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**IN THE MATTER OF THE
APPLICATION OF THE
TOWNSHIP OF MIDDLETOWN,
MONMOUTH COUNTY, a
municipal corporation of the State
of New Jersey.**

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MONMOUTH COUNTY**

DOCKET NO.: MON-L-

Civil Case
(Mount Laurel)

EXHIBITS J-Q

ORDINANCE NO. 2009-2994

TOWNSHIP OF MIDDLETOWN
COUNTY OF MONMOUTH

ORDINANCE AMENDING CHAPTER 16 OF THE REVISED GENERAL
ORDINANCES OF TOWNSHIP OF MIDDLETOWN TO ADDRESS THE
REQUIREMENTS OF COAH REGARDING COMPLIANCE WITH THE
MUNICIPALITY'S PRIOR ROUND AND THIRD ROUND AFFORDABLE
HOUSING OBLIGATIONS UNDER ITS FAIR SHARE PLAN

WHEREAS, on December 11, 2008, the Middletown Township Planning Board adopted an amended Master Plan Housing Element and Fair Share Plan; and

WHEREAS, on December 30, 2008, the Township Committee subsequently endorsed the action of the Planning Board and petitioned the New Jersey Council on Affordable Housing ("COAH") for Substantive Certification of said Fair Share Plan; and

WHEREAS, on October 14, 2009, COAH granted the Township Substantive Certification by COAH Resolution No. 42-09; and

WHEREAS, pursuant to N.J.A.C. 5:96-6.3(e), COAH's grant of Substantive Certification is explicitly conditioned upon the Township's adoption of an ordinance implementing its Fair Share Plan within forty-five (45) days of receipt of substantive certification; and

WHEREAS, COAH'S Resolution specifically provides that if "Middletown Township fails to timely adopt its Fair Share Ordinances, COAH's grant of substantive certification shall be void and of no force and effect. . . ."; and

WHEREAS, it is in the best interests of the taxpayers of the Township of Middletown to take these steps to ensure it is effectively protected from litigation by developers in the form of Builder's Remedy actions.

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Middletown in the County of Monmouth, State of New Jersey that Chapter 16 of the Revised General Ordinances of the Township of Middletown be supplemented and amended as follows:

Section 1. Affordable Housing Obligation

- (a) This Ordinance is intended to assure that low- and moderate-income units ("affordable units") are created with controls on affordability over time and that low- and moderate-income households shall occupy these units. This Ordinance shall apply except where inconsistent with applicable laws and regulations.
- (b) The Township of Middletown Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Fair Share Plan has been endorsed by the governing body. The Fair Share Plan describes the ways Township of Middletown shall address its fair share for low- and moderate-income housing as determined by the COAH and documented in the Housing Element.
- (c) This Ordinance implements and incorporates the Fair Share Plan and addresses the requirements of N.J.A.C. 5:97, as may be amended and supplemented.
- (d) The Township of Middletown shall file monitoring reports with COAH in accordance with N.J.A.C. 5:96, tracking the status of the implementation of the Housing Element and Fair Share Plan. Any plan evaluation report of the Housing Element and Fair Share Plan and monitoring prepared by COAH in accordance with N.J.A.C. 5:96 shall be available to the public at the Township of Middletown Municipal Building, Municipal Clerk's Office, 1 Kings Highway, Middletown.

New Jersey, or from COAH at 101 South Broad Street, Trenton, New Jersey and on COAH's website, www.nj.gov/dca/affiliates/coah.

Section 2. Definitions

The following terms when used in this Ordinance shall have the meanings given in this Section:

"Accessory apartment" means a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is created within an existing home, or through the conversion of an existing accessory structure on the same site, or by an addition to an existing home or accessory building, or by the construction of a new accessory structure on the same site.

"Act" means the Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.)

"Adaptable" means constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

"Administrative agent" means the entity responsible for the administration of affordable units in accordance with this ordinance, N.J.A.C. 5:96, N.J.A.C. 5:97 and N.J.A.C. 5:80-26.1 et seq.

"Affirmative marketing" means a regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

"Affordability average" means the average percentage of median income at which restricted units in an affordable housing development are affordable to low- and moderate-income households.

"Affordable" means, a sales price or rent within the means of a low- or moderate-income household as defined in N.J.A.C. 5:97-9; in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

"Affordable development" means a housing development all or a portion of which consists of restricted units.

"Affordable housing development" means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.

"Affordable housing program(s)" means any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

"Affordable unit" means a housing unit proposed or created pursuant to the Act, credited pursuant to N.J.A.C. 5:97-4, and/or funded through an affordable housing trust fund.

"Agency" means the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1, et seq.).

