point the Parties reserve their right to return to the *status quo ante*. In this regard, the Township and FSHC acknowledge that the parties have entered into this agreement to settle the litigation

and that each is free to take such position as it deems appropriate should the matter return to the *status quo ante*.

22. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.

23. This Agreement shall be governed by and construed by the laws of the State of New Jersey.

24. This Agreement may not be modified, amended or altered in any way except by a writing signed by both the Township and FSHC.

25. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Agreement.

26. The Township and FSHC acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each person to sign this Agreement is the proper person and possesses the authority to sign the Agreement, that this Agreement contains the entire understanding of the Township and FSHC and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

27. The Township and FSHC acknowledge that this Agreement was not drafted by the Township and FSHC, but was drafted, negotiated and reviewed by representatives of the Township and FSHC and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. The Township and FSHC expressly represent that: (a) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (b) it has conferred due authority for execution of this Agreement upon the persons executing it.

28. Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Agreement with prior written approval of both the Township and FSHC.

29. This Agreement constitutes the entire Agreement between the Township and FSHC hereto and supersedes all prior oral and written agreements between the Township and FSHC with respect to the subject matter hereof except as otherwise provided herein.

30. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which representatives of the Township and FSHC have executed and delivered this Agreement.

31. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the Township and FSHC by certified mail, return receipt requested, or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be affected as follows, subject to

change as to the person(s) to be notified and/or their respective addresses upon ten (10) days' notice as provided herein:

TO FSHC:

Kevin D. Walsh, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Phone: (856) 665-5444
Telecopier: (856) 663-8182
E-mail: kevinwalsh@fairsharehousing.org

TO THE TOWNSHIP:

Michael J. Edwards, Esq.
Jeffrey R. Surenian and Associates, LLC
707 Union Avenue, Suite 301
Brielle, NJ 08730
Phone: (732) 612-3100
Telecopier: (732) 612-3101
Email: MJE@Surenian.com

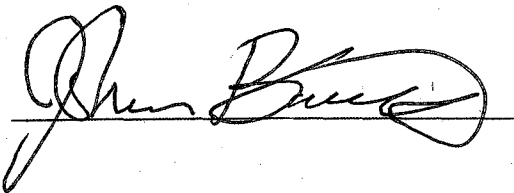
**WITH A COPY TO THE
MUNICIPAL CLERK:**

Colleen Eckert, Clerk
Township of Bordentown
One Municipal Drive
Bordentown, NJ
Phone: (609) 29802800 Ext. 2108
Email: C.eckert@bordentowntwp.org

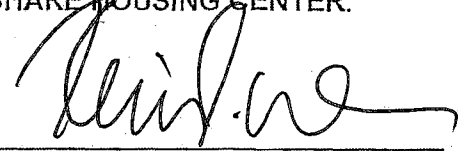
In the event any of the individuals identified above has a successor, the individual identified shall name the successor and notify all others identified of their successor.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be properly executed, their corporate seals affixed and attested and this Agreement to be effective as of the Effective Date.

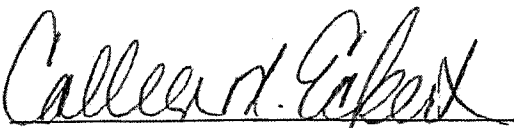
Witness/Attest:



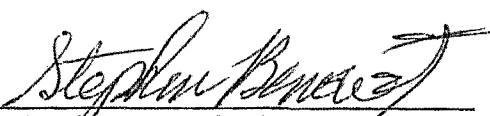
FAIR SHARE HOUSING CENTER:

By:  7/18/2017
Kevin D. Walsh, Esq.
On Behalf of Fair Share Housing Center

Witness/Attest:



TOWNSHIP OF BORDENTOWN:

By: 
Stephen Benowitz, Mayor

On Behalf of the Township of Bordentown

Dated: June 26, 2017

AGREEMENT TO RESOLVE ISSUES BETWEEN THE TOWNSHIP OF BORDENTOWN AND FAIR SHARE HOUSING CENTER CONCERNING THE TOWNSHIP'S MOUNT LAUREL FAIR SHARE OBLIGATIONS AND THE MEANS BY WHICH THE TOWNSHIP SHALL SATISFY SAME.

In the Matter of the Township of Bordentown, County of Burlington, Docket No. BUR-L-1579-16

AMENDMENT

This Amendment, dated June 11, 2019 ("Amendment"), to the Settlement Agreement, dated June 26, 2017 (the "Settlement Agreement") is made by and between:

TOWNSHIP OF BORDENTOWN, a municipal corporation of the State of New Jersey, County of Burlington having an address at One Municipal Drive, Bordentown, New Jersey 08505 (hereinafter the "Township" or "Bordentown");

And

FAIR SHARE HOUSING CENTER, having an address at 510 Park Boulevard, Cherry Hill, New Jersey 08002, (hereinafter "FSHC") (collectively, FSHC and the Township shall be referred to as the "Parties");

WHEREAS, the Parties entered into a Settlement Agreement in June of 2017, which established the Township's obligations as well as its proposed compliance techniques which will serve as the foundation for the Township's Housing Element and Fair Share Plan;

WHEREAS, in or around April of 2018, the Township was contacted by KJohnson Enterprises, LLC ("KJ") seeking to construct affordable housing in a senior inclusionary project at a site identified on the Township's Tax Map as Block 58, Lot 37;

WHEREAS, the Township has adopted zoning to permit a development of up to 92 senior units, of which 19 (20%) will be affordable senior units (the "Senior Project");

WHEREAS, subsequently, KJ again approached the Township regarding the prospect of additional affordable housing in a proposed family rental inclusionary project located at a site identified on the Township's tax map as Block 57, Lot 6.

WHEREAS, the Parties agreed to permit a mixed use inclusionary project, which will produce up to 130 rental units, of which 26 will be affordable along with commercial uses (the "Family Project").

WHEREAS, the Township seeks to modify its Settlement Agreement with FSHC to account for the 19 affordable senior units associated with the Senior Project and for the 26 units associated with the Family Project

WHEREAS, as a result, the Township seeks to reduce the number of market-to-affordable ("MTA") units (or other compliance mechanisms constructed in lieu of MTA units) in its settlement from 59 to 14 units;

NOW, THEREFORE, in consideration of the promises, the mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, the parties hereto agree to amend the Settlement Agreement as follows:

A. Section 8 of the Settlement Agreement is hereby amended and restated in its entirety to read as follows:

8. The Township has a Round 3 settlement number of 425 units, which shall be satisfied as follows:

<u>Project Name</u>	<u>Description</u>	<u>Type</u>	<u>Units</u>	<u>Rental Bonus Credit</u>
Surplus Credits (Round 2)	Residual Credits resulting from Bradford Point	Family Rental	10	10
VOA - 1		Senior Rental (64)/Special Needs (5)	69	5
BWC Residual Credits	Entire Project located at Block 140 – Lots 5-16, 19 and Block 141, Lot 4. 92.7 Net Acres	Family or Senior Rental	18	
Zieger	Block 138.01, Lots 41-43. 19 Net Acres (46.9 total). The Project will be 227 units (168 apartments, 54 Townhome footprints), 36 of which will be affordable.	Family Rental	36	36
Nissam	Block 1.01, Lot 3. 17.4 net acres (22.3 total). The proposed project will consist of roughly 230 total units, 40 of which will be affordable and over 13% of which will be affordable to very low income families	Family Rental	40	40
Kevin Johnson	Block 58, Lot 37. The	Senior	19	

Senior Project	Inclusionary Project will consist of 92 total age-restricted units, of which 20% (19 units) will be affordable to low, very low and moderate-income households. Of 19 affordable units, 10 will be reserved for low income units. Of the 10 low-income units, 3 will be made available to very low income households. No more than 9 units shall be moderate-income.	Inclusionary		
Kevin Johnson Family Project	Route 130 and designated as Block 57 Lots 6 on the Tax Map of the Township of Bordentown. Property in a mixed used project, or up to 130 residential units, with a 20% set aside for family affordable rental units (the "Family Inclusionary Development" or "Inclusionary Development") and Non-Residential Space.	Family Rentals	26	NA
Group Home (Bedrooms)		Special Needs	20	16
Market to Affordable or other agreed upon compliance mechanism		Family Rental	14	
VOA - 2		Family Rental	66	
Subtotal			318	
Bonus			107	
Total			425	

- a) Nissam has agreed to provide at least two units in excess of its total obligation to provide very low income units. These will be very low income family units such that the Township will provide a total of 13% of all post-2008 new affordable housing units (13% of 308 units) as very low income. The Township and Nissam have entered into a Settlement Agreement for this Project and the redevelopment plan associated with it has been adopted by the Township.
- b) BWC's total affordable housing obligation is 15% of its final approvals. At the time of that agreement, that obligation was 101 units. 15% of its total approvals, however, ends up being 87 units, not 101 units. 69 of those units have been

satisfied through the development of 69 affordable units at VOA1. The remaining 18 units required to be produced as part of BWC remain the obligation of BWC.

- c) The Township is in the process of providing crediting information on existing group home. The Township has identified 12 qualifying bedrooms to date and anticipates it has at least a total of 20 creditworthy existing group home bedrooms. In the event there are less than 20 creditworthy existing group homes, the Township will provide for the shortfall by creating additional group home bedrooms, as further addressed in this agreement. At least 30 days prior to the compliance hearing in this matter, the Township will provide all necessary documentation to the Special Master and FSHC regarding existing group homes and provide a detailed plan for the creation of additional units, if needed, in accordance with the terms of this agreement.
- d) The Township and Zieger have entered into a Settlement Agreement and the Zieger Zoning Ordinance has been adopted by the Township.
- e) KJ and the Township have entered into a Developer's Agreement and have, pursuant to that Agreement, adopted the requisite zoning for the production of 19 age-restricted affordable housing units located at vacant real property located on Route 130 and designated as Block 58, Lots 37 on the Tax Map of the Township of Bordentown (the "Property"). The Inclusionary Project will consist of 92 total age-restricted units, of which 20% (19 units) will be affordable to low, very low and moderate-income households. The affordable units will comply with UHAC requirements, Fair Housing Act requirements and COAH's prior round regulations – Very low-income shall be defined pursuant to the Section 304(m) of the FHA. 19 affordable units, 10 will be reserved for low income units. Of the 10 low-income units, 3 will be made available to very low income households. No more than 9 units shall be moderate-income.
- f) KJ and the Township have entered into a Developer's Agreement for the production of 26 family rental affordable housing units located at real property located on Route 130 and designated as Block 57, Lot 6 on the Tax Map of the Township of Bordentown (the "Property"). The Inclusionary Project will consist of up to 130 total family rental units, of which 20% (26 units) will be affordable to low, very low and moderate-income households. The affordable units will comply with UHAC requirements, Fair Housing Act requirements and COAH's prior round regulations. Very low-income shall be defined pursuant to the Section 304(m) of the FHA. Of 26 affordable units, 13 will be reserved for low income units. Of the 13 low-income units, 4 will be made available to very low income households. No more than 13 units shall be moderate-income.
- g) Market-to-Affordable: With respect to the Market to Affordable units, the Township shall complete at least five units by July 1, 2022; at least 12 total units by 2023; and shall complete all 14 units by the end of the year 2024.

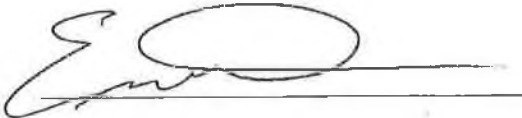
- h) The Parties agree that the Township is exempt from the requirements of 8.g above and the production of MTA units in the event that the Township identifies and generates 14 credits with any combination of supportive housing units or newly constructed municipally-sponsored affordable housing through Habitat for Humanity or other non-profit entity. In either event, the Township is required to report on the MTA program or chosen alternative compliance technique(s) at the July 1, 2020 midpoint as defined by Section 19 of the June 26, 2017 FSHC Settlement Agreement. Regardless of which mechanism is identified and utilized, the Township agrees to comply with all relevant COAH regulations and standards for the given mechanism, including N.J.A.C. 5:93-5.8 (Alternative living arrangements) and N.J.A.C. 5:93-5.5 (Municipally sponsored construction).
- B. Section 13 of the FSHC Settlement Agreement shall be supplemented as follows: Income limits for all units that are part of the HEFSP and for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1 shall be updated by the Township annually within 30 days of the publication of determinations of median income by HUD as follows:
- a. Regional income limits shall be established for the region that the Township is located within (i.e. Region 5) based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in the Township's housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low income unit for a household of four shall be **30 percent of the regional weighted average median income for a family of four**. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.
 - b. The income limits, updated for 2019 and available at <http://ahpnj.org/resources/income-limits-rental-increases>, are the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for FY 2019, and shall be utilized until the Township updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
 - c. The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by

the Township annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.

- d. The parties agree to request the Court at the compliance hearing in this matter to enter an order implementing this paragraph of this Agreement.

C. Finally, nothing in this Amendment shall impact the validity of all remaining provisions in the June 2017 FSHC Settlement Agreement.

Witness/Attest:

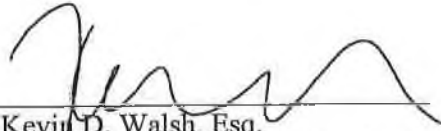


Dated:

5/29/2019

FAIR SHARE HOUSING CENTER:

By:



Kevin D. Walsh, Esq.

On Behalf of Fair Share Housing Center

Witness/Attest:



Dated:

6/11/19

TOWNSHIP OF BORDENTOWN:

By:



Steven Benowitz, Mayor

On Behalf of the Township of Bordentown

APPENDIX C

Nissim

- 2017 MOU with Nissim Family Investments
- 2018 Adopted Redevelopment Plan
- 2019 Planning Board Resolution (P-2019-12)

RESOLUTION #2017-233-27C

RESOLUTION AUTHORIZING A MEMORANDUM OF UNDERSTANDING BETWEEN THE TOWNSHIP OF BORDENTOWN AND NISSIM FAMILY INVESTMENTS, LLC AND NISSIM FAMILY, LLC, D/B/A NISSIM REALTY RELATING TO BORDENTOWN TOWNSHIP'S AFFORDABLE HOUSING PLAN

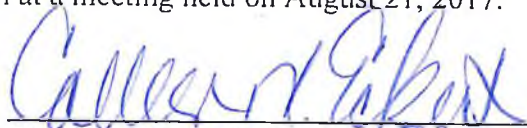
WHEREAS, Nissim Family Investments, LLC and Nissim Family, LLC, d/b/a Nissim Realty, hereinafter referred to as NISSIM, is the owner of property located on Route 206, a/k/a Block 1.01, Lots 3 and 6; and

WHEREAS, the Township of Bordentown and NISSIM have agreed upon the development of the property, which shall, in part, offer affordable housing units in accordance with Bordentown Township's Affordable Housing Plan;

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Bordentown that it does hereby accept the Memorandum of Understanding for Settlement with NISSIM, attached hereto; and

BE IT FURTHER RESOLVED that the Mayor and Township Clerk are hereby authorized to execute the Memorandum of Understanding on behalf of the Township of Bordentown.

It is hereby certified that the foregoing is a true and correct copy of a resolution adopted by the Township Committee of the Township of Bordentown at a meeting held on August 21, 2017.



COLLEEN M. ECKERT, RMC, TWP. CLERK

08/21/17

MEMORANDUM OF UNDERSTANDING FOR SETTLEMENT

THIS MEMORANDUM OF UNDERSTANDING ("MOU") made this _____ day of _____, 2017, by and between:

TOWNSHIP OF BORDENTOWN, a municipal corporation of the State of New Jersey, County of Burlington, having an address at 1 Municipal Drive, Bordentown, New Jersey 08505 (hereinafter the "Township");

And

NISSIM FAMILY INVESTMENTS, LLC and NISSIM FAMILY LLC, d/b/a Nissim Realty, a New Jersey limited liability company, a New Jersey Corporation, all with an address at 14 Kovach Court, West Orange, New Jersey 07052, (hereinafter collectively "Nissim");

Collectively, the Township and NISSIM shall be referred to as the "Parties."

WHEREAS, in response to the New Jersey Supreme Court's decision In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), on or about July 2, 2015, the Township filed an action with the Superior Court of New Jersey ("Court"), entitled In the Matter of the Application of the Township of Bordentown, County of Burlington, Docket No. BUR-L-1579-15, seeking a Judgment of Compliance and Repose approving its Affordable Housing Plan (as defined herein), in addition to related reliefs (the "Compliance Action"); and

WHEREAS, the Township simultaneously sought and ultimately secured an Order protecting Bordentown from all exclusionary zoning lawsuits while it pursues approval of its Fair Share Plan; and

WHEREAS, NISSIM is the owner of the vacant real property designated as Block 1.01, Lot 3 and 6. on the Tax Map of the Township of Bordentown; and

WHEREAS, through private negotiations, the Parties have reached an agreement in principle that NISSIM will redevelop its Property to include an inclusionary project consisting of 272 rental apartments of which 232 units will be market rate family units and 40 units will be set-aside for very low, low and moderate income households, specifically 20 moderate income units 11 low income units and 9 very low income units ("Inclusionary Development"); and

WHEREAS, in exchange for a set aside which is slightly below 15%, NISSIM has agreed to provide very low income units in excess of its obligation to provide at least 13% of its affordable units as affordable to very low income households as defined by the Fair Housing Act at N.J.S.A. 52:27D-329.1; and

WHEREAS, to ensure that the Inclusionary Development contemplated by this MOU generates affordable housing credits to be applied to the Township's Gap (1999-2015) and Round 3 (2015-2025) affordable housing obligations, the affordable units within the Inclusionary Development shall not be age-restricted and shall be developed in accordance with the COAH Prior Round regulations, the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. ("UHAC") with one exception from UHAC such that 9 of the 40 total affordable units shall be affordable to very-low income households at 30% of the regional median income (the statutory requirement) instead of the UHAC standard to be affordable at 35% of the regional income, and all other applicable law, and said Inclusionary Development shall be deed restricted for a period of 30 years from the initial occupancy of the affordable units; and

WHEREAS, the Parties wish to enter into this MOU as a framework for a more formal Redeveloper Agreement, which Agreement shall set forth the terms, conditions, responsibilities and obligations of the Parties, and which agreement shall control to the extent it is at conflict with the terms embodied in this MOU; and

NOW, THEREFORE, in consideration of the promises, the mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereto, agree in this MOU to prepare and adopt a Redeveloper's Agreement reflecting, at a minimum the terms set forth as follows:

ARTICLE I – "BASIC TERMS AND CONDITIONS"

1.1 Purpose The purpose of this MOU is to create a realistic opportunity for the construction of the Inclusionary Development, and to generate affordable housing credits for the Township to apply to its Gap (1999-2015) and Round 3 (2015-2025) affordable housing obligations. The Inclusionary Development shall be consistent with the concept plan attached hereto and made a part hereof as Exhibit A, which have generally been reviewed and approved by the Township and the Township's professionals. The Inclusionary Development shall be governed by the redevelopment plan and agreement which shall include an "AH Affordable Housing Zone" (the "AH Zone") that will be adopted as part of Township Zoning Ordinances in accord with the standards set forth herein. As part of that redevelopment plan, the Township intends to vacate right of way currently named "Nissim Ave" for the purposes of redevelopment.

1.2 This MOU is subject to Court approval at the Fairness and Preliminary Compliance Hearing currently scheduled for September 7, 2017, or at a date scheduled by the Court thereafter. The Parties will work together to ensure that the Court approves the MOU at the currently scheduled Fairness and Preliminary Compliance Hearing or promptly thereafter, if rescheduled by the Court.