"Age-restricted unit" means a housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development where the unit is situated are 62 years or older; or 2) at least 80 percent of the units are occupied by one person that is 55 years or older; or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as "housing for older persons" as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

“Assisted living residence” means a facility licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

“Certified household” means a household that has been certified by an Administrative Agent as a low-income household or moderate-income household.

“COAH” means the Council on Affordable Housing, which is in, but not of, the Department of Community Affairs of the State of New Jersey, that was established under the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.).

“DCA” means the State of New Jersey Department of Community Affairs.

“Deficient housing unit” means a housing unit with health and safety code violations that require the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

“Developer” means any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land proposed to be included in a proposed development including the holder of an option to contract or purchase, or other person having an enforceable proprietary interest in such land.

“Development” means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to N.J.S.A. 40:55D-1 et seq.

“Inclusionary development” means a development containing both affordable units and market rate units. This term includes, but is not necessarily limited to: new construction, the conversion of a non-residential structure to residential and the creation of new affordable units through the reconstruction of a vacant residential structure.

“Low-income household” means a household with a total gross annual household income equal to 50 percent or less of the median household income.

“Low-income unit” means a restricted unit that is affordable to a low-income household.

“Major system” means the primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement or load bearing structural systems.

“Market-rate units” means housing not restricted to low- and moderate-income households that may sell or rent at any price.

“Median income” means the median income by household size for the applicable county, as adopted annually by COAH.

“Moderate-income household” means a household with a total gross annual household income in excess of 50 percent but less than 80 percent of the median household income.

“Moderate-income unit” means a restricted unit that is affordable to a moderate-income household.

"Non-exempt sale" means any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a class A beneficiary and the transfer of ownership by court order.

"Random selection process" means a process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery).

"Regional asset limit" means the maximum housing value in each housing region affordable to a four-person household with an income at 80 percent of the regional median as defined by COAH's adopted Regional Income Limits published annually by COAH.

"Rehabilitation" means the repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

"Rent" means the gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

"Restricted unit" means a dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as may be amended and supplemented, but does not include a market-rate unit financed under UHORP or MONI.

"UHAC" means the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 et seq.

"Very low-income household" means a household with a total gross annual household income equal to 30 percent or less of the median household income.

"Very low-income unit" means a restricted unit that is affordable to a very low-income household.

"Weatherization" means building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for rehabilitation.

Section 3. Affordable Housing Programs

Township of Middletown has determined that it will use the following mechanisms to satisfy its affordable housing obligations:

(a) Rehabilitation Program.

1. Township of Middletown's rehabilitation program shall be designed to renovate deficient housing units occupied by low- and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28.
2. Both owner occupied and renter occupied units shall be eligible for rehabilitation funds.
3. All rehabilitated units shall remain affordable to low- and moderate-income households for a period of 10 years (the control period). For owner occupied units the control period will be enforced with a lien and for renter occupied units the control period will be enforced with a deed restriction.

4. The Township of Middletown shall dedicate a minimum of \$10,000 for each unit to be rehabilitated through this program, reflecting the minimum hard cost of rehabilitation for each unit.
5. The Township of Middletown shall adopt a Resolution committing to fund any shortfall in the rehabilitation programs for the Township of Middletown.
6. The Township of Middletown shall designate, subject to the approval of COAH, one or more Administrative Agents to administer the rehabilitation program in accordance with N.J.A.C. 5:96 and N.J.A.C. 5:97. The Administrative Agent(s) shall provide a rehabilitation manual for the owner occupancy rehabilitation program and a rehabilitation manual for the rental occupancy rehabilitation program to be adopted by resolution of the governing body and subject to approval of COAH. Both rehabilitation manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).
7. Units in a rehabilitation program shall be exempt from N.J.A.C. 5:97-9 and UHAC, but shall be administered in accordance with the following:
 - i. If a unit is vacant, upon initial rental subsequent to rehabilitation, or if a renter-occupied unit is re-rented prior to the end of controls on affordability, the deed restriction shall require the unit to be rented to a low- or moderate-income household at an affordable rent and affirmatively marketed pursuant to N.J.A.C. 5:97-9 and UHAC.
 - ii. If a unit is renter-occupied, upon completion of the rehabilitation, the maximum rate of rent shall be the lesser of the current rent or the maximum permitted rent pursuant to N.J.A.C. 5:97-9 and UHAC.
 - iii. Rents in rehabilitated units may increase annually based on the standards in N.J.A.C. 5:97-9.
 - iv. Applicant and/or tenant households shall be certified as income-eligible in accordance with N.J.A.C. 5:97-9 and UHAC, except that households in owner occupied units shall be exempt from the regional asset limit.