ARTICLE II – NISSIM OBLIGATIONS

2.1 Affordable Housing Set-Aside. NISSIM shall have an obligation to deed-restrict forty (40) of the residential units in the Inclusionary Development as very low, low and moderate income

affordable units. Any such affordable units shall comply with UHAC with one exception such that 9 of the 40 total affordable units shall be affordable to very-low income households at 30% of the regional median income (the statutory requirement) instead of the UHAC standard to be affordable at 35% of the regional income, applicable COAH affordable housing regulations, any applicable order of the Court, and other applicable laws. In addition, the affordable family units shall remain affordable rental units for a period of at least thirty (30) years from the date of their initial occupancy ("Deed-Restriction Period") so that the Township may count the units against its obligations to provide family rental affordable housing. This obligation includes, but is not limited to NISSIM's obligation to comply with (1) bedroom distribution and income split requirements (8 three bedroom units (2 very low, 2 low, and 4 moderate income units), 24 two bedroom units (5 very low, 7 low, and 12 moderate income units) and 8 one bedroom units (2 very low, 2 low, and 4 moderate income units)), (2) income split requirements (9 very low income units, 11 low income units and 20 moderate income units), (3) pricing requirements, (4) affirmative marketing requirements, (5) candidate qualification and screening requirements, (6) integrating the affordable units amongst the market rate units, and (7) deed restriction requirements.

2.2 The distribution of the affordable housing units shall be in compliance with COAH's Round Two substantive regulations, N.J.A.C. 5:93, which the Parties believe will govern the issue, or as approved by the Special Master and the Court.

IN WITNESS WHEREOF, the Parties hereto have caused this Memorandum of Understanding to be properly executed, their corporate seals affixed and attested and this MOU to be effective as of the Effective Date.

Witness/Attest:

NISSIM FAMILY INVESTMENTS, LLC

Catherine F. Brunczek By: Jules Nissim
Name: CATHERINE F. BRUNCZEK Name: JULES NISSIM
Title: Title: Managing Member

Dated: 8/11/17

Witness/Attest:

NISSIM FAMILY LLC, d/b/a Nissim Realty

Catherine F. Brunczek By: Jules Nissim
Name: CATHERINE F. BRUNCZEK Name: JULES NISSIM
Title: Title: Managing Member

Dated: 8/12/17

Witness/Attest:

TOWNSHIP OF BORDENTOWN

By:
as its MAYOR

Steve Benowitz By: Steve Benowitz
Steve Benowitz, Mayor

Dated: 8-29-17

EXHIBIT A

CONCEPT PLAN FOR INCLUSIONARY DEVELOPMENT



REDEVELOPMENT PLAN

BLOCK 1.01, LOTS 3-9, 20

**Township of Bordentown
Burlington County, New Jersey**

**March 23, 2018
Adopted April 23, 2018**

Prepared by



REDEVELOPMENT PLAN BLOCK 1.01, LOTS 3-9, 20

Township of Bordentown

Burlington County, New Jersey

**March 23, 2018
Adopted April 23, 2018**

Prepared by



Heyer, Gruel & Associates
Community Planning Consultants
63 Church Street, 2nd Floor
New Brunswick, New Jersey 08901
732-828-2200

The original of this report was signed and
sealed in accordance with N.J.S.A. 45:14A-12.

A handwritten signature in black ink, reading 'Susan S. Gruel'.

Susan S. Gruel P.P. #1955

A handwritten signature in black ink, reading 'Fred Heyer'.

Fred Heyer, P.P. #3581, A.I.C.P., LEED-AP ND, CNUa, CUD

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INTRODUCTION

The Township of Bordentown's Redevelopment Area is a 55-acre area along the southbound frontage of Route 206 in the northwest portion of the Township. The Area consists of Block 1.01 Lots 3, 6, 9 and 20. (See Redevelopment Area Map).

The Area was deemed as "An Area in Need of Redevelopment" as defined in the Local Redevelopment and Housing Law by the Township Committee in 2003.

A portion of the Redevelopment Area (Block 1.01 Lots 3 and 6) is also a component of the Settlement Agreement between the Township and Fair Share Housing Center (FSHC) which was executed on June 26, 2017 (the "Settlement Agreement"). The Settlement Agreement determined that this portion of the Redevelopment Area is appropriate and suitable for a family rental inclusionary development of 272 units with a mandatory affordable housing set-aside. This mandatory set-aside will result in 40 affordable, family rental units. (See Nissim Redevelopment Area Site Map).

As such, this Redevelopment Plan is written to implement the Settlement Agreement and the Memorandum of Understanding (the "MOU") between Bordentown Township and Nissim Family Investments LLC and Nissim Family LLC d/b/a Nissim Realty dated August 29, 2017. (See Exhibit 1: Executed Settlement Agreement and Memorandum of Understanding).





STATUTORY REQUIREMENTS

The Redevelopment Plan is a formal planning document for the Redevelopment Area. According to the Local Redevelopment and Housing Law (NJSA 40A:12A-7), the Redevelopment Plan shall include an outline for the planning, development, redevelopment or rehabilitation of the project area sufficient to indicate:

1. Its relationship to definite local objectives as to appropriate land uses, density of population and improved traffic and public transportation, public utilities, recreational and community facilities and other public improvements;
2. Proposed land uses and building requirements in the project area;
3. Adequate provision for the temporary and permanent relocation as necessary of residents in the project area including an estimate of the extent to which decent, safe and sanitary dwelling units affordable to displaced residents will be available to them in the existing local housing market;
4. An identification of any property within the redevelopment area proposed to be acquired in accordance with the redevelopment plan;
5. Any significant relationship of the redevelopment plan to:
 - a. The master plans of contiguous municipalities;
 - b. The master plan of the County in which the municipality is located; and
 - c. The State Development and Redevelopment Plan adopted pursuant to the "State Planning Act" PL 1985, C398 (C52:18A-196 et al.).

As of the date of the adoption of the resolution finding the area to be in need of redevelopment, an inventory of all housing units affordable to low- and moderate- income households, as defined pursuant to section 4 of P.L. 1985 c.222 (C.52:27D-304), that are to be removed as a result of the implementation of the redevelopment plan, whether as

a result of subsidies or market conditions listed by affordability level, number of bedrooms, and tenure.

A plan for the provision, through new construction or substantial rehabilitation of one comparable, affordable replacement housing unit for each affordable housing units that has been occupied at any time within the last 18 months, that is subject to affordability controls and that is identified as to be removed as a result of implementation of the Redevelopment Plan.

PLAN PRINCIPLES

Residential Development

- Redevelop the majority of the site for a residential inclusionary development.
- Provide realistic opportunity for the development of a portion of the Township's Round 3 fair share of the region's low- and moderate-income households in accordance with the Settlement Agreement and MOU.
- Provide living spaces for a variety of income levels, including very low, low- and moderate income- housing.

Site Design

- Create an aesthetically pleasing development.

Green Infrastructure

- Incorporate green stormwater infrastructure best management principles into the design and layout of the site
- Use native vegetation, to the extent feasible, to absorb run-off, reduce water pollution, and prevent sedimentation.

Commercial Development

- Upgrade commercial buildings which front on Route 206 either through substantial renovation of the existing or through demolition and new commercial development

GOALS AND OBJECTIVES

- To improve the utilization of land, which can be redeveloped for the community's benefit while also taking into account environmental constraints imposed upon the land.
- To redevelop underutilized parcels to meet the changing needs of the Township.
- To encourage developers to meet sustainable/green standards.
- To provide housing opportunities for households of all income levels.
- To address a portion of the Township's affordable housing obligation
- To upgrade the parcels which front on Route 206 either through renovation or new construction

RELATIONSHIP OF PLAN TO TOWNSHIP LAND DEVELOPMENT REGULATIONS

The Redevelopment Area shall be redeveloped in accordance with the standards detailed in this Redevelopment Plan. The Plan supersedes the use and bulk provisions of the Township Land Development Regulations (Chapter 25) as it relates the planned residential development as detailed in the Settlement Agreement and MOU (Nissim site) and the adjacent Nissim commercial sites. Other Township regulations affecting developments that are in conflict are superseded by this Plan. However, existing engineering standards, performance standards and definitions detailed in the Land Development Ordinance shall apply.

The remaining properties in the Redevelopment Area shall be developed in accordance with the underlying zoning. If existing commercial buildings owned by Nissim Realty are to be retained, they shall be improved at least to a level shown on the attached exhibits (Exhibit B).

No deviations may be granted which will result in permitting a use that is not a permitted use within this Redevelopment Plan. Any deviation from standards of this Plan that results in a "d" variance pursuant to N.J.S.A. 40:55D-70d shall be addressed as an amendment to the Plan rather than via variance relief through the Township's Zoning Board of Adjustment. An application requesting a deviation from the requirements of this Redevelopment Plan shall provide public notice of such application in accordance with the public notice requirement set forth in N.J.S.A. 40:55D-12a.&b. All development must be approved by the Planning Board and shall be submitted through the normal site plan and subdivision procedures as identified by N.J.S.A. 40:55D, et seq.

Any deviations from bulk standards shall require "c" variance relief. The Planning Board shall have the power to grant relief to the same extent as the Board may grant relief from bulk and dimensional requirements pursuant to N.J.S.A. 40:55D-70.c.

The Planning Board may grant exceptions or waivers from design standards from requirements for site plan or subdivision approval as may be reasonable and within the general purpose and intent of the provisions for site plan review and/or subdivision approval within the

Plan. The Board may grant exceptions or waivers if it is determined the literal enforcement of one or more provisions of the Plan is impracticable or would exact undue hardship because of peculiar conditions pertaining to the site. No deviations may be granted under the terms of this section unless such deviations can be granted without resulting in substantial detriment to the public good and will not substantially impair the intent and purpose of the Redevelopment Plan.

Final adoption of this Redevelopment Plan by the Township Committee shall be considered an amendment to the Township of Bordentown Land Development Ordinance and Zoning Map. Unless otherwise defined in the Plan, terms used in this Plan shall have the same meaning as defined in the Township's Land Development Ordinance.

LAND USE PLAN

The Land Use Plan shows the following two (2) new land use districts:

- The Affordable Housing District
 - The Commercial District
- (See Land Use Plan map)

It is expected that the Nissim site will be subdivided into 2 parcels generally consistent with the District boundaries.

Affordable Housing District

The purpose of the Affordable Housing District is to provide for comprehensive redevelopment of the Nissim site to create a vibrant planned residential neighborhood. This Land Use Plan section includes an illustrative concept plan, designed in accordance with the Settlement Agreement and MOU.

Commercial District (Nissim)

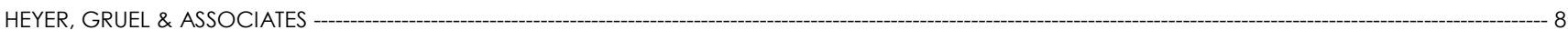
The purpose of the Commercial District (Nissim-owned) is to provide for the redevelopment of the parcels that front along Route 206 and both sides of the proposed access boulevard to the residential development.

If existing commercial buildings are to be retained on the Nissim Property, they shall be renovated and improved to at least the level as shown in Exhibit B including parking updates. Building Renovations are triggered upon vacation of current tenants

Affordable Housing

In conformance with the Township's Settlement Agreement, and MOU, residential development on the Nissim site is required to provide a set aside of 40 affordable units. The breakdown of the affordable housing units shall be in accordance with the Settlement Agreement.

All properties not developed in accordance with the provisions of the Affordable Housing District or Commercial District (Nissim) shall be developed in accordance with the Township's underlying commercial zoning.



AFFORDABLE HOUSING DISTRICT

District Standards

The following district standards contain information pertaining to the permitted and accessory uses, bulk standards, and other district-specific standards.

Principal Permitted Uses

- Multi-family residential inclusionary development in accordance with the Settlement Agreement and MOU.

Permitted Accessory Uses

- Uses which are customary and incidental to the principal use such as parking, signage, fences, open space and recreational facilities
- Stormwater management facilities
- Decks and patios in the rear yard only
- Entry gatehouses
- Gates

Additional Standards

- A development application shall provide evidence at the site plan hearing that any proposed development complies with all applicable standards as required by all relevant regional, state, and federal entities, including but not limited to the New Jersey Department of Environmental Protection.
- Residential development shall be generally limited to that portion of the site as detailed on the concept plan
- The Nissim Ave right of way shall be vacated and/ or relocated
- Access shall be provided to the residential development by way of a divided landscaped boulevard as shown on the concept plan.

Although the access shall not be by way of a public right of way, the boulevard shall be constructed to municipal road standards,

Bulk Standards- Affordable Housing District

Any deviations from bulk standards shall require "c" variance relief.

Minimum Perimeter Building Setbacks:	35 feet
Minimum building setbacks from commercial lots	25 feet
Minimum buffer from commercial lots	25 feet
Maximum Building Coverage	35%
Maximum Impervious Coverage	70%
Maximum Residential Building Height	4 stories / 55 feet Measured to the midpoint of a hip or gable roof. Maximum height to ridge: 62 ft Minimum roof pitch is 6:12
Minimum Building separations	No residential building shall be located closer to another building than ½ the height of the taller building
Minimum Parking:	Per RSIS
Minimum perimeter landscaped buffer excluding buffer adjacent to commercial lots	25 feet
Maximum residential units (including affordable units)	272 family rental units
Required Affordable Housing Set-Aside	40 units in accordance with the Settlement Agreement

ROUTE 206 COMMERCIAL DISTRICT

District Standards

Principal Permitted Uses

- Retail sales of goods and services
- Professional and business offices on the upper floors
- Banks
- Restaurants, bars and taverns
- Child care centers which requires a license from the NJ Department of Human Services

Permitted Accessory Uses

- Uses which are customarily and incidental to the principal use such as parking, signage, fences and walls, open space
- Temporary construction trailer and one sign not exceeding 75 sq. ft., advertising the prime contractor, subcontractor(s), architect, financing institution and similar data for the period of construction beginning with the issuance of a construction permit and concluding with the issuance of a certificate of occupancy or one year, whichever is less, provided that the trailer(s) and sign are on the site where construction is taking place and are set back at least 30 feet from all street and lot lines.

Additional Standards

- Retail commercial buildings may contain more than one principal use, provided each retail use occupies a minimum gross floor area of 750 sq. ft.
- The general requirements in 25.408E shall apply.
- The pre-existing non-conforming conditions are permitted to remain (including if any subdivision occurs) until such time as the building demolition and/or building expansion occurs. Drive thru uses are permitted under any future redevelopment.
- No outdoor storage shall be permitted.

Bulk Standards- Commercial District

Any deviations from bulk standards shall require "c" variance relief.

Minimum building setback from lot lines and street lines:	25 feet
Maximum Building Coverage	40%
Maximum Impervious Coverage	85%
Maximum Building Height	3 stories / 45 feet
Minimum parking and loading	See sections 25.408F & G
Minimum perimeter landscaped buffer to lot line	10 feet
Minimum perimeter landscaped buffer to street	20 feet

Design Standards

The following design standards shall be considered site plan standards. Any deviation from the following standards shall be considered design standard waivers. The design standards are intended to reinforce the physical, visual, and spatial characteristics of the Redevelopment Area. Any elements not covered by these standards shall be subject to the appropriate provisions of the Township of Bordentown Land Development Ordinance. The following standards shall apply, when appropriate:

General

- The entirety of the development shall be developed with a common architectural theme. The architectural theme shall include buildings, signing, fencing, lighting, paving, curbing, landscaping and other similar related features
- All portions of all buildings shall be designed with compatible architectural themes and materials, whether constructed at one time or in stages over a period of time, and the architectural design proposed by the applicant shall be subject to review and approval by the Township
- The architectural design and surface material and color of the buildings shall be suitably finished for aesthetic purposes to be compatible with the front of the building
- All new buildings shall have a gable, hip, gambrel or mansard roof (or other dual pitched, single ridge roof); no flat roofs are permitted. However, where roof mounted equipment is necessary and/or preferable for the operation of the building, a façade roof treatment exhibiting the appearance of such a dual pitched, single-ridge roof may be permitted if specifically approved by the Township, provided that any flat roof areas shall be screened from public view
- Mechanical equipment serving a building, whether roof or ground mounted, shall be screened from public view by features integrated into the overall design of the building and with the foundation landscaping.
- All areas not utilized for buildings, parking, loading, access aisles and driveways or pedestrian walkways shall be suitably landscaped with grass, shrubs, groundcover, or trees and shall be maintained in good condition.
- Stormwater management facilities shall be designed to enhance the aesthetic attributes of the proposed development, including water features and landscaping which create an attractive visual appearance.
- Internal sidewalks or pathways shall be provided within the development to connect residential buildings to parking areas, club houses and recreation areas as well as to the retail commercial buildings
- At least one additional vehicle emergency access should be provided to the adjoining commercial property as well as pedestrian and bicycle paths (subject to cooperation of such adjacent property owner)

Signage

Signage for residential uses shall be in accordance with the Township's Code (Section 500) except for the following standards. Where there is a conflict between the Ordinance and this Plan, this Plan takes precedence.

- All signage shall be designed with a consistent theme throughout the development and shall be compatible in terms of design, materials, colors, lettering, lighting and the positions of the signs within the development.
- One (1) monument identification sign shall be permitted in the median of the entrance boulevard into the development, identifying the name of the development only. The sign shall not exceed six feet (6') in height and twenty-four (24) square feet in area and shall be setback at least ten feet (10') from the Route 206 right-of-way. The sign may be internally or externally lit.
- Residential buildings, clubhouses, and recreation areas are permitted to have customary and typical street number designations and nameplate signs as may be approved by the Township.
- Commercial signage shall comply with the following:
 - One (1) free-standing sign shall be permitted for each retail commercial lots
 - Each freestanding sign shall be landscaped around the base of the sign to the satisfaction of the Township

- The total sign size of each sign shall not exceed fifty (50) sq. ft. in area, shall be setback at least fifteen (15) feet from all street rights-of-way and twenty-five (25) feet from the tract boundary line, and shall not exceed a height of sixteen (16) feet above ground-level.
- Each principal use in the retail commercial buildings shall each be permitted one (1) attached façade sign along Route 26 façade, provided and in accordance with the following requirements:
 - The sign shall identify the name and/or logo of the use only
 - The sign shall be located directly above storefronts, in the sign band on the façade, if provided, but in no case higher than twenty-two (22) feet above grade
 - The size of an attached façade sign shall not exceed fifty (50) sq. ft. in area or one-half (1/2) sq. ft. of the sign area per one (1) linear foot of the building façade facing Route 206 and occupied by the individual use, whichever square footage is less
 - Attached façade signs may be internally or externally illuminated
 - The length of any façade sign shall not exceed sixty percent (60%) of the width of the storefront of the use, and no sign shall be closer than twenty-four (24) inches to the end of the storefront of said use or to the corner of a building
 - If awnings are used over the windows of the storefront, the awnings also may include the name of logo of the use, provided that the lettering or logos shall not exceed six (6) inches in height or one (1) foot in total length
- Any retail commercial use also having a front or side façade facing the entrance boulevard of the development may have an illuminated sign attached

flat against a façade of the building facing the boulevard, provided and in accordance with the following:

- The area of the façade sign shall not exceed five percent (5%) of the building façade facing the street and occupied by the use, but in no case shall exceed twenty (20) sq. ft. in area
 - In any case, no façade of a building shall be permitted to have more than one (1) sign per use attached thereto.
- Each commercial use may have one (1) identification sign at a rear or side service door providing access into the store space; such signs shall not exceed two (2) sq. ft.

Architectural Standards

- The exterior walls of buildings shall not have large blank or featureless expanses. No blank walls may be constructed that are greater than 30 feet in length.
- Materials used near sidewalks and adjacent to the entrance shall be durable and compatible with other building materials.
- Air conditioning units should not be placed into windows or any other openings visible from the parking lots. Units located in non-window openings may be permitted if they are screened with a grille within the building wall.
- Loading and service areas where required shall be integral to building design and screened from public view. These areas, especially areas used to store garbage and recycling, shall be fully screened on all sides by masonry units that match the building architecture.
- No flat roofs are permitted for residential buildings.
- Rooftop appurtenances, including architectural features such as spires, cupolas, domes, and belfries, are permitted, as long as their highest points are no more than 15 feet above the maximum overall height of the building, and as long as the total areas enclosed by the outer edges of the appurtenances, measured at the maximum overall height of

the building, does not exceed 10% of the total horizontally projected roof area of the building.

- Stairs and elevator penthouses which project above the maximum height of the building shall count toward the 10% allowance. Parapet walls and equipment screens which project above the maximum overall height of the building shall also count toward that 10% allowance.
- Enclosure of rooftop areas, terraces, or balconies is not permitted. However, rooftop planters, fences below the height of the parapets or railings, canvas terrace awnings, and outdoor furniture are allowed.
- Balconies are permitted to wrap around corners.



Landscaped median

Circulation

- Only one central boulevard-style driveway shall provide vehicular access to the site. The driveway shall have mountable island(s) that provide separate ingress and egress.

- Turning templates showing emergency vehicles, delivery vehicles, and garbage collection vehicles shall be overlaid on the site plan and provide for review at the time of application.

Lighting

- Pedestrian-level, bollard lighting, ground-mounted lighting, or other low, glare-controlled fixtures mounted on building shall be used to light pedestrian walkways.
- Lighting shall be shielded to prevent glare on adjacent properties.
- Exterior light fixtures shall be compatible and relate to the architectural character of the buildings on the site.
- Parking lot light fixtures shall not exceed 20 feet in height and shall contain decorative fixtures and bases.

Open Space and Recreation

- The residential portion of the development shall be served by common recreational facilities, which may include, but not limited to, a swimming pool, a spa, a bocce ball court, a dog run, nature trails and a community center or club house.
- Landscape buffers shall include appropriate plantings of evergreen and deciduous trees and shrubs, and shall be comprised of a variety of species.
- All open space areas shall be landscaped and maintained in an attractive condition with appropriate plant materials
- Indigenous plant species shall be utilized over exotic or foreign species
- Best management practices shall be utilized to reduce excessive fertilizer and pesticide applications, which may result in runoff.
- The use of artificial plant material is prohibited.
- Permeable paving material is encouraged for parking lots and driveways
- Any landscaping that is not well acclimated to the environment or dies within 2 years of planting shall be replaced by the developer.
- Project shall be exempt from compensatory plantings per ordinance section 25.506.



Example of green roof

General Design Requirements and Phasing

- A development shall be designed, subdivided, site planned and approved by the Township Planning Board as a single entity according to a comprehensive site development plan.
- All buildings shall comply with the architectural design guidelines contained in Ordinance 2003-23 as adopted by the Township.

Stormwater Management

- All development shall be in accordance with the stormwater controls standards found in the Township's Land Development Ordinance.
- To the extent feasible, development within the Area should employ Green Infrastructure techniques including, but not limited to, the following:
 - Rain Gardens / Bioretention Basins
These are landscaped, shallow areas that capture rainwater and allow it to percolate into the ground rather than run off site or into Township Storm Sewers.
 - Green Roofs
Green Roofs are roofing that is either partially or totally covered with vegetation. The benefits include absorbing and retaining rainfall, thereby limiting run-off, and reducing the urban heat island effect. Green roofs can be low-maintenance and focused strictly on storm water management benefits, or can be more intensive to support a variety of vegetation.
 - Pervious Pavement
Pervious pavement systems allow water to infiltrate into the soil rather than run off and enter the storm sewer system. In the Redevelopment Area, the application may be limited to pervious concrete for sidewalks.

PROPOSED CONCEPT PLAN

The concept plan has been developed in accordance with the Settlement Agreement Bordentown has entered into with Fair Share Housing Center in regards to the Township's affordable housing obligations and the MOU between the Township and Nissim Realty.

The concept plan proposes a planned residential inclusionary development on 22-acres consisting of 272 total residential units. Of the total, 232 units will be market rate family units containing a mix of 1- and 2-bedroom units. In addition, of the 40 affordable units, no more than 20 units will be set aside for moderate-income households, at least 11 units for low-income households, and 9 units for very low-income households. The proposed affordable units will comply with the MOU, UHAC regulations, the FHA, applicable COAH regulations, and all other applicable laws.

Recreational amenities will be provided including a 3,500-sq. ft. community building, an outdoor pool and/or spa, a deck area, a bocce court and dog run. As shown on the concept plan, the rear portion of the property along Crosswicks Creek and associated wetlands will be preserved as a nature area with no proposed development.

A landscaped boulevard will provide access to the site from Route 206. The adjacent existing commercial sites owned by the redeveloper shall either be renovated to provide at least improvements to a level as detailed in the following plans or demolish and redevelop with new commercial buildings that will conform to the standards of the Plan. An attempt shall be made to provide emergency access at least on the south side of the residential district to the property line.





SITE PERSPECTIVE 1
OCTOBER 19, 2016
N.T.S.
PLANNING | ARCHITECTURE | ENGINEERING | SURVEYING
CPL CHESTER, PLOUSSAS, LISOWSKY
PARTNERSHIP, LLC
Bordentown, NJ 08005-1001 | Phone: 609.396.0211 | Fax: 609.396.0212

BORDENTOWN, NJ



SITE PERSPECTIVE 2
OCTOBER 19, 2016
N.T.S.
PLANNING | ARCHITECTURE | ENGINEERING | SURVEYING
CPL CHESTER, PLOUSSAS, LISOWSKY PARTNERSHIP, LLC
BORDENTOWN, NJ



TYPICAL GARDEN APARTMENT ELEVATION



TYPICAL DUPLEX OVER FLATS ELEVATION



REC CENTER ELEVATION



RESIDENTIAL DEVELOPMENT SIGNAGE - 1/4"=1'-0"

TYPICAL RESIDENTIAL ELEVATIONS
OCTOBER 15, 2016
SCALE: 1/8"=1'-0" UNO
PLANNING | ARCHITECTURE | ENGINEERING | SURVEYING
CPL CHESTER, PLOUSSAS, LISOWSKY PARTNERSHIP, LLC
BORDENTOWN, NJ



JARONS RETAIL ELEVATION



GOODWILL RETAIL ELEVATION



JARONS SIGNAGE ELEVATION - 1/4"=1'-0"



GOODWILL SIGNAGE ELEVATION - 1/4"=1'-0"

TYPICAL RETAIL ELEVATIONS
OCTOBER 19, 2016
SCALE: 1/8"=1'-0" UNO

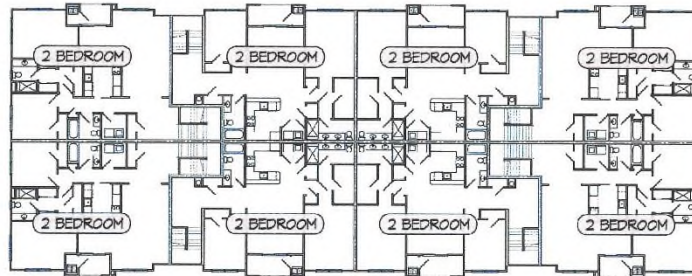
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CHESTER
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LISOWSKY
PARTNERSHIP, LLC

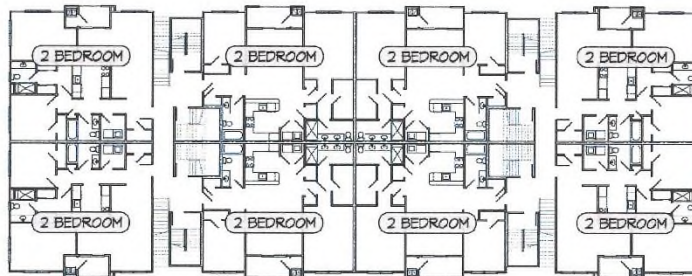
1000 N. 10TH STREET, SUITE 200, PHILADELPHIA, PA 19107-1000
TEL: 215.596.1000 FAX: 215.596.1001

BORDENTOWN, NJ

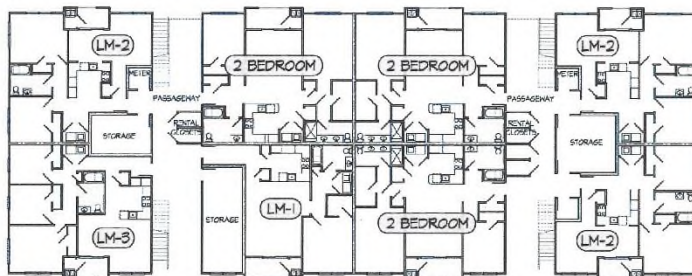
**GARDEN APARTMENTS -
TYPICAL BUILDING PLANS**



TYPICAL THIRD FLOOR PLAN

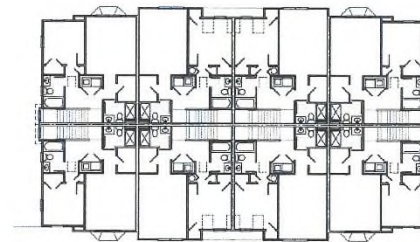


TYPICAL SECOND FLOOR PLAN

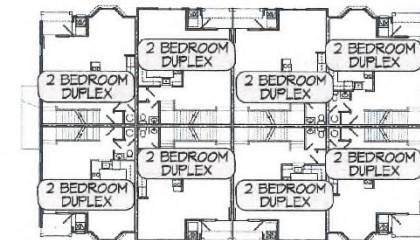


TYPICAL FIRST FLOOR PLAN

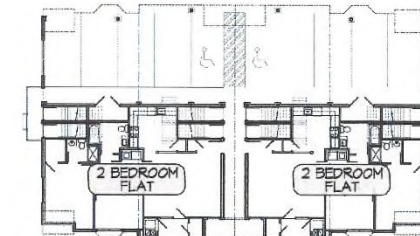
**DUPLEX OVER FLATS -
TYPICAL BUILDING PLANS**



TYPICAL THIRD FLOOR PLAN



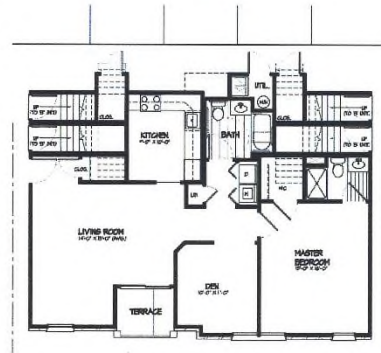
TYPICAL SECOND FLOOR PLAN



TYPICAL FIRST FLOOR PLAN

TYPICAL BUILDING PLANS
OCTOBER 19, 2016
SCALE: 3/32"=1'-0"
PLANNING | ARCHITECTURE | ENGINEERING | SURVEYING
CHESTER,
PLOUSAS,
BLOWSKY
PARTNERSHIP, LLC
BORDENTOWN, NJ

**DUPLEX OVER FLATS -
TYPICAL UNIT PLANS**



A-UNIT-BEDROOM FLAT



B-UNIT 2-BEDROOM FLAT



C-UNIT 2-BEDROOM DUPLEX END



D-UNIT 2-BEDROOM DUPLEX



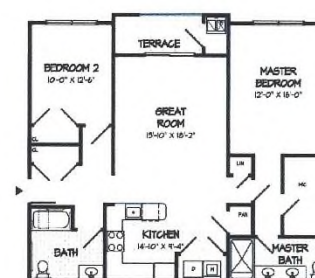
**GARDEN APARTMENTS -
TYPICAL UNIT PLANS**



A UNIT- 1 BEDROOM FLAT



B UNIT- 2-BEDROOM FLAT



C UNIT- 2-BEDROOM FLAT

RELATIONSHIP TO OTHER PLANS

Master Plan/Reexamination

The Township's most recent Master Plan Reexamination Report was adopted in December 2008. The Reexamination Report builds on the goals and objectives identified in the 1990 Master Plan and its subsequent Reexamination Reports and Revisions adopted in 1996, 1998 and 2002.

This Redevelopment Plan supports the following goals from the 1990 Master Plan:

- The Land Use Plan of the Township of Bordentown should build upon and refine the past planning decisions of the municipality, consistent with present local and regional needs, desires, and obligations
- The Land Use Plan noted the physical characteristics of the Township and its inherent limitations of the land to host different types of community development, thereby necessitating the assignment of different densities and intensities of development to match the capacities of the environment
- The Land Use Plan should strive to prevent homogeneous suburban development throughout the municipality, using such elements as a balanced variety of uses, housing styles and neighborhood commercial centers providing personal sales and services.
- Higher density housing should be permitted only as part of larger scale developments to ensure that adequate roads, recreational areas, communities amenities, drainage facilities, public water and sewerage facilities, and other infrastructure are constructed commensurate with the requirements for a variety of residential densities.

The following represents additional recommendations from the 2008 Master Plan Reexamination Report:

- Review existing redevelopment plan/areas to determine if changes need to be made to the boundaries, types of uses permitted, and zoning requirements.

The 2008 Reexamination Report additionally states that the site, Block 1.01 Lots 3 and 6, be included as part of the Township's Redevelopment Plan along with several surrounding properties.

This Redevelopment Plan is consistent with the Township's Master Plan Reexamination Report.

Northern Burlington County Growth and Preservation Plan

The Northern Burlington County Growth and Preservation Plan (GAPP) was adopted by the Burlington County Board of Chosen Freeholders in October 2010. The Township is located in northern Burlington County. The GAPP presents a regional strategy with the following goals:

- Revitalize Northern Burlington County's Hamlets, Villages and Towns
- Conserve Northern Burlington County's agricultural and natural resources and systems
- Promote beneficial economic growth, development and renewal for all residents of the County
- Protect the environment, prevent and clean up pollution
- Provide adequate public facilities and services at a reasonable cost
- Provide adequate housing at a reasonable cost
- Preserve and enhance areas with historic, cultural, scenic, open space and recreational value
- Ensure sound and integrated planning and implementation throughout the Northern Burlington County region.

The GAPP shows the majority of Bordentown Township under the category of T3- Suburban. The Suburban Area includes Post World War II neighborhoods and modern residential subdivisions in sewer service areas, as well as development highway corridors and centers outside older communities. According to the GAPP, the Nissim Site falls within the suburban infill classification.

The Plan also encourages redevelopment, where appropriate, at intensities sufficient to support pedestrian-oriented development, public safety, transit accessibility, a broad range of uses and mixed uses, and efficient use of infrastructure. Additionally, municipalities should continue to provide local and regional housing services that support healthy Centers.

This Redevelopment Plan is consistent with the GAPP.

New Jersey State Development and Redevelopment Plan

The New Jersey State Development and Redevelopment Plan (SDRP) was adopted on March 1, 2001. This plan compared the planning policies among various government levels with the purpose of attaining compatibility among local, county and State plans. The SDRP allocates land into five (5) different categories called Planning Areas. The Nissim Site in Bordentown Township is located within Planning Area 1 (PA1), the Metropolitan Planning Area. The Metropolitan Planning Area includes a variety of older, developed cities and towns that have a compact, close-knit development pattern. The SDRP is a unique document that, while not binding, guides State-level development and redevelopment policy as well as local and regional planning efforts. The Plan includes eight statewide goals and dozens of policies which are intended to implement the goals.

The goals of the PA 1: Metropolitan Planning Area are as follows:

- Provide for much of the State's future redevelopment
- Revitalize cities and towns
- Promote growth in compact forms
- Stabilize older suburbs
- Redesign areas of sprawl
- Protect the character of existing stable communities

This Redevelopment Plan is consistent with the State Development and Redevelopment Plan.

State Strategic Plan

The Final Draft of the New Jersey State Strategic Plan for Development and Redevelopment dated October 2011, which has yet to be adopted by the State Planning Commission, was intended to be an update to the State Development and Redevelopment Plan. This document takes a strategic approach to setting goals and a vision for the State of New Jersey. The State Strategic Plan contains four overarching goals that "incorporate[s] administrative actions, legislative and regulatory forms, and public investment prioritization." These goals are as follows:

- Goal 1: Targeted Economic Growth

- Goal 2: Effective Planning for Vibrant Regions
- Goal 3: Preservation and Enhancement of Critical State Resources
- Goal 4: Tactical Alignment of Government

The Strategic Plan further states "these goals must work in tandem as their interrelationship represents a critical piece of the State's blue print for success."

Additionally, the State Strategic Plan articulates a number of goals as Garden State Values. The following values are relevant to this Redevelopment Plan:

- Garden State Value #1: Concentrate development and mix uses.
- Garden State Value #2: Prioritize Redevelopment, infill, and existing infrastructure.
- Garden State Value #4: Create High-Quality, Livable Places.
- Garden State Value #6: Advance Equity.
- Garden State Value #7: Diversify Housing Options.
- Garden State Value #8: Provide for Healthy Communities through Environmental Protection and Enhancement.
- Garden State Value #10: Make Decisions within a Regional Framework

This Redevelopment Plan is consistent with the Draft State Strategic Plan.

RELATIONSHIP TO ADJACENT MUNICIPALITIES

The Township of Bordentown lies adjacent to the following municipalities:

- Hamilton Township (Mercer County)
- Chesterfield Township (Burlington County)
- Mansfield Township (Burlington County)
- Florence Township (Burlington County)
- Fieldsboro Borough (Burlington County)
- Bordentown City (Burlington County)

The closest municipality to this Redevelopment Area is Hamilton Township, which is approximately half a mile north of the site. The second closest municipality is Bordentown City, which is about 1-mile south from the site. The development of this site is not anticipated to have any impacts on the adjacent municipalities.

ADMINISTRATIVE AND PROCEDURAL REQUIREMENTS

Duration of Redevelopment Plan

The Redevelopment Plan shall remain in effect for 30 years from the date of adoption of this Plan by the Township Committee. After that period, the Zoning Ordinance will regulate the development of the site.

Amending the Redevelopment Plan

Upon compliance with the requirements of applicable law, the Township of Bordentown may amend, revise or modify this Redevelopment Plan, as changing circumstances may make such changes appropriate.

Property Acquisition

Although permitted, the use of eminent domain is not anticipated.

Relocation

The site does not contain any residential units which would require relocation.

Affordable Housing Units

No affordable housing units are identified to be removed as part of the implementation of this Redevelopment Plan.

Provision of New Affordable Housing Units

Redevelopment Plans are permitted to require the provision of affordable housing units per the Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-7.b).

In conformance with the Township's Settlement Agreement, residential development within the Redevelopment Area is required to provide 40 family-rental units. Residential units shall be developed in conformance with the approved Settlement Agreement, and all affordable housing units shall comply with the Uniform Housing Affordability Controls (UHAC), N.J.A.C. 5:80-26.1 et. seq. or any successor legislation, with the exception that in lieu of 10% of affordable units in rental projects being required to be affordable households earning at or below 35% of the regional median household income, a minimum of 13% of affordable units in such projects is required to be affordable to households earning at or below 30% of the regional median household income. The development is proposed to provide more than 13% of the affordable units are very low-income. The proposed affordable units will comply

with the MOU, UHAC regulations, the FHA, applicable COAH regulations, and all other applicable laws.

**PLANNING BOARD
TOWNSHIP OF BORDENTOWN**

**Application No.: PB 2019-04
Resolution No.: P-2019-12**

RESOLUTION GRANTING THE APPLICATION OF LARKEN ASSOCIATES, LLC, FOR PRELIMINARY AND FINAL MAJOR SITE PLAN & MAJOR SUBDIVISION APPROVAL WITH RESPECT TO BLOCK 1.01, LOTS 3 & 6, MORE COMMONLY KNOWN AS 596 ROUTE 206 SOUTH

WHEREAS, Larken Associates, LLC (“the Applicant”) is the contract purchaser of the property located in the Township of Bordentown identified on the Tax Map as Block 1.01, Lots 3 & 6, more commonly known as 596 Route 206 South; and

WHEREAS, the Applicant is proposing development of 272 residential units, including 40 affordable units, a residential recreation facility for the residences, and improvements to the two existing commercial properties within the Northwest/Nissim Redevelopment Area; and

WHEREAS, the Board found that all jurisdictional requirements of the Bordentown Township Code (“Code”) have been satisfied and that all procedural requirements of the Code have been either satisfied or waived by the Board; and

WHEREAS, the Applicant submitted an affidavit of mailing and publication to the Board demonstrating that notice of the hearing on the Application was provided in a manner which complies with the applicable notice requirements under the Municipal Land Use Law (“MLUL”); and

WHEREAS, the Applicant and its representatives were sworn to present testimony in support of the requested relief and were represented by Ron Shemanewicz, Esq. of Hutt & Shemanewicz, PC, at the special public meeting held on May 30, 2019; and

SECTION 1. Submissions and Testimony of Record at the Hearing.