(b) An Accessory Apartment program.

1. All accessory apartments shall meet the following conditions:
 - i. Accessory apartments are permitted by the Zoning Ordinance for various zoning districts, provided the units are affordable to low- and moderate-income households. Accessory apartments may be developed as low-income or moderate-income units (accessory apartments may be limited to only low- or only moderate-income units as determined in the Fair Share Plan).
 - ii. Accessory apartments shall comply with all applicable statutes and regulations of the State of New Jersey in addition to all building codes.
 - iii. At the time of initial occupancy of the unit and for at least ten years thereafter, the accessory apartment shall be rented only to a household which is either a low- or moderate-income household.
 - iv. Rents of accessory apartments shall be affordable to low- or moderate-income households as per COAH and UHAC regulations.
 - v. There shall be a recorded deed or declaration of covenants and restrictions applied to the property upon which the accessory apartment is located running with the land and limiting its subsequent rental or sale of the unit and the accessory apartment.

- vi. The appropriate utility authority must certify that there is water and sewer infrastructure with sufficient capacity to serve the proposed accessory apartment. Where the proposed location is served by an individual well and/or septic system, the additional capacity necessitated by the new unit must meet the appropriate NJDEP standards.
 - vii. The Township of Middletown accessory apartment program shall not restrict the number of bedrooms in any accessory apartment.
 - viii. No accessory apartment created as a result of this article or these regulations shall exceed the gross floor area of the existing principal dwelling on the lot.
2. The maximum number of creditable accessory apartments shall be equal to no more than 23, which is equal to 10 percent of the Township of Middletown's Third Round fair share obligation.
 3. The Township of Middletown shall designate an administrative entity to administer the accessory apartment program that shall have the following responsibilities:
 - i. The Administrative Agent shall administer the accessory apartment program, including advertising, income qualifying prospective renters, setting rents and annual rent increases, maintaining a waiting list, distributing the subsidy, securing certificates of occupancy, qualifying properties, handling application forms, filing deed restrictions and monitoring reports and affirmatively marketing the affordable accessory apartment program in accordance with the UHAC.
 - ii. The administrative entity shall only deny an application for an accessory apartment if the project is not in conformance with COAH's requirements and/or the provisions of this section/article. All denials shall be in writing with the reasons clearly stated.
 - iii. In accordance with COAH requirements, Township of Middletown shall provide at least \$25,000 per unit to subsidize the creation of each low-income accessory apartment or \$20,000 per unit to subsidize the creation of each moderate-income accessory apartment. Subsidy may be used to fund actual construction costs and/or to provide compensation for reduced rental rates.
 4. Property owners wishing to apply to create an accessory apartment shall submit to the administrative entity:
 - i. A sketch of floor plan(s) showing the location, size and relationship of both the accessory apartment and the primary dwelling within the building or in another structure;
 - ii. Rough elevations showing the modifications of any exterior building façade to which changes are proposed; and
 - iii. A site development sketch showing the location of the existing dwelling and other existing buildings; all property lines; proposed addition, if any, along with the minimum building setback lines; the required parking spaces for both dwelling units; and any man-made conditions which might affect construction.

(c) A Market to Affordable program.

1. A market to affordable program is established to permit the purchase or subsidization of units through a written agreement with the property owner

and sold or rented to low- and moderate-income households. Subject to the provisions of 2iii below, the market to affordable programs may produce both low- and moderate-income units (the program may be limited to only low- or only moderate-income units as per the Fair Share Plan).

2. The following provisions shall apply to market to affordable programs:
 - i. At the time they are offered for sale or rental, eligible units may be new, pre-owned or vacant.
 - ii. The units shall be certified to be in sound condition as a result of an inspection performed by a licensed building inspector.
 - iii. The municipality will provide a minimum of \$25,000 per unit to subsidize each moderate-income unit and/or \$30,000 per unit to subsidize the each low-income unit, with additional subsidy depending on the market prices or rents in a municipality.
 - iv. The maximum number of creditable market to affordable units shall be equal to no more than 10 for sale units and 10 rental units or a combined total of 10 percent of the fair share obligation, whichever is greater. (Additional units may be approved by COAH if the municipality demonstrates the successful completion of its initial market to affordable program.)
3. The units shall comply with N.J.A.C. 5:97-9 and UHAC with the following exceptions:
 - i. Bedroom distribution (N.J.A.C. 5:80-26.3(b) and (c));
 - ii. Low/moderate income split (N.J.A.C. 5:80-26.3(a)); and
 - iii. Affordability average (N.J.A.C. 5:80-26.3(d) and (e)); however:
 - A. The maximum rent for a moderate-income unit shall be affordable to households earning no more than 60 percent of median income and the maximum rent for a low-income unit shall be affordable to households earning no more than 44 percent of median income; and
 - B. The maximum sales price for a moderate-income unit shall be affordable to households earning no more than 70 percent of median income and the maximum sales price for a low-income unit shall be affordable to households earning no more than 40 percent of median income.