In reaching its decision, the Board relied on the submissions, exhibits, and witness testimony and representations of the Applicant's representatives as summarized below, in addition to the application materials which are deemed part of the record as if set forth in full herein:

A. The Applicant's Exhibits:

- A-1: Existing Condition Map, containing a color copy of Plan Set Sheet 2
- A-2: Color copy of Plan Set Sheet 3, combining the Site Plan & Landscape Plan
- A-3: Hand markup of requested landscape amendments to the Landscape Plan
- A-4: Color elevations of the 4-story structures
- A-5: Color elevations of the 3-story structures and garage structure
- A-6: Colorized layout showing placement of market and affordable units
- A-7: Colorized layout of garden units with affordable units noted
- A-8: Color perspective rendering of the recreation center
- A-9: Rear perspective rendering of recreation center
- A-10: Perspective rendering of the parking lot from the center of the site
- A-11: Perspective rendering of the pavilion/dog run area
- A-12: Bird's eye view rendering from Shop Rite site looking down
- A-13: Bird's eye view rendering from the site entrance
- A-14: Signage exhibit for the residential property
- A-15: Bird's eye rendering of proposed commercial signage

B. Reports from Board professionals, to be incorporated herein by reference as if set forth in full:

- Review Letter by Frederick J. Turek, P.E., P.P., C.M.E., dated May 24, 2019.
- Review Letter by Jack Carman, FASLA, LLA, PP dated May 28, 2019.

C. Testimony of the Witnesses:

Michael K. Ford, P.E. Van Cleef Engineering Associates, LLC

1. Mr. Ford was sworn and qualified as the Applicant's Site Engineering Expert.
2. Mr. Ford summarized the existing conditions on the site and the proposed improvements made to site access in conjunction with the Department of Transportation along Route 206. The "island" in front of Union Hall will be eliminated, and replaced with an expanded green area.

3. With respect to water and sewer, the Applicant has agreed to a waste plan which includes a sewer pump station directed toward the existing Route 206 Line, as well as improvements made by the Applicant to the down-flow pump station.
4. Mr. Ford summarized site access and circulation, the proposed building types and layouts, as well as the layout and amenities of the proposed community center serving the residential units.
5. The Applicant confirmed that the garages on site would be limited to use by residential tenants, and will be strictly limited to parking as opposed to personal storage.
6. Mr. Ford summarized the green space at the site, including the stormwater management basin and wetlands swale, for which the Applicant already has DEP approval. As to the remainder of the wetlands green area, the Applicant confirmed it will be placed into a conservation easement.
7. There are two emergency access points onto the site, in addition to use of the primary site entrance. One is a grass paver access point adjacent to the Shop Rite site, and the second is through Lot 9, also part of the future Shop Rite development. Both access points will require the lot owner's approval.
8. With respect to the commercial properties, the frontage along Route 206 will be altered to improve the non-conforming parking at the Jarron's site that is technically within the Route 206 Right of Way. The number of spaces will not be altered, but the encroaching spaces will be moved and replaced with green area.
9. Mr. Ford also highlighted the improved truck circulation for both Goodwill and the Jarron's site that will result from the overall improvements, indicating that loading can occur in the back of the stores, and that the existing condition of the pavement and vegetation will be cleaned up to facilitate loading.
10. Mr. Ford addressed perimeter buffering and landscaping, describing the boulevard landscaping and addressing the need to reduce the buffering area between the commercial and residential lots due to the addition of the grass paver fire lane. Specifically, the lane behind Building #7 required removal of some buffer landscaping on the residential side. A 10-foot landscape buffer is able to be provided, which includes 8-foot vinyl fencing between the commercial and residential sites.
11. Mr. Ford confirmed that in order to comply with the intent of the buffering requirement, the landscaping was extended an additional 10 feet on the commercial side, to provide an overall 20 foot buffer between the uses as required, albeit not completely located within the residential site.
12. Upon questioning by the Board, Mr. Ford confirmed that there are no driveways or pedestrian access points between the proposed development and the residential neighborhood to the north, or the Union Hall property.
13. Upon questioning by the Board, Mr. Ford confirmed that the site does technically have frontage on Route 206 via the residential boulevard, therefore avoiding creation of the landlocked parcel.
14. Mr. Ford also summarized the Applicant's design waiver request regarding shade trees, indicating that while 183 are technically required, there are roughly 130 proposed. The exact deficiency will be updated after amendments to the landscape plan are made in accordance with this hearing.

15. Mr. Ford also summarized the Applicant's design waiver request for an 8-foot vinyl fence where a 6-foot fence is permitted, indicating the benefits of the additional fencing height between the residential and commercial uses. The Board agreed with the benefits of this design waiver, and confirmed that it was granted.
16. Upon questioning from the Board, the Mr. Ford confirmed that the Applicant agrees to all comments and conditions addressed within the Board Engineer's review letter, to the extent not already addressed through testimony and/or revised submissions.
17. The Board questioned Mr. Ford as to the use of porous pavement, and Mr. Ford indicated that the plan has been revised to not use porous pavement at the suggestion of the Board Engineer. Instead, rain gardens as depicted in the plan are proposed to absorb water runoff, which is also supported by stormwater best management practices.
18. The Board confirmed that responsibility of the stormwater basin is solely attributable to the property owner, and that there is no public works obligation.
19. The Board discussed access from Route 206, and Mr. Ford confirmed that Route 206 access would be facilitated by a slow/merge lane separate from the existing two lanes of travel. The DOT has asked the Applicant to widen and extend the merge/slow lane as part of the frontage improvements to better facilitate ingress and egress at the site, as represented on the site plan submission.
20. The Board discussed lighting at the site, and Mr. Ford noted the style of lighting and confirmed that all proposed lighting meets the Township's ordinance requirements. Mr. Ford also highlighted that commercial lighting improvements would be made, in a manner and style consistent with the residential LED lighting.
21. The Board questioned Mr. Ford as to any environmental concerns, and Mr. Ford confirmed that the Applicant would provide a DEP No Further Action letter, and that there are no known areas of environmental concern on the residential tract.
22. The Board questioned the Board Engineer as to agreement with the Applicant's submissions concerning adequacy of stormwater management, and the Board Engineer agreed that any impervious coverage deviations were *de minimus* and necessary to support parking. Furthermore, the Board Engineer confirmed the adequacy of the Applicant's stormwater management provisions.
23. The Board confirmed that the Applicant could satisfy, and agreed to address to the extent not addressed through testimony, all comments and conditions of the Board's Traffic Engineer and Planner as well, to which Mr. Ford and the Applicant agreed.
24. As to the review letter comments of the Planning Board Engineer, the Planning Board Planner and the Planning Board Traffic Consultant, the Applicant agreed to comply with those comments in accordance with and to the extent set forth in letter from Michael K. Ford, PE of Van Cleef Engineering Associates, LLC to Michael P. Theokas, Bordentown Township – Director of Community Development, dated May 29, 2019 (the "Van Cleef Response Letter").

David Gardner, Managing Partner of Larken Associates, LLC

25. Mr. Gardner was sworn and stated his position as President & CEO of Larken Associates, LLC.
26. Mr. Gardner summarized the history of his team's involvement with the property, confirming that they are contract purchasers of both the residential and commercial parcels.
27. With respect to the existing signage, Mr. Gardner confirmed that they would be brought into conformity.
28. Mr. Gardner further summarized the overall site improvements, indicating that improvements will be made to the commercial sites as depicted on the plan to compliment the newly developed residential site. Management of the detached garages to ensure proper use is easily accomplished through the site managers, which will be on-site at all times.
29. The Board questioned Mr. Gardner as to the structure of the site management team, and Mr. Gardner confirmed that one full-time site manager will be living on the site and approximately 6 to 7 persons will be employed at the site to ensure that all issues can be timely addressed.

Rob Larson, R.A., P.P., CPL Group

30. Mr. Rob Larson was sworn and qualified as the Applicant's Expert Architect.
31. Mr. Larson provided an overview of the color, style, materials, and patterns to be used throughout the site, and confirmed that all buildings will have their materials carried around the entire structure, rather than just the frontage. There will be no difference in materials, style, or design between the market rate and affordable units.
32. Mr. Larson discussed the trash disposal and management of the site, indicating that the buildings have interior chutes and compactors for both recycling and trash. The trash is only brought outside on the day of collection.
33. Mr. Larson referred to the interior building layouts, noting that personal storage units are provided for residents, further minimizing the likelihood that garages will be used for improper storage rather than parking.
34. The community recreation center will be 3,500 square feet, and will encompass a lounge, game room, pool, leasing office, covered and open patio space, and a picnic and barbeque area.
35. Upon questioning by the Board, Mr. Larson confirmed that the pool will not be open and accessible 24/7. It will be secured by a gate that cannot be accessed after hours or when otherwise closed.
36. The Board questioned Mr. Larson as to the heating and air conditioning units, and Mr. Larson highlighted that each unit will be equipped with a Magic Pack, which is an enclosed heating and air closet with color-matched vents to the exterior. There are no exterior condensers, and both noise and visual impact of these units is minimal. Mr. Larson clarified that some exterior condensers will be necessary for the common areas, but that these will be ground-level and covered by landscaping and screening.
37. With respect to signage, Mr. Larson opined that the proposed residential monument sign complies with the zoning requirements, and indicated that

building-mounted address signage would be coordinated with the Board Professionals to ensure compliance. Mr. Larson also discussed the need for the wayfinding signage as presented in the plan submission.

38. With respect to the commercial signage, the existing non-conforming signs will be brought into compliance. The Board discussed the Goodwill sign, noting that it cannot be moved anywhere to be deemed compliant. The Jarron's sign, however, can be made compliant as indicated by the Applicant's proposed sign submissions.
39. Upon questioning by the Board, the Applicant agreed that the signs would be reformatted to be monument-style with a base and two pylons, rather than the "lollipop-style" signage which is currently present.
40. The Board questioned Mr. Larson as to the presence of electric car charging stations at the site, and the Applicant confirmed that while they will be provided, they are unsure of the exact location at this time.
41. Upon questioning by the Board, the Applicant confirmed that landscape irrigation will be provided, and that all units have laundry facilities within, rather than a separate laundry room.

Jay Troutman, Jr., PE

42. Mr. Troutman was sworn and qualified as the Applicant's Traffic Engineer Expert.
43. Mr. Troutman provided an update as to the status of the Applicant's DOT approvals, indicating that the DOT's comments were consistent with the Applicant's prior meetings with both DOT officials and the Board Professionals.
44. With respect to on-site circulation, the plan improvements address the current inability to load behind the Goodwill property. The plan also increases parking at the Goodwill property by two spaces.
45. Mr. Troutman indicated that the Jarron's property is a light parking generator, and while the Township code technically requires a higher parking obligation the site has never had overflow parking issues based upon that use.
46. The residential parking management plan shows that resident parking is available close to their respective residential buildings, not scattered or clumped randomly throughout the site. Mr. Troutman highlighted the surplus parking available toward center of the lot, adjacent to higher demand areas.
47. Mr. Troutman provided a summary of traffic flow along Route 206 during weekday, weekend, and rush hour readings, and concluded that the updated readings don't affect any prior traffic-related conclusions issued pursuant to this application.
48. Specifically, Mr. Troutman highlighted that the DOT allows for a 7.5 second delay before a condition is deemed a violation of available service capacity. The anticipated peak delay due to the proposed improvement is at 6 seconds. With respect to delays at the jug handle opposite the site, the traffic study findings concluded that impacts would be negligible.
49. Mr. Troutman further confirmed that as per the RSIS standards, all regular parking spaces on the site would measure 9x18.

Art Bernard, P.P.

50. Mr. Art Bernard, P.P., was sworn and qualified as the Applicant's Planning Expert.
51. Mr. Bernard highlighted that the redevelopment plan governing this site includes a proposed site plan which is nearly identical to that proposed by the Applicant.
52. Mr. Bernard addressed each of the requested variances, opining that each can be justified as C(2) variances pursuant to the Municipal Land Use Law.
53. Specifically, the proposal advances the Township's affordable housing obligation, reduces curb cuts on Route 206, provides space for fire lane and outdoor gathering space, and generally brings the site more into compliance.
54. Mr. Bernard stated that the proposal advances the following purposes of the Municipal Land Use Law:
 - Purpose A – Promoting the appropriate use of land
 - Purpose E – Promoting appropriate population densities
 - Purpose G – To provide sufficient space for a variety of residential uses
55. Mr. Bernard also stated that the benefits of the proposal substantially outweigh the detriments.
56. Mr. Bernard further indicated that most of the relief involves existing nonconformities which are explicitly allowed to remain as noted within the redevelopment plan.
57. The Board questioned Mr. Bernard as to the updated Community Impact Statement, and after discussion it was determined that the school enrollment calculations and financial impacts were acceptable.

D. Comments from the Public:

58. Mr. Angel Ramos, Jr., of 127 Carmen Ave questioned whether there should be an added lane on Route 206. The Board's Traffic Engineer summarized relevant parts of his report, and notes that DOT also required a review. The impact was deemed minimal, and no additional lane would therefore be required.
59. Mr. Stephen Robert of Shady Lane questioned whether the traffic study was performed using existing timing or optimized timing. The Board and Applicant Traffic Engineers indicated that they used DOT recommended optimizing timing, and further discussed with Mr. Robert the minimal impacts anticipated.
60. Mr. Stephen J Hodosy of 134 Carmen Avenue questioned where does excess water would go that pools in the basin. The Board's Engineer explained engineering requirements of basins, their functioning, and the adequacy of the proposed plan.

E. Conditions and revisions agreed to by the Applicant at the hearing:

61. In general, the Applicant agrees to satisfy all comments and conditions outlined within the Board Professionals' review letters, to the extent not already addressed or satisfied within the submissions (including the Van Cleef Review Letter) or testimony of the hearing.
62. The Applicant shall supply updated ownership data for the Applicant entities.
63. The Applicant shall accomplish vacation of Nissim Avenue, in conjunction with the Township.
64. The Applicant agrees to landscape enhancements requested by the Board Professionals, including additional evergreens behind building 7 on the commercial side, and to provide larger plantings in consultation with the Board's Professionals.
65. The Applicant agrees to extend the walking path adjacent to the emergency access lane that connects to the Shop Rite property, in consultation with the property owner, to connect to the Shop Rite site.
66. The Applicant agrees to install fencing around the stormwater management basin pond, in consultation with the Board Engineer.
67. The Existing non-conforming pilon signage will be revised to bring into conformance, in consultation with the Board Engineer.
68. The Applicant will revise their commercial sign proposal to incorporate a base, in coordination with Board Professionals, to ensure conformance with Township's desired design improvement standards.
69. Detail of parking management conclusions, as well as commercial driveway traffic counts, will be provided to the Board Traffic Engineer.
70. The Applicant will file and record a landscape easement protecting the additional 10 feet of buffering added to commercial side of Jarron's property. This easement shall be submitted to the Board Solicitor for review and approval.
71. The Applicant shall comply with all general conditions applicable to the application, including outside agency approvals, Township permits and approvals, applicable development fees, and applicable affordable housing requirements.
72. The Applicant shall comply with all representations made on the record, which are deemed material to the Board's decision to grant the approvals memorialized in this resolution.

SECTION 2. Approval.

NOW THEREFORE, BE IT RESOLVED BY the Planning Board for Bordentown Township, County of Burlington, and State of New Jersey as follows:

A. The Application by Larken Associates, LLC, seeking Approval to develop 272 residential units, including 40 affordable units, a residential recreation facility for the residences, and improvements to the two existing commercial properties within the Northwest/Nissim

Redevelopment Area with respect to the property identified as Block 1.01, Lots 3 & 6, on the Official Tax Map of Bordentown Township, more commonly known as 596 Route 206 South be and hereby is **GRANTED** for the reasons set forth herein and on the record of the proceedings, and subject to the additional conditions as stated herein; and

B. Consistent with the terms stated herein, the Applicant has agreed to certain conditions as outlined herein, and such agreements and conditions were material to the Board's determination and relied upon by the Board as a basis for its Approval.

C. The Board finds that it is appropriate and consistent with the law and the best interests of the Township that the approval of this Application be conditioned upon the inclusion of those agreed upon revisions, limitations, and/or conditions, such that the conditions as set forth herein and as agreed to on the record are hereby incorporated as conditions to the Approval of this Application, including the stated agreement to submit additional documents and/or revised plans as applicable, all of which are subject to the approval by the Board's professionals.

D. The Board further finds that the Applicant has met its burden of proof by producing competent testimony that the relief requested, including the variance relief and design waivers sought.

ROLL CALL ON THE MOTION: On May 30, 2019:

<u>Board Member</u>	<u>In Favor</u>	<u>Against</u>	<u>Abstain</u>
Mayor Benowitz	x		
Cmtmn Holliday	x		
Grayson	x		
Chair Chidley	x		
Hirschfeld	x		
Fairlie	x		

Holston	X		
Popko	X		
Bowyer	X		

ABSENT: Esser

NOT VOTING: D'Angelo

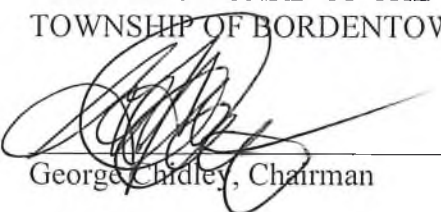
ROLL CALL ON MEMORIALIZATION: On July 11, 2019:

<u>Board Member</u>	<u>In Favor</u>	<u>Against</u>	<u>Abstain</u>
Mayor Benowitz	X		
Cmtmn Holliday			X
Grayson	X		
Chair Chidley	X		
Hirschfeld	X		
Esser			X
Fairlie	X		
Holston			ABSENT
Popko	X		
Bowyer	X		
D'Angelo			NOT VOTING


PLANNING BOARD OF THE
TOWNSHIP OF BORDENTOWN

Dated: 7-11-19

By:

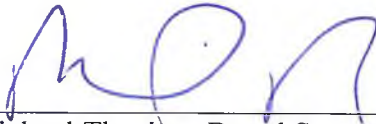

George Chidley, Chairman

ATTEST:


Michael Theokas, Board Secretary

CERTIFICATION

The undersigned, Secretary of the TOWNSHIP OF BORDENTOWN Planning Board, does hereby certify that the foregoing Resolution was adopted by said Board at its meeting held on July 11, 2019. This Resolution memorializes the formal action taken by the Board at its regular meeting held on May 30, 2019.



Michael Theokas, Board Secretary

APPENDIX D

Zeiger/Bordentown Redevelopment Company (BDC)

- 2017 Settlement Agreement between the Township and BDC
- 2018 Ordinance (Ordinance 2018-21) rezoning
- 2019 Planning Board resolution (P-2019-04) approving development

RESOLUTION #2017-268-20D

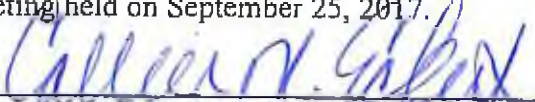
RESOLUTION AUTHORIZING AN AFFORDABLE HOUSING SETTLEMENT AGREEMENT
WITH BORDENTOWN DEVELOPMENT CO., LLC (BDC)

WHEREAS, Bordentown Development Co., LLC, hereinafter referred to as BDC, is the owner of property located on Route 130 and Rising Sun Road and designated as Block 138.01, Lots 41, 42, and 43; and

WHEREAS, through mediation, it has been agreed upon that BDC will develop its property, to include, in part, affordable housing units, which will generate affordable housing credits to be applied to the Township's Gap and Round 3 affordable housing obligations; and

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Bordentown that it does accept the terms and conditions of the settlement agreement and further authorizes the Mayor and Township Clerk to execute the agreement on behalf of the Township of Bordentown.

It is hereby certified that the foregoing is a true and correct copy
of a resolution adopted by the Township Committee of the Township
of Bordentown at a meeting held on September 25, 2017.



COLLEEN M. ECKERT, RMC, TWP. CLERK

09/25/17

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") made this _____ day of _____, 2017, by and between:

TOWNSHIP OF BORDENTOWN, a municipal corporation of the State of New Jersey, County of Burlington, having an address at One Municipal Drive, Bordentown, New Jersey 08505 (hereinafter the "**Township**");

And

BORDENTOWN DEVELOPMENT CO., LLC, a New Jersey limited liability company, **ZB PROPERTIES LLC** A New Jersey limited liability company **AND ZEIGER ENTERPRISES INC.** a New Jersey Corporation, all with an address at 1 West Walnut Avenue, Moorestown NJ 08057. (hereinafter collectively "**BDC**");

Collectively, the Township and BDC shall be referred to as the "**Parties**."

WHEREAS, on June 8, 2017, the Township Council ("Committee") of the Township adopted a resolution in which the Township reaffirmed its voluntary commitment to satisfy its affordable housing obligations, however they may ultimately be defined by the New Jersey Committee on Affordable Housing ("COAH") or a court; and

WHEREAS, in response to the New Jersey Supreme Court's decision In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), on or about July 2, 2015, the Township filed an action with the Superior Court of New Jersey ("Court"), entitled In the Matter of the Application of the Township of Bordentown, County of Burlington, Docket No. BUR-L-1620-15, seeking a Judgment of Compliance and Repose approving its Affordable Housing Plan (as defined herein), in addition to related reliefs (the "Compliance Action"); and

WHEREAS, on or about August 19, 2015, BDC filed a Motion to Intervene in the Compliance Action ("BDC Intervention") and such intervention was granted by the Court on December 8, 2015; and

WHEREAS, BDC is the owner of the vacant real property located on Route 130 and Rising Sun Road and designated as Block 138.01 Lots 41, 42 and 43 on the Tax Map of the Township of Bordentown; and

WHEREAS, through mediation supervised by the Court Master, Mary Beth Lonergan, A.I.C.P., P.P., the Parties have reached an agreement that BDC will develop its Property to include a subdivided commercial lot consisting of ten (10) contiguous acres at the corner of Route 130 and Rising Sun Road, (the "**Commercial Lot**") and with an inclusionary project consisting of 54 townhome footprints/ within which are 49 market and 10 affordable stacked flats and 168 apartments allocated as 142 market rate apartments and 26 affordable apartments. The total project yield will be 227 units, of which 191 units will be market rate family units and

36 units will be set-aside for very low, low and moderate income households ("Inclusionary Development"); and

WHEREAS, BDC is amenable to fully and finally resolving the BDC Intervention premised upon securing the right to construct the development contemplated herein on the Property; and

WHEREAS, the Planning Board is not a party to this Settlement Agreement but the Parties understand and anticipate that the Planning Board will abide by the terms of this Agreement as set forth below for the purpose of facilitating a resolution of BDC's objection to the Township's Affordable Housing Plan; and

WHEREAS, the Township will continue to seek the Court's approval of the Affordable Housing Plan in connection with the Compliance Action and, regardless of the Court's approval or disapproval of the Affordable Housing Plan and the ultimate disposition of the Compliance Action, the Parties intend to be bound by this Agreement, provided this Agreement is approved by the Court; and

WHEREAS, to ensure that the Inclusionary Development contemplated by this Agreement generates affordable housing credits to be applied to the Township's Gap (1999-2015) and Round 3 (2015-2025) affordable housing obligations, the affordable units within the Inclusionary Development shall be developed in accordance with the COAH Prior Round regulations, the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. ("UHAC"), and all other applicable law, and said Inclusionary Development shall be deed restricted for a period of 30 years from the initial occupancy of the affordable units; and

WHEREAS, the Parties wish to enter into this Agreement, setting forth the terms, conditions, responsibilities and obligations of the Parties, and seek the Court's approval of this Agreement; and

NOW, THEREFORE, in consideration of the promises, the mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereto, each binding itself, its successors and assigns, do hereby covenant and agree, each with the other, as follows:

ARTICLE I – "AH AFFORDABLE HOUSING ZONE"

- 1.1 **Purpose** The purpose of this Agreement is to settle the BDC Intervention and to create a realistic opportunity for the construction of the Inclusionary Development, and to generate affordable housing credits for the Township to apply to its Gap (1999-2015) and Prospective Need – (2015-2025) affordable housing obligations. The Inclusionary Development shall be substantially consistent with the concept plan attached hereto and made a part hereof as Exhibit A and zoning standards attached hereto and made a part hereof as Exhibit B which have generally been reviewed and approved by the Township and the Township's professionals. The Inclusionary Development and the Commercial Lot, exclusive of Lot 41, shall be governed by an "AH Affordable Housing Zone" (the

"AH Zone") that will be adopted as part of Township Zoning Ordinances in accord with the timeframes and standards set forth herein.

1.2 Standards The AH Zone shall incorporate the following requirements:

- 1.2.1 Density. The mixed-use development of the Property shall be developed with a density of 227 residential units, inclusive of an affordable housing component that is described in greater detail in Section 3.1 herein.
- 1.2.2 Setbacks – The mixed-use development of the Property shall comply with the building setbacks set forth in the bulk chart attached as **Exhibit B**, which standards shall be adopted as part of an "AH" Zone that will be part of Township Zoning Ordinances.
- 1.2.3 Commercial Lot– The mixed-use development of the Property shall include a ten (10) contiguous acre parcel both fronting on Route 130 and Rising Sun Road, as shown on the attached **Exhibit A**. The Commercial Lot and existing Lot 41 (fronting on Route 130) shall be zoned to allow both "HC" Highway Commercial and "REO" permitted uses, and the revised Ordinance shall incorporate the less restrictive bulk standards from each zone, so that the commercial development of these parcel is encouraged to the maximum extent possible. The Parties agree that Lot 41 will not be required for the Inclusionary Development, and that this lot is outside the WQMP sewer service area. The Township and BDC shall cooperate in the extension of sewer service in accord with Article 4.4 below.
- 1.2.4 Amenities. BDC shall include various amenities in the Inclusionary Development designed to support the apartment and Townhome uses, including, without limitation, a clubhouse, pool and tot lot, as illustrated on the drawings in **Exhibit A**.
- 1.2.5 RSIS. The Parties agree that the Inclusionary Development shall be governed by the Residential Site Improvement Standards as to all matters covered by the RSIS.
- 1.2.6 Architectural Design. BDC shall construct the mixed-use development in substantial compliance with the floor plans and final architectural building elevations as further reviewed and approved by the Township.
- 1.2.7 Infrastructure Improvements. BDC shall take affirmative steps to encourage commercial development of the site, including, but not limited to the following: Utility connection(s) and storm water connection(s) will be designed along with necessary easements established for the future Commercial Property.
- 1.2.8 Buffer. Buffering shall be provided along Meadow Run and along the Commercial property.

ARTICLE II - BASIC TERMS AND CONDITIONS

2.1 This Agreement is subject to Court approval at a Fairness Hearing to be scheduled concurrently with the Compliance Hearing, or at a date scheduled by the Court. The Parties will work together to ensure that the Court approves the Agreement at the currently scheduled Compliance Hearing or promptly thereafter, if rescheduled by the Court.

2.2 In the event of any legal challenges to the Court's approval of this Agreement or the Redevelopment Approvals, the Parties shall diligently defend any such challenge and shall cooperate with each other regarding said defense. In addition, if any such challenge results in a modification of this Agreement or the Inclusionary Development, the Parties shall negotiate in good faith with the intent to draft a mutually-acceptable amended Agreement, provided that no such modification requires an increase or decrease in density from that agreed upon and reflected in the within Agreement.

2.3 This Agreement does not purport to resolve all of the issues before the Court raised in the Compliance Action. The Township may continue to prosecute the Compliance Action however, such continued prosecution shall not affect this Agreement and the Inclusionary Development that is authorized herein.

ARTICLE III - BDC OBLIGATIONS

3.1 **Affordable Housing Set-Aside.** BDC shall have an obligation to deed-restrict thirty six (36) of the residential units in the Inclusionary Development as very low, low and moderate income affordable units. Any such affordable units shall comply with UHAC, applicable COAH affordable housing regulations, any applicable order of the Court, and other applicable laws, including the 13% very low income requirement (a minimum of 13% very low income units, very low income is defined as 30% or less of the regional income) embodied in the Fair Housing Act in lieu of the UHAC requirement as to low income.

3.1.1 In addition, the affordable units shall remain affordable rental units for a period of thirty (30) years from the date of their initial occupancy ("Deed-Restriction Period") so that the Township may count the units against its obligations to provide family rental affordable housing. This obligation includes, but is not limited to BDC's obligation to comply with (1) bedroom distribution requirements (8 three bedroom units (2 very low, 2 low and 4 moderate), 21 two bedroom units (3 very low, 8 low and ten moderate) and 7 one bedroom units (1 very low, 3 low and 3 moderate), (2) income split requirements (5 very low income unit, 13 low income units and 18 moderate income units), (3) pricing requirements, (4) affirmative marketing requirements, (5) candidate qualification and screening requirements, (6) integrating the affordable units amongst the market rate units, and (7) deed restriction requirements.

3.1.2 The distribution of the affordable housing units shall be in compliance with COAH's Round Two substantive regulations, N.J.A.C. 5:93, which

the Parties believe will govern the issue, or as approved by the Special Master and the Court.

- 3.1.3 BDC shall contract with the Township's affordable housing administrative agent ("Administrative Agent") for the administration of the affordable units and shall have the obligation to pay all costs associated with properly deed restricting the affordable units in accordance with UHAC and other applicable laws for the Deed-Restriction Period. BDC shall work with the Township and the Township's Administrative Agent regarding any affordable housing monitoring requirements imposed by COAH or the Court
- 3.1.4 Pursuant to UHAC, at the end of the required minimum thirty (30) year control period, the Township must undertake any and all actions to release the affordability controls on the units by municipal ordinance. The Township must introduce and adopt such ordinance within thirty (30) years and one hundred and twenty days (120) days of the commencement of the control period.
- 3.1.5 The Parties agree that the affordable units are to be included in the Affordable Housing Plan to be approved and credited by the Court in the Compliance Action, and that the credits will be applied against the Township's gap (1999-2015) and Prospective Need (2015-2025) obligations.
- 3.1.6 Upon written notice, BDC shall provide detailed information requested by the Township, or the Township's Administrative Agent, within 30 days concerning BDC's compliance with UHAC and other applicable laws.

3.2 Obligation Not To Oppose Township's Application for Approval of its Affordable Housing Plan. As it pertains to the Township's Application for Approval of its Affordable Housing Plan, BDC shall not directly or indirectly oppose or undertake any further action to interfere with the Court's adjudication of the Township's affordable housing obligations and compliance standards. BDC shall also not directly or indirectly oppose or undertake any further action to interfere with the Court's approval and/or implementation of the Affordable Housing Plan, as it may be amended in any form, unless the Affordable Housing Plan deprives BDC of any rights created hereunder, or unless any other defendants or interested parties undertake any action to obstruct or impede BDC from securing such approvals as it needs to develop the Inclusionary Development on the Property.

3.3 Obligation to Withdraw Objection To The Township's Affordable Housing Plan. BDC agrees that it will withdraw its current objection to the Township's Affordable Housing Plan, and that it will not object further to the Township's Affordable Housing Plan, as may be amended.

3.4 Obligation to pay Fair Share Housing Center ("FSHC") Fees. BDC shall be responsible for paying Two Thousand Five Hundred Dollars (\$2500.00) upon the adoption of the

AH Ordinance pursuant to Article 4.1 below-toward the legal fees incurred by FSHC. BDC shall pay Two Thousand Five Hundred Dollars (\$2500.00) to FSHC upon the closing of title to the developer of the residential project toward the legal fees incurred by FSHC. In the event that the AH Ordinance is not adopted within sixty (60) days, BDC shall have no obligation to pay FSHC's legal fees.

ARTICLE IV - OBLIGATIONS OF THE TOWNSHIP

4.1 Obligation To Adopt Zoning Ordinance. The Township shall adopt the AH Affordable Housing Zoning Ordinance (the "AH Ordinance," attached hereto as "Exhibit B") within sixty (60) days following the court approval of this Settlement Agreement. The AH Ordinance shall be reasonably satisfactory to both the Township and BDC (or its successor). In connection with the above actions, the Township shall comply with all applicable procedural requirements set forth in the Municipal Land Use Law and the case law interpreting same, including, but not limited to, legal notice requirements. All of the time periods set forth in this Section 4.1 may be subject to extension of time, which shall be reasonably agreed upon by the Parties, if at no fault of either Party the required actions cannot be completed within the time periods established.

4.2 Obligation To Preserve The Zoning Ordinance. The AH Ordinance shall not be amended or rescinded except upon the application of BDC or by Order of the Court.

4.3 Representation regarding Sufficiency of Water and Sewer: The Township agrees to reasonably comply with BDC's investigation and inquiry into the sufficiency of portable water and sewer capacity to service the proposed Inclusionary Development. Any on-site water, sewer, or any other utility infrastructure or improvements required for the development of the proposed Inclusionary Development shall be at the sole cost and expense of BDC. In addition, BDC may be required to provide a pro rata contribution in accordance with N.J.S.A. 40:55D-42, as applicable, for any such improvements that are located off site or off tract.

4.4 Lot 41 WQMP Amendment The Parties acknowledge that Lot 41 is outside the existing WQMP sewer service area, but is otherwise suitable for possible future commercial development. The Township will execute and endorse an application by Zeiger Enterprises to modify the WQMP sewer service area to incorporate Lot 41 within the Township sewer service area. The WQMP map amendment shall conform to NJDEP regulations.

4.5 Obligation To Cooperate: The Township acknowledges that in order for BDC to construct its Inclusionary Development, BDC will be required to obtain any and all necessary and applicable agreements, approvals, and permits from all relevant public entities and utilities; such as, by way of example only, the Township, the Planning Board, the County of Burlington, the Burlington County Planning Board, the New Jersey Department of Environmental Protection, the New Jersey Department of Transportation, Burlington Soil Conservation District and the like, including the Township's ordinance requirements as to site plan and subdivision approval (the "Required Approvals"). The Township agrees to use all reasonable efforts to assist BDC in its undertakings to obtain the Required Approvals.

4.6 Obligation to Refrain From Imposing Cost-Generative Requirements. The Township recognizes that the Required Approvals and this Agreement all contemplate the development of an "inclusionary development" within the meaning of the Mount Laurel doctrine, and BDC shall be entitled to any benefits, protections, and obligations afforded to developers of inclusionary developments, in addition to what BDC has agreed to in this Agreement. Therefore, the Township will not impose development standards and/or requirements that have not been agreed to by the parties, and would otherwise be considered to be "cost generative."

ARTICLE V – OBLIGATIONS OF THE PLANNING BOARD

5.1 Obligation to Process BDC's Development Applications with Reasonable Diligence. Notwithstanding any other provision of Article V, the Parties understand that the Planning Board is not a party to this Agreement, but the Parties anticipate that the Planning Board will honor the provisions set forth herein. The Planning Board shall expedite the processing of BDC's development applications following Court approval of this Agreement following a duly noticed Fairness Hearing in accordance with N.J.A.C. 5:93-10.1(a) and within the time limits imposed by the MLUL. In the event of any appeal of the Required Approvals, or Court approval of this Agreement, the Board shall process and take action on any development application by BDC for the Property which decision may be conditioned upon the outcome of any pending appeal.

5.2 Obligation to Refrain From Imposing Cost-Generative Requirements. The Planning Board recognizes that the Required Approvals and this Agreement all contemplate the development of an "inclusionary development" within the meaning of the Mount Laurel doctrine, and BDC shall be entitled to any benefits, protections, and obligations afforded to developers of inclusionary developments in addition to what BDC agreed to in this Agreement. Nothing shall prevent BDC from applying for a waiver or bulk variance from any standard imposed by the AH Ordinance and/or the Township's Land Use and Development Ordinance, as applicable, and the standards set forth in the MLUL, as applicable, shall determine if BDC is entitled to this relief or to a waiver or de minimus exception to any standard or requirement of the Residential Site Improvement Standards under the applicable regulations. Notwithstanding the above, the Township Council and the Planning Board are under no obligation to grant or approve any request for a variance, waiver or de minimus exception.

ARTICLE VI – MUTUAL OBLIGATIONS

6.1 Escrow Agreement. Within thirty (30) days of the Effective Date (as this term is defined herein), the Township and BDC shall enter into an escrow agreement for the deposit of monies by BDC in escrow with the Township to be utilized to tender payment of reasonable fees for professional services, including legal, engineering, planning services and construction inspection, being provided in conjunction with the Required Approvals and the review and construction inspection of the Inclusionary Development and any off-site and off-tract improvements.

6.2 Obligation To Comply with State Regulations: The Parties shall comply with any and all Federal, State, County and local laws, rules, regulations, statutes, ordinances, permits, resolutions, judgments, orders, decrees, directives, interpretations, standards, licenses, approvals, and similarly binding authority, applicable to the Inclusionary Development or the performance by the Parties of their respective obligations or the exercise by the Parties of their respective rights in connection with this Agreement.

6.3 Mutual Good Faith, Cooperation and Assistance. The Parties shall exercise good faith, cooperate, and assist each other in fulfilling the intent and purpose of this Agreement, including, but not limited to, the approval of this Agreement by the Court, the Redevelopment Approvals, the development of the Property consistent with the terms hereof, and the defense of any challenge with regard to any of the foregoing.

6.4 Failure to Adopt AH Ordinance. If the Township fails to adopt the AH Ordinance within the time frames set forth in Section 4.1, then, at the option of BDC, in its sole discretion and by prior written notice to the Township in accordance with Article IX of this Agreement, the Parties shall be restored to the status quo ante to the date hereof and all claims and defenses available now shall be available to the Parties:

6.4.1 In the event that BDC decides that the Parties shall be restored to the status quo ante to the date hereof and all claims and defenses available now shall be available to the Parties, no Party shall be entitled to use this Agreement, or negotiations in conjunction therewith, to attempt to prejudice the other in any future proceedings.

6.5 Defense of Agreement. Each party exclusively shall be responsible for all costs that they may incur in obtaining Court approval of this Agreement and any appeal therefrom, or from obtaining the Required Approvals or the approval of the Affordable Housing Plan or any part thereof. The Parties shall diligently defend any such challenge.

ARTICLE VII - AFFORDABLE HOUSING CREDITS

7.1 Upon written notice, BDC agrees to supply the Township and the Township's Administrative Agent, within 30 days, all documents within its possession that may be reasonably necessary to demonstrate the creditworthiness of the affordable units.

ARTICLE VIII - COOPERATION AND COMPLIANCE

8.1 Implementation And Enforcement Of Agreement: The Parties agree to cooperate with each other, provide all reasonable and necessary documentation, and take all necessary actions to satisfy the terms and conditions hereof and assure compliance with the terms of this Agreement, subject to prior written agreement between the Parties on payment by the requesting party of the requested party's direct costs and expenses in connection with such assistance. The Township's obligation to cooperate shall be further conditioned upon BDC paying and maintaining current real estate taxes, subject to any Exemption for the Inclusionary Development.

ARTICLE IX - NOTICES

9.1 Notices: Any notice or transmittal of any document required, permitted or appropriate hereunder and/or any transmittal between the Parties relating to the Property (herein "Notice[s]") shall be written and shall be served upon the respective Parties by facsimile or by certified mail, return receipt requested, or recognized overnight or personal carrier such as, for example, Federal Express, with certified proof of receipt, and, where feasible (for example, any transmittal of less than fifty (50) pages), and in addition thereto, a facsimile delivery shall be provided. All Notices shall be deemed received upon the date of delivery set forth in such certified proof, and all times for performance based upon notice shall be from the date set forth therein. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days' notice as provided herein:

TO BDC:

Bordentown Development Co., LLC
Attention: Jeffrey Zeiger
1 West Walnut Avenue
Moorestown, NJ 08057
Email: jeffz1@msn.com

WITH COPIES TO:

Fox Rothschild, LLP
Attention: Henry L. Kent-Smith, Esq.
997 Lenox Drive, Building 3
Lawrenceville, NJ 08648
Fax: 609-482-8901
Email: hkent-smith@foxrothschild.com

TO THE TOWNSHIP OF BORDENTOWN:

Township of Bordentown
One Municipal Drive
Bordentown NJ 08505
Attn: Colleen Eckert, Clerk
PH:
Email: C.eckert@bordentowntp.org

WITH COPIES TO:

Jeffrey R. Surenian and Associates, LLC
Attention: Michael Edwards, Esq.
707 Union Avenue, Suite 301
Brielle, NJ 08730
PH (732) 612-3100

Fax: (732) 612-3101
Email MJE@Surenian.com

In the event any of the individuals identified above has a successor, the individual identified shall name the successor and notify all others identified of their successor.

ARTICLE X - MISCELLANEOUS

10.1 Severability: Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provisions of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.

10.2 Successors Bound: The provisions of this Agreement shall run with the land, and the obligations and benefits hereunder shall be binding upon and inure to the benefit of the Parties, their successors and assigns, including any person, corporation, partnership or other legal entity which at any particular time may have a fee title interest in the Property which is the subject of this Agreement. This Agreement may be enforced by any of the Parties, and their successors and assigns, as herein set forth.

10.3 Governing Law: This Agreement shall be governed by and construed by the laws of the State of New Jersey.

10.4 No Modification: This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.

10.5 Effect of Counterparts: This Agreement may be executed simultaneously in one (1) or more facsimile or e-mail counterparts, each of which shall be deemed an original. Any facsimile or e-mail counterpart forthwith shall be supplemented by the delivery of an original counterpart pursuant to the terms for notice set forth herein.

10.6 Voluntary Agreement: The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each party is the proper person and possesses the authority to sign the Agreement, that this Agreement contains the entire understanding of the Parties and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

10.7 Interpretation: Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties, and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties that: (a) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (b) it has conferred due authority for execution of this Agreement upon the person(s) executing it.

10.8 Necessity of Required Approvals: The Parties recognize that the site plans required to implement the Inclusionary Development provided in this Agreement, and such other actions as may be required of the Planning Board or Township under this Agreement, cannot be

approved except on the basis of the independent reasonable judgment by the Planning Board and the Township Council, as appropriate, and in accordance with the procedures established by law. Nothing in this Agreement is intended to constrain that judgment or to authorize any action not taken in accordance with procedures established by law. Similarly, nothing herein is intended to preclude BDC from appealing any denials of or conditions imposed by the Planning Board in accordance with the MLUL or taking any other action permitted by law.

10.9 Schedules: Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Agreement with prior written approval of both Parties.

10.10 Entire Agreement: This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior oral and written agreements between the parties with respect to the subject matter hereof except as otherwise provided herein.

10.11 Conflict Of Interest: No member, official or employee of the Township or the Planning Board shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.

10.12 Effective Date: Anything herein contained to the contrary notwithstanding, the effective date ("Effective Date") of this Agreement shall be the date upon which the last of the Parties to execute this Agreement has executed and delivered this Agreement.

10.13 Waiver. The Parties agree that this Agreement is enforceable. Each of the Parties waives all rights to challenge the validity or the ability to enforce this Agreement. Failure to enforce any of the provisions of this Agreement by any of the Parties shall not be construed as a waiver of these or other provisions.

10.14 Captions. The captions and titles to this Agreement and the several sections and subsections are inserted for purposes of convenience of reference only and are in no way to be construed as limiting or modifying the scope and intent of the various provisions of this Agreement.

10.15 Default. In the event that any of the Parties shall fail to perform any material obligation on its part to be performed pursuant to the terms and conditions of this Agreement, unless such obligation is waived by all of the other Parties for whose benefit such obligation is intended, or by the Court, such failure to perform shall constitute a default of this Agreement. Upon the occurrence of any default, the non-defaulting Party shall provide notice of the default and the defaulting Party shall have a reasonable opportunity to cure the default within forty-five (45) days. In the event the defaulting Party fails to cure within forty-five (45) days or such reasonable period of time as may be appropriate, the Party(ies) for whose benefit such obligation is intended shall be entitled to exercise any and all rights and remedies that may be available in equity or under the laws of the State of New Jersey, including the right of specific performance to the extent available. Further, the Parties may apply to the Court for relief, by way of a motion for enforcement of litigant's rights.

10.16 Notice of Actions. The Parties and their respective counsel agree immediately to provide each other with notice of any lawsuits, actions or governmental declarations threatened or pending by third parties of which they are actually aware which may affect the provisions of this Agreement.

10.17 Construction, Resolution of Disputes. This Agreement has been entered into and shall be construed, governed and enforced in accordance with the laws of the State of New Jersey without giving effect to provisions relating to the conflicts of law. Jurisdiction of any litigation ensuing with regard to this Agreement exclusively shall be in the Superior Court of New Jersey, with venue in Burlington County. Service of any complaint may be effected consistent with the terms hereof for the delivery of "Notices," hereinafter defined. The Parties waive formal service of process. The Parties expressly waive trial by jury in any such litigation.

10.18 Conflicts. The Parties acknowledge that this Agreement cannot be modified by the Compliance Action or any amendments to the Township's Affordable Housing Plan or Land Use and Development Ordinances and this Agreement shall control with respect to those matters as applied to the Property. Upon the entry of a Judgment of Compliance and Repose in the Township's Compliance Action, and after the Compliance Action is concluded, the Court shall retain jurisdiction to ensure compliance with the terms and conditions of this Agreement. As to any inconsistencies between the Redevelopment Approvals and this Agreement, the Redevelopment Approvals shall control.

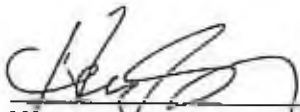
10.19 Recitals. The recitals of this Agreement are incorporated herein and made a part hereof.

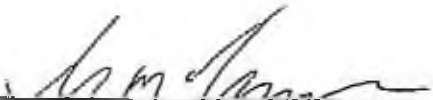
THE REMAINDER OF THIS PAGE IS PURPOSEFULLY BLANK

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be properly executed, their corporate seals affixed and attested and this Agreement to be effective as of the Effective Date.

Witness/Attest:


BORDENTOWN DEVELOPMENT CO.
LLC

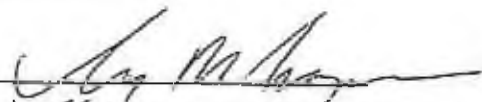

Name: Henry Kent Smith
Title: Henry Kent Smith
Dated: 9.7.2017

By: 
Name: Jeffrey M. Zeiger
Title: Authorized Signatory

Witness/Attest:


ZB PROPERTIES, LLC

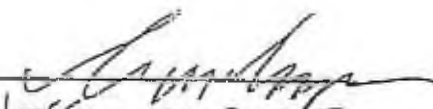

Name: Henry Kent Smith
Title: Henry Kent Smith
Dated: 9.7.2017

By: 
Name: Jeffrey M. Zeiger
Title: Authorized Signatory

Witness/Attest:

ZEIGER ENTERPRISES, INC.



Name: Henry Kent Smith
Title: Henry Kent Smith
Dated: 9.7.2017

By: 
Name: Jeffrey M. Zeiger
Title: Authorized Signatory

Witness/Attest:

TOWNSHIP OF BORDENTOWN

By:
as its MAYOR


Dated: 10-2-17

By: 
_____, Mayor

EXHIBIT A

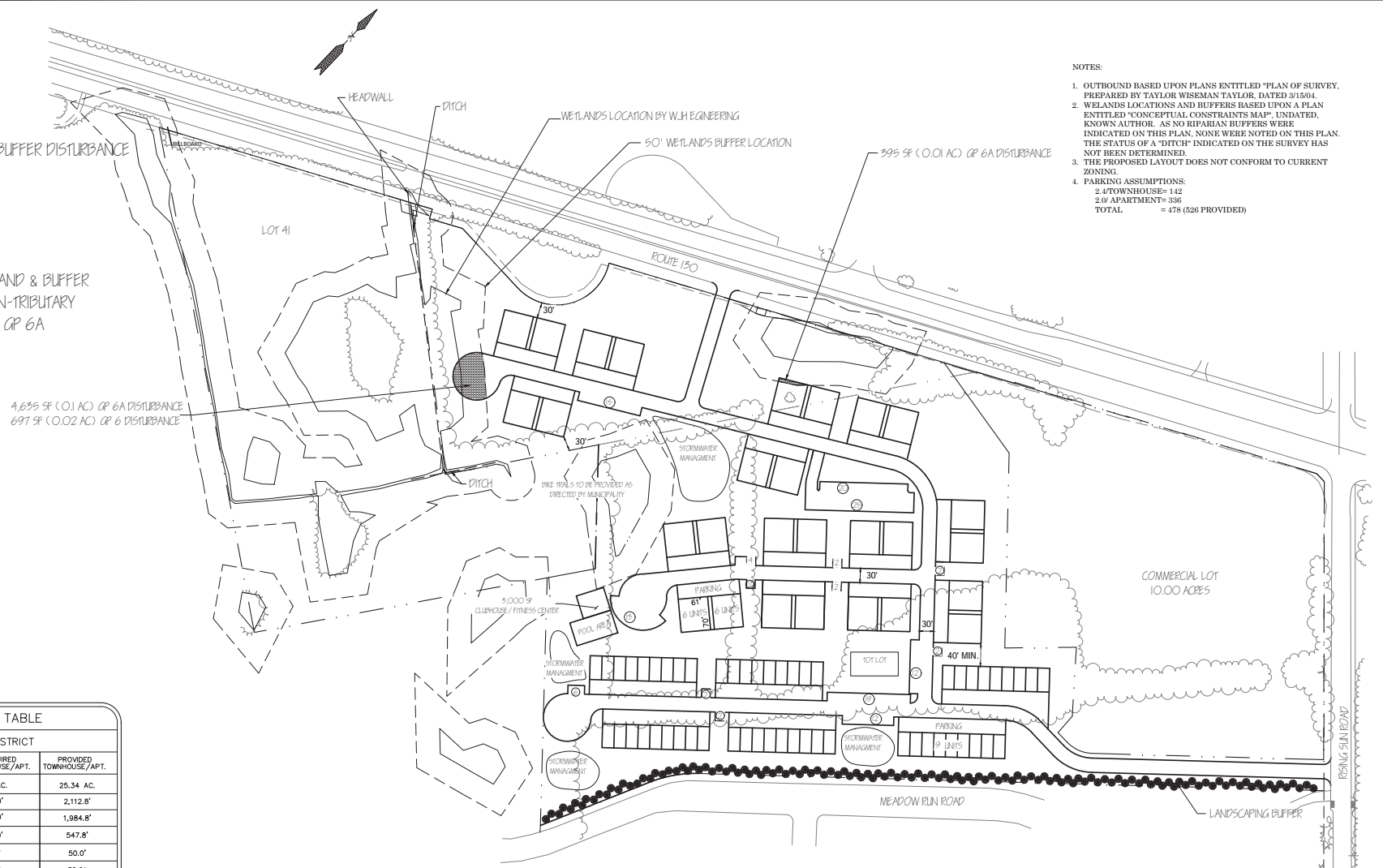
CONCEPT PLAN FOR INCLUSIONARY DEVELOPMENT

EXHIBIT B

AH ZONING ORDINANCE STANDARDS

* IT IS ASSUMED THAT ALL WETLAND & BUFFER ENCROACHMENTS OCCUR TO NON-TRIBUTARY WETLANDS ELIGIBLE FOR GP 6 & GP 6A

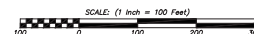
1. OUTBOUND BASED UPON PLANS ENTITLED "PLAN OF SURVEY, PREPARED BY TAYLOR WISEMAN TAYLOR, DATED 3/15/04.
2. WELANDS LOCATIONS AND BUFFERS BASED UPON A PLAN ENTITLED "CONCEPTUAL CONSTRAINTS MAP", UNDATED, KNOWN AUTHOR. AS NO RIPARIAN BUFFERS WERE INDICATED ON THIS PLAN, NONE WERE NOTED ON THIS PLAN. THE STATUS OF A "DITCH" INDICATED ON THE SURVEY HAS NOT BEEN DETERMINED.
3. THE PROPOSED LAYOUT DOES NOT CONFORM TO CURRENT ZONING.
4. PARKING ASSUMPTIONS:
 - ± 4 TOWNHOUSE: 142
 - 2.0 APARTMENT: 336
 - TOTAL = 478 (526 PROVIDED)



ZONING TABLE			
A/T DISTRICT			
	REQUIRED TOWNHOUSE/APT.	PROVIDED TOWNHOUSE/APT.	
MIN. LOT AREA	10 AC.	25.34 AC.	
MIN. LOT FRONTAGE	300'	2,112.8'	
MIN. LOT WIDTH	300'	1,984.8'	
MIN. LOT DEPTH	300'	547.8'	
MIN. FRONT YARD SETBACK	40'	50.0'	
MIN. REAR YARD SETBACK	50'	30.0"	
MIN. SIDE YARD SETBACK	50'	50.0'	
ACCESSORY BLDG. MIN. DISTANCE TO SIDE LINE	150' AGGREGATE	140' AGGREGATE*	
ACCESSORY BLDG. MIN. DISTANCE TO REAR LINE	50'	N/A	
ACCESSORY BLDG. MIN. DISTANCE TO OTHER BLDG.	10'	N/A	
MAXIMUM BUILDING HEIGHT	35' (3 STORIES)	ARCH. TO CONFIRM	
MAXIMUM BUILDING COVERAGE	2%	16.15*	
MAXIMUM IMPERVIOUS SURFACE RATIO	0.55	0.27	
MAXIMUM DENSITY	8 UNITS/ACRE	9 UNITS/ACRE	

* PROPOSED NON CONFORMITY

10.00- ACRE COMMERCIAL LOT
59- TOWNHOUSES (49 MARKET RATE, 10 AFFORDABLE)
168- MIXED 1-3 BR APARTMENTS W/ GARAGES

[illegible]

ZONING TABLE	
RISING SUN MEADOWS PROJECT	
	Provided
Minimum lot area	10 ac.
Minimum lot frontage	300'
Minimum lot width	300'
Minimum lot depth	300'
Minimum front yard setback	40'
Minimum rear yard setback	25'
Minimum side yard setback	40'
Maximum building height	55'
Maximum building coverage	25%
Maximum impervious surface ratio	.55
Maximum density	9.5 units/acre
Minimum distance – building to building	40'

Zieger /
BDC.

Ordinance 2018- 21

AN ORDINANCE TO CREATE THE AH-1 AFFORDABLE HOUSING OVERLAY ZONE.
PROVIDING FOR AFFORDABLE HOUSING AND OTHER USES ON PROPERTY IN THE
TOWNSHIP OF BORDENTOWN

WHEREAS, the mandate to provide for affordable housing throughout the State has been expressed in court decisions from the Supreme Court of the State of New Jersey: most recently in 2015; and

WHEREAS, that mandate has been reinforced by subsequent lower court rulings; and

WHEREAS, the Township Committee of the Township of Bordentown wishes to comply with the mandate to provide for affordable housing; and

WHEREAS, Bordentown Township has had its affordable housing program under the jurisdiction of the Superior Court and the Court has assigned a Special Master to advise the Court; and

WHEREAS, after the most recent Supreme Court ruling, entities collectively known as Bordentown Development Company (BDC) filed a Motion with the Superior Court to Intervene in the Township's Compliance Action and such motion was granted; and

WHEREAS, BDC is the owner of vacant real property known as Tax lots 41, 42, 43, Block 138.01 on the official Tax Maps of the Township of Bordentown; and

WHEREAS, through mediation supervised by the Court Master, Mary Beth Lonergan, the Township has reached a settlement agreement with BDC, authorized by resolution 2017-286-20D, and dated October 10, 2017, to develop the aforementioned lots with market rates multifamily housing affordable housing units, and commercial development; and

WHEREAS, the Township wishes to enact a zoning ordinance in order to comply with its obligation for the same in the settlement agreement.

NOW, THEREFORE BE IT ORDAINED by the Township Committee of the Township of Bordentown, that:

Section 1: A new Overlay Zoning district. Entitled "Affordable Housing - I" (AH- I) is hereby created as follows:

AH- I Affordable Housing Zone

A. Purpose

To provide for market rate and affordable housing on property known as Tax Lots 42 and 43, in Block 138.01, as shown on the official Tax Maps of Bordentown Township; and to provide for commercial uses on Tax Lots 41 and 43, in accordance with the attached concept plan prepared by WJH Engineering dated August 28, 2017. The commercial uses shall be located on Lot 41, and on a minimum 10-acre parcel to be set aside from the residential uses and to be located in the northeast corner of Lot 43, at the intersection of Route US 130 and Rising Sun Road. The residential uses shall be located on the balance of Lot 43 and Lot 42.

B. Principal Permitted Uses

1. Townhouses
2. Apartments
3. The maximum number of residential units shall not exceed 227. At least 36 units will be set aside for low, very-low and moderate-income households.
4. Commercial Uses on a minimum 10-acre lot in Lot 43 and Lot 41 as shown on the attached exhibit:
 - a. Retail sales of goods and services
 - b. Personal service establishments
 - c. Banks, including drive-in facilities
 - d. Offices and office buildings, including medical offices and professional offices
 - e. Hotels with or without conference centers, as conditional uses under Section 25:601
 - f. Health Clubs
 - g. Shopping centers
 - h. Child care centers
 - i. Restaurants
 - j. Self-storage facilities, as a conditional use under Section 25:601
 - k. Mixed uses of any of the above

C. Accessory Uses Permitted

1. Residential:
 - a. Structures and uses incidental and supportive of a multi-family development including but not limited to a clubhouse, pool, tot lots, maintenance structures, detached garages, garbage enclosures, postal and parcel structures, and other customary accessory structures
2. Commercial:
 - a. Off-street parking
 - b. Fences, walls and signs
 - c. Temporary construction trailers, only during construction, in accordance with subsection 25:408. B.5.

D. Maximum Building Height

1. Residential: 3 Stories, 45'
2. Commercial:
 - a. Buildings used exclusively for offices or hotels: 55' or five stories
 - b. All other building uses: 30'

E. Area and Yard Requirements

1. Residential Uses (The following area and yard requirements for residential uses shall be applicable to the overall tract being developed. The area and yard requirements for individual fee simple townhouses and townhouse/affordable unit mixed buildings shall be governed by the specific area and yard requirements set forth in Section 3, 4 and 5 below:
 - a. Minimum lot area: 10 acres
 - b. Minimum lot frontage: 300'

- c. Minimum lot width: 300'
- d. Minimum lot depth: 300'
- e. Minimum front yard setback: 40'
- f. Minimum rear yard setback: 25'
- g. Minimum side yard setback: 40'
- h. Maximum building coverage: 25%
- i. Maximum impervious coverage: 55%
- j. Maximum density: 9.5 units per acre
- k. Minimum distance building to building: 40'
- l. Maximum connected townhouses: 9 units
- m. Maximum number of apartment units within a single structure: 24

2. Commercial Uses:

- a. Minimum lot frontage: 500'
- b. Minimum lot width: 400'
- c. Minimum lot depth: 400'
- d. Minimum front yard setback: 75'
- e. Minimum rear yard setback: 50'
- f. Minimum side yard setback: 25'
- g. Maximum floor area ratio (FAR): 0.4
- h. Maximum impervious coverage: 75%

3. Bulk Standards for Fee Simple Townhouses:

- a. Minimum lot area: 2,000 square feet
- b. Minimum lot frontage: 20' per unit
- c. Minimum lot depth: 90'
- d. Minimum lot width: 20' per unit
- e. Minimum front yard setback: 20' for units with a garage
- f. Minimum side yard: 0' if adjoining another unit; 8' if outside wall
- g. Minimum rear yard: 15'
- h. Minimum Distance Between Buildings: 35'
- i. Decks and Patios shall be permitted within the rear yard only. Other amenities such as chimneys or similar structures shall be permitted within side and rear setbacks.

4. Bulk Standards for Townhouse/Affordable Unit Mixed Buildings

- a. Minimum lot area: 15,000'
- b. Minimum lot frontage: 150'
- c. Minimum lot depth: 100'
- d. Minimum lot width: 150'
- e. Minimum front yard setback: 20'
- f. Minimum side yard: 8'
- g. Minimum rear yard: 15'
- h. Minimum distance between units: 35'

5. Accessory Buildings/Structures, Garages to Side and Rear Setback:
10' unless tract buffer requires more.

F. Affordable Housing Set Aside- A maximum of 227 residential units shall be permitted. The minimum number of affordable units shall be 36. The affordable units shall comply with Uniform Housing Affordability Controls (U HAC), applicable Council On Affordable Housing (COAH) housing regulations, any applicable order of the Court, and other applicable laws including the 13% very low income requirement embodied in the Fair Housing Act in lieu of the U HAC requirement as to low income. This includes an obligation to comply with:

1. Bedroom distribution requirements listed in the settlement agreement.
2. Income split requirements listed in the settlement agreement.
3. Pricing requirements
4. Affirmative action marketing requirements
5. Candidate qualification and screening requirements
6. Integration of affordable units with market-rate units
7. Deed restriction requirements including that the affordable units shall remain deed restricted with the affordability controls for a period of at least 30 years from the date of initial occupancy.

G. Buffers

1. 15' Minimum planted buffer along Meadow Run development lot line.
2. 20' Minimum planted buffer between residential and commercial lots. This buffer may be established on either lot or a combination of portions on each lot provided a total of 20' is provided.
3. 10' Minimum planted buffer between residential detached parking garages abutting commercial property.

H. Minimum Off-Street Parking and Loading

1. Residential: Parking size, configuration and number for all residential uses shall be governed by the Residential Site Improvement Standards (RSIS).
2. Each space in a garage shall count as 1.0 off-street parking space and a driveway shall count as one parking space for each 9/10 feet by 18 feet area between the garage door and the right-of-way line. A development with 2 spaces in the driveway shall have a

minimum length of 38-feet measured from the private right-of-way line to the front of the garage portion of the principal structure. Where sidewalks are proposed, the 38-feet shall be measured from the back of the sidewalk to the front of the garage portion of the principle structure.

3. Commercial: In accordance with standards set forth in Section 25:408

I. Signs

1. Residential:

- a. One free standing sign at each main project access shall be permitted. This sign shall be a maximum of 6' in height and have a maximum sign area of 40 square feet. Sign area does not include structural or decorative elements. Free standing signs shall not be within required sight triangles.
 - b. Building mounted numbers for multi-unit building identification shall be permitted on each facade facing a street or parking area and shall not exceed 2' in height and an area of 5 square feet.
 - c. "Wayfinding" signage shall be permitted and should provide for safe and identifiable circulation on site. A coordinated signage plan inclusive of directional signage, leasing office signs, amenity locations etc. shall be proposed. Signs identifying leasing offices and amenities shall not exceed 6 square feet. All additional "way finding" signs shall be a maximum of 3 square feet.
2. Commercial: Signs on the commercial site shall comply with Ordinance 2014-11, standards for the HC Zone.

J. Fencing for Townhouses

Fencing in the rear yards shall be uniform throughout the townhouse development, including height, color, style and materials. A height of 6-feet shall be permitted. Color and style shall be consistent and complementary with/to the architectural building facades.

K. Sidewalks and Walking Paths

1. Sidewalks along roadways and drives shall have a minimum width of 5-feet, except where abutting parking, where a 6-foot width shall be required.
2. Walk paths shall be provided through the project, specifically for open space areas and connect areas of housing/recreation to create a loop system to other housing areas of sidewalk or walk paths. Walk paths shall be a minimum width of 6-feet.

L. Detached Parking Garages

1. Detached parking garage structures shall be architecturally compatible with the building façade colors and materials.
2. Roof drains shall connect directly to the storm sewer system or discharge onto lawn areas where approved by the Planning Board Engineer.

Section 2: The official Zoning Map of the Township of Bordentown is hereby amended to include the overlay of the AH- I Zone on the aforementioned properties.

Section 3: The Township of Bordentown shall comply with the other terms and conditions of the aforementioned settlement agreement.

Section 4: This Ordinance shall take effect immediately upon adoption by the Township Committee.

INTRODUCED: June 25, 2018
ADOPTED: July 23, 2018

**PLANNING BOARD
TOWNSHIP OF BORDENTOWN**

Application No.: PB 2018-05

Resolution No.: P-2019-04

RESOLUTION GRANTING THE APPLICATION OF RISING
SUN MEADOWS, LLC, FOR PRELIMINARY AND FINAL
MAJOR SUBDIVISION APPROVAL, PRELIMINARY AND
FINAL MAJOR SITE PLAN APPROVAL, WITH PHASING OF
CERTAIN IMPROVEMENTS AND FOR OTHER RELIEF
WITH RESPECT TO BLOCK 138.01, LOTS 41, 42 and 43
MORE COMMONLY KNOWN AS RISING SUN ROAD & Rt.
130 NORTH

WHEREAS, Rising Sun Meadows, LLC, is the Applicant relating to the development of property located in the Township of Bordentown identified on the Tax Map as Block 138.01, Lots 41, 42 and 43 which is more commonly known as Rising Sun Road & Rt. 130 North; and

WHEREAS, the Applicant submitted an Application for approval of a Major Site Plan, for Preliminary and Final approval of a Major Subdivision approval with phasing of various improvements, and variance relief sought as to: (A) relief from the requirements of Township Code, §25.514.F4, to permit a 5 ft. setback from the right-of-way where a 15 ft. setback is required; and

WHEREAS, the Application also seeks approval of a phasing plan for the construction of various buildings in stages; and

WHEREAS, the Application also seeks certain design waivers with respect to: (A) the requirements of Township Code, §25.508A, relating to the size of certain parking spaces; (B) §25.508A.5.b, relating to the width of ADA accessible parking spaces; (C) §25.508A, pavement thickness; and (D) §25.503E.8, the design of the fence for the storm-basin (subsequently withdrawn); and

WHEREAS, the subject property already has an old foundation and billboard on the site and the Applicant requested that the Application be modified to permit the phasing of the improvements, which request was granted by the Board with the description of the Phasing of the improvements and schedule for the same as stated herein; and

WHEREAS, the subject property is located within the Affordable Housing (AH-1), Zone and the proposed use is a permitted use within this zone; and

WHEREAS, the Board has considered the recommendations and comments of its professional staff, namely the report letters of November 27, 2018 and January 2, 2019 by the Board's Professional Engineer, Frederick J. Turek, II, P.E., P.P., C.M.E. of Turek Consulting, LLC, as well as the Board Engineer's comments and recommendations made at the hearing; as well as the report letters of November 23, 2018 and January 3, 2019 by the Board's Professional Planner, Jack Carman, PP, of Design for Generations, LLC, and Mr. Carman's comments and recommendations made at the hearing of this matter; and the report letter of January 10, 2019 by the Board's Traffic Engineering Consultant, James Kochenour; and

WHEREAS, the Applicant requested certain waivers from the Submission requirements, namely, waivers from the requirements of having to submit items # 46, *and 64-66 and 73*; and

WHEREAS, the Board found that given the limited scope of the revisions to be made to the site, the requests for a waiver from the requirement to submit these items was reasonable and appropriate and the Board's professionals supported granting a waiver from these submission requests with certain modifications as stated; and

WHEREAS, based upon the Board's review of the Application documents submitted and the requests for waivers from certain items required to be submitted, the Board granted the Applicant's request for a waiver of these requirements and the Board affirmatively found that the

Application was to be deemed complete on November 29, 2018; and

WHEREAS, the Board found that all jurisdictional requirements of the Bordentown Township Code (“Code”) with respect to notice have been satisfied and that the modification sought with respect to the submission requirements has been modified or waived by affirmative vote of the Board, in which the Board deemed the Application complete subject to the submission waivers; and

WHEREAS, the Applicant submitted an affidavit of mailing and publication to the Board demonstrating notice of the hearing on the Application, which complies with the public notice requirements under the Municipal Land Use Law (“MLUL”); and

WHEREAS, the Applicant was represented in this matter by Ronald L. Shimanowitz, Esq., of Hutt & Shimanowitz, P.C., and the hearing was conducted during the course of one session which took place on two sessions: November 29, 2018 and on January 14, 2019, at which time the following documents, testimony and submissions were presented:

1. SECTION 1. Submissions and Testimony of Record at the Hearing. In reaching its decision, the Board relied on the submissions, exhibits, and witness testimony identified below:

a. *The Applicant’s submissions:*

- Application form and completed checklist (dated 07/25/18)
- Design Plans, Site Details (dated 07/13/18)
- Architectural Drawings (Cover Page Dated 12/20/18)
- Site Plan Review checklist Environmental Comm. (dated 07/25/18)
- Supplemental Letter with summary of design revisions (dated 09/20/18)
- (additional items per Engineer’s Review Letter)
- Environmental Impact Statement
- Trip Generation Statement (dated 07/13/18)
- Grading and Drainage Plan (dated 07/18/18)
- Amended Design Plans submitted (11/07/18)
- Traffic Study Analysis (dated 12/26/18)
- Supplemental Community Impact Statement (12/20/18)

b. *Reports from Board professionals:*

- Review letters dated November 27, 2018 and January 2, 2019 by Frederick J. Turek, II, P.E., P.P., C.M.E. of Turek Consulting, LLC.
- Review letter dated November 23, 2018 and January 3, 2019 by Jack Carman, PP, of Design for Generations, LLC.
- Review letter dated January 10, 2019 of Consulting Traffic Engineer, James Koehenour, P.E., P.P. of Arora and Associates, P.C.

c. *Exhibits marked and accepted into evidence during the public hearing:*

- Exhibit A-1: Color Rendering of Overall Site Plan (dated 11/7/2018)
- Exhibit A-2: Architectural Plans (dated 7-19-18) (Appel Design Group)
- Exhibit A-3: Revised Architectural Plans Building 3 & 4 (11-29-18) 3 Sheets Drawings PB4-01, PB4-02, and PB4-03
- Exhibit A-4: Color Rendering Front Elevation - Building Type 1 (Bldg. A)
- Exhibit A-5: Color Rendering of Front of Townhouse – Type 3
- Exhibit A-6: Townhome with COAH Flats – Building Type 4
- Exhibit A-7: Color Rendering Front Elevation, Clubhouse
- Exhibit A-8: Architectural Renderings (revised 12/20/18) (17 Sheets)
- Exhibit A-9: Building Refuse Area for Townhomes (01/10/19) (Appel Design)
- Exhibit A-10: Building Signage Renderings (01/10/19) (Appel Design Group) – Drawings PB-BS.1 and PB-BS.2
- Exhibit A-11: Photo of Sample Wayfinding sign
- Exhibit A-12: Subdivision – Color Coded Rendering (WJ Engineering)

d. *Testimony of the Witnesses:* The sworn testimony of the following witnesses was presented by the Applicant and considered by the Board:

November 29, 2018:

Mr. Shimanowitz gave an overview of the Application, noting that the Application was for Preliminary and Final Major Site Plan approval, Preliminary and Final Major Subdivision approval, with requests for variances from the parking requirement and the building and other setback requirements as well as a request for a design waiver as to the size of the parking stalls. He also summarized the submission waivers sought by the Applicant. It was noted that the Application is a component of the Township's plan to comply with its Affordable Housing obligation. There was a presentation and testimony regarding completeness with comments from the Board's professionals and questions from the Board relating to requests for waivers of the following items required for submission with the Application:

Item #34: A waiver was sought as to the requirement for Restrictive Covenants and the HOA with the agreement that the Board can impose requirements as to Deed restrictions and HOA requirements as a condition of approval;

Item #46: A waiver was sought from the requirement to submit the location of each plant; the request was supported by the Board's professionals based upon the current condition as a relatively clear site (prior farmland);

Item #66: A waiver was requested to be permitted to submit a modified Financial Impact Statement (A. Bernard); testified in support of the waiver and the methodology for his report. Provided information as to age breakdown, number and age of school age children and projected figures for school attendance and fiscal impact from types of revenues generated and costs associated for services from the development; analyzed impact on various services PD; Fire Dept., Hospitals; and

Item #67: A waiver was sought as to the requirement to submit a Final Subdivision Plat. The Board indicated it will need additional testimony on the proposed revisions and the Applicant agreed to submit revised design plans at least 15 days in advance of the next hearing on the matter.

The Board passed a motion to deem the Application preliminarily complete subject to the requirement that the Applicant is to submit a supplemental report outlining the potential impacts on sewer, police, fire and services as outlined by Mr. Carman and in conjunction with the recommendations of the Board's professionals and the other modifications and submission requirements as noted. In addition, the Applicant agreed to submit a supplemental report as to the Traffic Impact for the site at least 15 days before the next hearing on the matter.

The Applicant provided a summary of the Application noting the number of units, and providing a description of the number of affordable units versus market rate units, with the location of each component and type, Townhomes and Apartments. It was noted that the purpose of the Subdivision is to rearrange lots with a portion of Lot 43 being retained by the property Owner for potential future development.

i. Walter Hopkin, P.E. was qualified and accepted as an expert, and provided testimony as to the site design features and introduced various Exhibits, which were accepted by the Board. Mr. Hopkin testified as to the following matters:

- Introduced and described Exhibit A-1, a Color Rendered Version of Plans (dated 11/7/2018) and testified as to the site's acreage which is in excess of 35 acres;
- As to the orientation of the property in relation to other properties and development in the area, describing the drainage; the location and existence of certain pipeline easements noting that state law requires a set-back of 100 ft. from occupied residential property.
- 10 acres of the site will be retained by owner and be in commercial development zone;
- Described the location of market rate and affordable apartments on the site, the location of 26 affordable apartments being within 2 buildings; described the location on the site of Townhouses and their orientation for affordable and market rate units.
- Described recreational opportunities, including a biking path, walking trails, club house; there is a the divided, landscaped boulevard leading into the development from Rt. 130, with some connectivity to a walking path;
- Parking access and the radii of roadways which are RSIS compliant;
- 2 signs proposed for entrances with minor variance relief sought for signage;
- Described the storm-water management system which will be managed privately and appears similar to a lake; there is also a detention basin, which will be a dry basin;

there will be water and sewer line to connect to existing infrastructure; describes trash collection areas;

- Landscaping will include planting of over 1200 shrubs and over 700 trees; there will be foundation and street lighting will be LED lighting and sidewalks for walking in accordance with RSIS;

- All Townhouses will have garage plus room in the driveways for off street parking; there are 37 garages available for additional rent on the apt. side; there is a maintenance structure for on-site maintenance.

- Design waivers sought: (1) waiver for the number of parking spaces for the Apartments; parking for Townhomes exceeds requirements; (2) to permit a 11 ft. wide ADA space, which is compliant with national ADA standards, in lieu of a 12 ft wide space; (3) for Pavement thickness to comply with RSIS standard which is thinner on top and 6" underneath, which is thicker than the Township's standard; (4) withdrew request for a waiver for the split rail fence design for the basin drive.

- Application has preliminary approvals from Burlington County Soil Conservation; NJ DEP approval; Applicant has DOT application pending which has been deemed complete.

- There will be a HOA for maintenance of Townhomes and a maintenance company will provide maintenance for the apartments;

It was noted in the Board and Professionals' comments and the testimony that the Township would not accept ownership or maintenance responsibility for the internal streets (Marian Avenue) because the streets do not meet Township standards.

ii. Laurence Appel, Appel Design Group Architects was accepted by the Board as an expert in architectural design, provided testimony as to the architectural design features, and introduced various Exhibits, which were accepted by the Board. Mr. Appel identified the following Exhibits:

- A-2 Drawings 7-19-18 (submitted with the Application package)
- A-3 Revised Architectural Plans Building 3 & 4 (11-29-18) 3 Sheets
- A-4 Color Rendering Front Elevation of Bldg Type 1 (Bldg A)
- A-5 Color Rendering of Front of Townhouse
- A-6 Color Rendering of Front Elevation of Townhouse w/ COAH units (Bldg Type 4)
- A-7 Color Rendering of the Front of the clubhouse

Mr. Appel testified as to the following matters:

- As to the building designs conforming to zoning in terms of height, setbacks and stories; that the buildings share common design elements as noted in the renderings for the brick, siding and shingles; described the architectural details to be complimentary but provides some variety with architectural features as to height of some roofs and design elements of the dormers, as well as the accents and balconies; and described general architectural features of the various buildings for the Townhomes and apartment buildings; described the entryways and design features for the various styles of buildings; described building with basement for storage for landlord;

- Described 2 apartment buildings which have 48 units per building, and 13 affordable units in each building for a total of 26 affordable units and testified as to the location of the affordable units within the development;
- Testified as to the architectural features of Building Types 2, 3, and 4 and as to the common theme in the design for similar features, with variety and to look similar to the other units and similar amenities;
- All market Townhomes will have garages;
- Fencing details provided; it is an option for the homeowner to include;
- The Applicant agreed to provide samples and that the design for decks and patios would be subject to HOA approval as a condition of approval;
- Affordable Townhome units do not have garages and entry ways are designed differently; the Applicant revised the design to have a common area for trash and recycling so that it is not stored in the exterior and so that the resident would not have to walk to trash and recycling to an exterior dumpster. Following discussion, Patios on ground floor for affordable units can be included in a revised design.
- Discussion about where trash stored and access for the trash for residents in affordable units with common refuse area of 10' 9" by 13' 5" for storage of the toter style cans.
- Responded to questions from board with discussion regarding 10 affordable units which are in situated in the Townhouse buildings, but are not for sale as Townhouses, but are rental units.
- Introduced Exhibit A-7, which is the rendering of the clubhouse and testified as to the features of the clubhouse, as a 1-story structure, describes similar architectural features, with brick and similar style trim, windows and siding;
- Has a gym, rental office, community room, restrooms, small pantry area with island for entertaining and social functions; there is a package room, with details to be provided, and also small covered space for area overlooking the pool.
- Testified as to Sustainable Development and the incorporation of sustainable elements including accent lighting at entries, patios and with LED lighting; no solar or geo-thermal is being proposed; no car charging stations proposed in the project or the general parking area where the residents could use for storage or include the charging station.

e. Public Comment:

Chris McIntyre, 12 Edgewood Court - question about the roadway coming off of Rising Sun Road, which is an access way to Rt. 130; asked whether the development connects to his development (Meadow Run). Is part of the Township sewer system; had comments about his experience with loss of power in heavy rains while house across the street retains power. The power issue is controlled by PSE&G. He asked a question regarding location of affordable housing units, which are mixed in the various rental buildings and impact of property values and traffic impact, which will be discussed at the next meeting.

Summary of the testimony at the January 10, 2019 hearing:

iii. Walter Hopkin, P.E. provided additional testimony as to the site design features and proposed revisions made to the design plans based upon comments. Mr. Hopkin testified as to the following:

- Referring to Exhibit A-1, the configuration of affordable units was revised so that Buildings B & G each have 2 affordable units; footprint of the Building did not materially change; the design added a storage area appended to garage Building No. 4 as requested and an ADA accessible garage;

- Increased the buffer from 15 to 25 ft. and added snow stock pile areas; the size of the Basketball court has been increased; tied roof drains to underground drainage system;

- Building D was moved back from roadway and greenery was added.

- The configuration of the Affordable units was revised so that they are integrated in the various apartment buildings, while the Townhouses have 10 Affordable units and configuration stays the same;

- He addressed the revisions to the site plan per the previous review letters and Board comments and the Right Of Way width, which is governed by RSIS which does not apply to private roads.

iv. Mr. Appel provided additional testimony as to the architectural design features and proposed revisions made to the design plans based upon prior comments. Mr. Appel testified as to the following:

- He addressed the comments in Mr. Turek's Report regarding placement of affordable units in each of the buildings and addressed the construction of buildings with affordable housing units during phasing to be consistent with the revised drawings;

- Identified Exhibit A-10 sign renderings for buildings and site identification and described signage for identification for emergency service, signage for Building #3 for Affordable Units;

- It was noted that the Fire Marshal requested that the buildings consider sequence of numbers for a more efficient emergency response;

- The Applicant will revise plans to comply with size requirements for signs as per Mr. Carman's Comment page 5, 1b (Signs))

- Identified Exhibit A-11 (Photo of sample wayfinding signs)

- Addressed Carman Letter, Site Plan Comment #7, the Applicant will provide patios for ground floor affordable units; the site will have down-lighting for all garages, entry doors, patio doors and balcony doors;

- There are 26 apartments which will have dens; the Applicant previously agreed to a Deed restriction in which the dens are not permitted to be converted to an additional bedroom area for long-term occupancy; the dens are usually about 100 sq. ft.;

- In response to a question about accommodating outlets for charging stations for electrical vehicles, the Applicant agreed to a condition of approval to require that the HOA cannot prohibit these charging stations or units;

- Described design changes from last hearing based upon Comment letters of Board professionals and the comments of the Planning Board as to the building types, revisions to the garage bays, ADA handicap accessible garage; revision to garage for storage in affordable units;

- Identified Exhibit A-8 Architectural Drawings (last revised 12/20/18) (17 Sheets) and described the details and changes on each dated rendering;

- Addressed questions by the Board and Professionals as to trash and recycling containers and identified Exhibit A-9 (PB-REF Building Refuse for Townhomes)

- In response to a question, Mr. Appel testified that the signs are in harmony with the architectural features of the buildings and uses ground lighting for signs to promote consistency of design for buildings and sign; the Applicant proposes ground lighting for all 3 signs, including the entry-way sign at Rising Sun Road.

v. Mr. Art Bernard, PP, was qualified and accepted as an expert in professional planning, and provided testimony as to the affordable housing features, provided the methodology for his analysis, and the basis for the opinions expressed in his supplemental report dated 12-20-18 as to the Community Impact and also as to the variance relief requested. Mr. Bernard testified as to the following matters:

- Testified that his analysis was based upon 2015 data and a report by Rutgers University; that he uses the bedroom mix and housing type to attempt to predict number of people who would live in the units and estimate the number of children within households, the number of children attending various public schools (elementary; middle; HS), and the number of children who are not yet of school age.

- Testified that he reviewed 2017 enrollment data and anticipated enrollment; and calculated future ratios by grade which showed minimal impact or increase in ratios of teachers to students for the various class levels;

- Gathered information from public service providers (water; sewer; library) that there would have sufficient capacity to continue to serve this community at full development;

- The Recreation facility will include a game room, lounge, workout area, basketball court, and walking paths so there are sufficient recreational opportunities on site;

- Police did not foresee need to hire additional staff

- Reviewed Hospital data and does not foresee impact on local health system resources;

- Noted that for solid waste, a private hauler will provide service to rental units so there is no impact; for the owned units, the waste will be provided by Municipal hauler, which is the same as other owners in the Township.

- Testified as to impact on tax revenue for municipal, school and County services will result in net gain in revenue to the government, even with additional services provided.

- Testified as to variance relief sought for the entrance signs for setbacks along Rt. 130 with signs set into the wall, similar to other sites, noting that the Township's Ordinance allows one sign, but design provides for 2, with 1 on each side with signage flanking the Boulevard. His opinion is that this configuration provides symmetry and similar to The Grande at Crystal Lake; provides for site identification to promote traffic safety; that the benefits to granting the variance are that it enhances appearance for a desirable visual environment; recognition of the entrance promotes safety and free flow of traffic and that there was no negative impact.

- Another sign was requested on Rising Sun Road for which the Applicant seeks variance for setback 5 ft. from the DOT ROW where 15 ft required. If complied with standard, would push the sign further back from ROW, thereby decreasing the visibility of the sign, which is not illuminated. Similar signs in the area, do not detract from the neighborhood; closer to road will promote free flow of traffic and safety; not inconsistent with character of the

neighborhood; no negative impact to zone plan, so that in his opinion, the benefits substantially outweigh the detriments. The Applicant's Engineer reviewed the plans with the sign renderings on Sheet 32 of 34 of Engineering Plans submitted, which provides the visual rendering of the proposed dual entry signs. It was noted that the signs are to be illuminated with ground mounted lights.

vi. Walter Hopkin, P.E. was recalled and provided additional testimony as to the following:

- In response to a question, he described the ownership of various lots and buildings; fee simple townhomes as depicted on the plans in various colors, the orientation of the common space, Marion Avenue, all of which are owned by HOA and maintenance of Marian Drive. He testified as to the anticipated arrangement in which the Owner would be requested to provide financial assistance to the HOA to share cost of the common areas so that 47 HOA units do not bear entire cost of the maintenance of the common areas.

- Conditions for reciprocal easement agreements and the requirement to seek Board approval for revision of name of development to ensure consistency of signage stated.

vii. Jay Troutman, P.E., the Applicant's Traffic Engineer, of McDonough & Rea Associates, was qualified and accepted as an expert in traffic engineering, and provided testimony as to the traffic on the site and proposed revisions made to the design plans based upon comments. Mr. Troutman testified as to the following:

- Testified as to the methodology of his analysis and the basis for his findings and opinions and that the Applicant agreed to comply with the recommendations of the Board's Traffic Engineer as cited in the comment letter dated January 10, 2019 as a condition for approval;

- Testified as to his opinion that the proposed Project would not significantly impact the area;

- Addressed the need for an access permit from NJ DOT and that the design complies with standards for DOT access permits;

- Addressed sign variance requests for relief from setback requirements, stated his opinion that the sign variance and is justified based on the cone of vision of drivers traveling on adjacent roadway, which is Rt. 130, sign would be 31 ft. from edge of pavement, 5 ft. from ROW, so it is 26 ft. from roadway. In his experience, there is usually a 10 ft. ROW with a 15 ft. setback, so the requested relief would have the sign placed consistent with customary setbacks required for driver safety; that the same analysis applied to the other request for setback relief, and that compliance with the Ordinance is excessive for this site. He noted that the speed limit on Rt. 130 in this area is 50 mph; that the visibility for traffic south on Rt. 130, would assist motorists in that direction to see the sign which promotes site identification and safety.

viii. Walter Hopkin, P.E. was recalled again and provided additional testimony as to the following comments and questions by the Board's professionals:

- In response to a question concerning the phasing, the clubhouse would be constructed prior to issuance CO for 84 rental apartments;

- As to the Engineer's Comment #6, if connectivity is not resolved with the Meadow Run HOA by the completion of Phase 2, then can the Applicant will install the sidewalk only to the property line;
- As to the Engineer's Comment #7 concerning the use of an off-site basin on Lot 41, the Applicant agreed to obtain an easement from the property owner and to provide a draft of the proposed easement to the Board's Engineer and Solicitor for review and approval, with the easement being executed at the time of the closing and the easement to be duly recorded.
- As to the Engineer's Comment #8, relating to the installation of 95 ft. of sidewalk which would require additional wetlands permitting, the Applicant agreed to build sidewalk to extend to property line if permitted by DEP & DOT. If permission not granted by DOT/DEP, then the Applicant would not be required to build it.
- As to the Engineer's Comment #9 concerning the existing Billboard, the Applicant's professionals acknowledged that the DOT/DEP approvals are required and the Applicant agreed to give written notice of the existing billboard encroachment to DOT and to the owner of billboard.
- As to the Engineer's Comment #12, the Applicant agreed to ensure that the sales documents indicate that the roadway is a private road;
- As to the Engineer's Comment #20 for a Sidewalk to mail boxes, the Applicant agreed to work with the Board's Engineer to revise the design;
- As to the Planner's Comments, the Applicant agreed to work with the Board's Planning consultant to add lighting at mailboxes; for alternate color to white fencing (Comment J, Fencing) and to address Landscaping with the Planner, (Comment #5) including that the Applicant agreed to retain buffers at 5-6 ft. (Comment G1: Buffers);
- As to the Traffic Engineer's Comments in his Report, the Applicant agreed to reply to Items 1-6; and to provide more information as per Items 7-9 of Traffic Impact Analysis;
- As to the requested waiver, if a 10 ft. setback is not feasible and will lose too much parking, the Applicant agrees to work with Professionals to devise a revised design for the configuration of the islands within the parking area.
- As to Traffic Engineer's Comment #6 for Parking Management Plan, the Applicant agreed to update plan to show or prohibit parking in areas for review and approval by Traffic Engineer.
- As to Traffic Engineer's Comment #7, relating to fire truck circulation for accessibility throughout entire site, the Applicant agreed to address emergency vehicle access and, if necessary, revise the design to ensure adequate movements for emergency vehicles, including for ladder truck if the Fire Chief recommends such access.
- The Applicant agreed as a condition of approval to ensure that the sign on Rising Sun Road shall be under the control of same entity as the other signs to ensure uniformity of design, maintenance and lighting.

e. Comments from the Public: There were no comments from the public concerning this Application at this session.

f. Conditions of Approval and Revisions to Design Plans as agreed to by the Applicant or Applicant's Representatives at the hearings: Based upon the comments and recommendations of the Board's Professionals, the testimony of the Applicant's representatives

at the hearing that the following revisions and conditions of approval were agreed to by the Applicant, which modifications were considered by the Board to be material factors in its approval of the Application, the following are conditions for the approval of the Application:

1. The Applicant acknowledged receipt of the reports/memos by the Board's Professionals, as cited previously, and agreed to make and comply with all changes to the plans as recommended therein and as stated at the hearing and agreed to submit revised plans reflecting the changes to be incorporated into the design as a condition for approval. Specifically, in response to the Comments of the Board's Engineer in his review letters dated November 29, 2018 and January 2, 2019, Comment #2 (cross-easements included on recorded plats; #3 approval of Deed restrictions; #4 landscaping; #6 sidewalk; #9 Billboard encroachment as stated; #10-12, for the approval of Easements and corresponding legal descriptions and Solicitor approval of HOA documents; #12 sales documents to include statement that the roadway is a private roadway which the HOA has to maintain; #13 utilities; #15-16 storm-water maintenance) General Comments #18-20, 22, 24-28 and Miscellaneous Comments #1-6, 8-10, 13-20 and design plan revisions as noted at the hearing; as to the Comments of the Board's Professional Planner in his review letters dated November 23, 2018 and January 3, 2019, as stated, agreed to work with the Planner as to Comments regarding Buffers, Signs (#1) Fencing (#3), Sidewalks, Landscaping, and various revisions to plans as noted; in response to the Comments of the Board's Traffic Engineer in his review letter dated January 10, 2019, the Applicant agreed to address items #1-6, provide more information per #7-9.
2. The Applicant has acknowledged that the Township's Affordable Housing contribution requirements for new, non-residential development with respect to the Ordinance and/or state statute requiring payment of the applicable developer's fee for the area of approximately 10,000 sq. ft. to be developed by others as retail space by the property owner and that the retail area would not be exempt from the developer's fee and that the owner/developer of such retail space shall be solely responsible for such non-residential affordable housing developer fees. Applicant is not proposing any retail development.
3. As a condition of approval, the Applicant agreed to submit the site plan to the Township's Fire Code Official who must approve the site Plan design for emergency vehicle access.
4. In the event that any design revision, plan change or agreement as to the form or substance of a plan or document subject to the approval of its professionals cannot be agreed upon by the Applicant and the Board's professionals, the Board hereby retains jurisdiction of this Application if necessary to resolve any such dispute without the necessity of the applicant filing an appeal or a revised Application.
5. The Applicant agreed that the HOA documents would be submitted to the Board's Solicitor's for approval and to ensure that the conditions described are addressed in the HOA documents.
6. The Applicant agreed to provide samples and that the design for patios to ensure uniformity and consistency in design and installation and subject to HOA approval as a condition of approval.
7. As a condition of approval, the Applicant agreed that all trash and recycling has to be removed by the Home Owners' Association or private hauler, with whoever is in control of the rental units will be responsible for securing the services of private hauler.

8. As a condition of approval, the Applicant agreed that HOA rules cannot prohibit the use or installation of charging units for electric vehicles and also that the HOA documents should contain provisions for replacement of dying vegetation.

9. As a condition of approval, the Applicant agreed to a Deed restriction in which the dens are not permitted to be converted to an additional bedroom area for long-term occupancy.

10. As a condition of approval, the Applicant agreed to a Deed restriction for a 30-years from the date of initial occupancy of the Affordable units by persons who qualify for occupancy under the applicable standards.

11. Bordentown Sewerage Authority approval is required as condition of this approval. If it is determined that there is a need for a pump station, the Applicant will be required to provide a modified design for inclusion of that feature.

12. As condition of approval, the site will need reciprocal easements between HOA and owner of rental units for use of areas and for control/responsibility for signs with the HOA documents to be reviewed & approved by the Board Solicitor, Planner and Engineer.

13. As a condition of approval, the Applicant agreed that the sign for Rising Sun Meadows, if named differently, then have to come back to Board for approval of revision to the name on the signs so that all signs to be of uniform and consistent design.

14. As a condition of approval, the Applicant agreed to comply with the recommendations of the Board's Traffic Engineer as cited in the comment letter dated January 10, 2019.

15. As to the use of an off-site basin on Lot 41, the Applicant agreed as a condition for approval, to obtain an easement from the property owner and to provide a draft of the proposed easement to the Board's Engineer and Solicitor for review and approval, with the easement being executed at the time of the closing with the easement to be duly recorded.

16. The Applicant agreed to ensure that the sales documents indicate that the roadway is a private road, for which the HOA will be responsible for the cost of maintenance, repair, snow removal and access.

17. As a condition of approval, the Applicant agreed to give written notice of the existing billboard encroachment to NJ DOT and to the owner of billboard and provide confirmation of said notice to the Township.

SECTION 2. FINDINGS, DETERMINATIONS AND CONDITIONS

Findings. The Board has made the following findings of fact and conclusions:

A. The Applicant, Rising Sun Meadows, LLC, submitted an Application for Preliminary and Final approval of a Major Subdivision, for Preliminary and Final Site Plan approval with variance relief and design waivers for the property located in the Township of Bordentown identified on the Tax Map as Block 138.10, Lots 41, 42 and 43, which is more commonly known as Rising Sun Road and Route 130 North.

B. Through the testimony presented by the Applicant, the Board finds that the Applicant has met its burden of proof with respect to granting approval of the Preliminary and Final Major Subdivision and Preliminary and Final Major Site Plan, which application is hereby GRANTED.

C. With respect to the variance relief sought, based upon the Applicant's testimony and the modifications agreed to by the Applicant, the Board found that with respect to the requests for variance relief, the Applicant met its burden of proof for the variance relief sought in that the Board found that the positives substantially outweighed the negatives; that the proposed relief would not impair the intent of the Zone Plan and that granting the variance relief was consistent with the Master Plan. In particular, the proofs presented showed that the visual improvements to the site design for the setback relief is consistent with other similar commercial developments; that given the setback is designed to enhance site identification from the adjacent highway and thus promote safety Accordingly, the following variance is hereby GRANTED for relief as follows: (a) to permit a 5 ft. set-back from the Right of Way where 15 ft. is required; and

D. With respect to the design waivers sought, based upon the Applicant's testimony and the modifications agreed to by the Applicant, the Board found that the requests for waivers were reasonable, that strict adherence to the ordinance would be impracticable, that the Applicant had offered modifications to the site design which lessened the impact of the waiver requests and also that the relief sought was due in large part to existing site conditions and the configuration of the site. Accordingly, the following requests for design waivers are hereby GRANTED as follows: (a) relief from Township Code, §25.508A, relating to the size of certain parking spaces; (b) §25.508A.5.b, relating to the width of ADA accessible parking spaces; and (c) §25.508A, pavement thickness; and

E. With respect to the proposed Phasing plan, based upon the testimony presented, the Board found that the request supported the request for phasing of construction, such that the Applicant's Phasing Plan is APPROVED; and

F. *General Conditions.* The Approval of the relief sought in this Application is granted subject to the following additional general conditions:

1. *Compliance with local code standards.* As a condition to this approval applicant is required to comply with its inspection fee and the escrow agreement with Bordentown Township. No plan shall be processed and no permit issued unless and until all outstanding professional fees and taxes are paid and an appropriate escrow created to pay for future sums due.

2. *Representations made at public hearing.* The Applicant has submitted certain plans, drawings, depictions and other tangible things or documents which were accepted by the Planning Board as part of its application. Further, its representatives and/or witnesses have made certain representations, provided testimony, agreed to modifications to the plans, drawing and other features, all of which were made at the public hearings and all of which has been relied upon by the Planning Board in making its findings and determinations. Should there be any material deviation from said documents, plans, representations, agreements made, testimony, modifications agreed to or from any conditions contained herein and/or otherwise agreed to, then the failure to comply with those representations, changes and/or agreements shall be deemed a violation of the approvals granted and the Planning Board may, upon notice to the Applicant and an opportunity to be heard, elect to rescind its approval.

3. *Other approvals required.* The Applicant shall obtain the required permits noted from any other County, State or municipal agency having jurisdiction over the

Application, including NJ DOT, NJ DEP, Burlington County Planning Board, City of Bordentown Water Company and Sewerage Authority, the Bordentown Fire Marshal and such other entities or offices as may be required under law unless specifically and otherwise expressly waived.

4. The Applicant is required to comply with all Zoning, Land Use, Property Maintenance, Licensure, and other applicable Municipal Code provisions as may be applicable to the use of the Property and the activities to be conducted on the Property. These General Conditions of Approval, and any additional conditions of approval, if any, shall be binding upon the Applicant and any successors and/or assigns of them.

ROLL CALL ON THE MOTION: On January 10, 2019:

Yes - 8 No - 0 Absent - 2 Abstain - 1 Not Voting - 0

Benowitz, Mayor Yes
Grayson Absent
Chidley, Chairman Yes
Holston Yes
Bowyer (Alt. #1) Abstain

Holliday, Committeeman Yes
Esser Yes
Hirschfeld, Vice-Chairman Yes
Fairlie Yes
Popko Yes
D'Angelo (Alt. #2) Absent

ROLL CALL ON MEMORIALIZATION: On February 14, 2019:

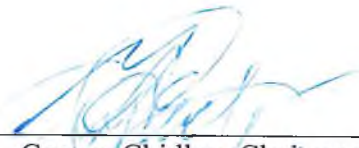
Yes - 8 No - 0 Absent - 1 Abstain - 1 Not Voting - 1

Benowitz, Mayor Yes
Grayson Abstain
Chidley, Chairman Yes
Holston Yes
Bowyer (Alt. #1) Not Voting


Holliday, Committeeman Yes
Esser Yes
Hirschfeld, Vice-Chairman Yes
Fairlie Yes
Popko Yes
D'Angelo (Alt. #2) Absent

PLANNING BOARD OF THE
TOWNSHIP OF BORDENTOWN

Dated: 2-14-19

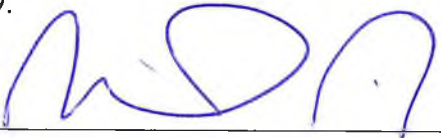
By: 
George Chidley, Chairman

ATTEST:


Michael Theokas, Board Secretary

CERTIFICATION

The undersigned, Secretary of the TOWNSHIP OF BORDENTOWN Planning Board, does hereby certify that the foregoing Resolution was adopted by said Board at its meeting held on February 14, 2019. This Resolution memorizes the formal action taken by the Board at its regular meeting held on January 10, 2019.


Michael Theokas, Board Secretary