(d) A Residential Over Commercial Program.

Consistent with § 16-9.43 of the Middletown Township Planning and Development Regulations.

Section 4. Inclusionary Zoning

- (a) **Presumptive densities and set-asides.** To ensure the efficient use of land through compact forms of development and to create realistic opportunities for the construction of affordable housing, inclusionary zoning permits minimum presumptive densities and presumptive maximum affordable housing set-asides at sites satisfying the Township's Growth Share obligation as follows:
 1. For Sale Developments
 - i. Inclusionary zoning in Planning Area 1 permits residential development

at a presumptive minimum gross density of eight units per acre and a presumptive maximum affordable housing set-aside of 25 percent of the total number of units in the development.

The zoning of the following sites as identified in the Housing Element and Fair Share Plan provide for 25 percent set-asides for restricted units and a density of a minimum 8 units per acre.

<u>SITE</u>	<u>Density (dwelling units per gross acre)</u>	<u>Setaside</u>
Steiner & Frustacci	8	25%
199 Laurel Ave. Assoc.	8	25%
Atlantic Pier	8	25%
Meadowview	24	25%

2. Rental Developments

- i. Inclusionary zoning permits a presumptive minimum density of 12 units per acre and a presumptive maximum affordable housing set-aside of 20 percent of the total number of units in the development and the zoning provides for at least 10 percent of the affordable units to be affordable to households earning 30 percent or less of the area median income for the COAH region. The zoning of the following site(s) provides for a 20 percent set-aside for restricted units and a density of 12 units per acre.

<u>SITE</u>	<u>Density (dwelling units per gross acre)</u>	<u>Setaside</u>
Taylor Lane	12	20%

3. Where an executed development agreement exists for affordable housing on a specific site or sites, list the sites below and identify the density and set-aside for each.

<u>SITE</u>	<u>Density (dwelling units per gross acre)</u>	<u>Setaside</u>
Four Ponds (aka Avaya)	5.5	20%
Mountain Hill	4.5	20%

4. Additional incentives to subsidize the creation of affordable housing available to very-low income households may be negotiated and specified in a developer's or redeveloper's agreement.

- (b) **Phasing.** In inclusionary developments the following schedule shall be followed:

Maximum Percentage of Market-Rate Minimum Percentage of Low- and Moderate-Income Units Completed

25	0
25+1	10
50	50
75	75
90	100

- (b) **Design.** In inclusionary developments, to the extent possible, low- and moderate-income units shall be integrated with the market units.
- (c) **Payments-in-lieu and off-site construction.** The standards for the collection of Payments-in-Lieu of constructing affordable units or standards for constructing affordable units off-site, shall be in accordance with N.J.A.C. 5:97-6.4.
- (d) **Utilities.** Affordable units shall utilize the same type of heating source as market units within the affordable development.

Section 5. New Construction

The following general guidelines apply to all newly constructed developments that contain low- and moderate-income housing units, including any currently unanticipated future developments that will provide low- and moderate-income housing units.

(a) Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:

1. The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low income unit.
2. In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units.
4. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
 - i. The combined number of efficiency and one-bedroom units shall be no greater than 20 percent of the total low- and moderate-income units;
 - ii. At least 30 percent of all low- and moderate-income units shall be two bedroom units;
 - iv. At least 20 percent of all low- and moderate-income units shall be three bedroom units; and
 - v. The remaining units may be allocated among two and three bedroom units at the discretion of the developer.
4. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

(b) Accessibility Requirements:

1. The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14.
2. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
 - i. An adaptable toilet and bathing facility on the first floor;
 - ii. An adaptable kitchen on the first floor;
 - ii. An interior accessible route of travel on the first floor;
 - iii. An interior accessible route of travel shall not be required between stories within an individual unit;
 - iv. An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and

- vi. An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14, or evidence that the Township of Middletown has collected funds from the developer sufficient to make 10 percent of the adaptable entrances in the development accessible:
 - A. Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
 - B. To this end, the builder of restricted units shall deposit funds within the Township of Middletown's affordable housing trust fund sufficient to install accessible entrances in 10 percent of the affordable units that have been constructed with adaptable entrances.
 - C. The funds deposited under paragraph B. above shall be used by the Township of Middletown for the sole purpose of making the adaptable entrance of any affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
 - D. The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of the Township of Middletown.
 - E. Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14, and that the cost estimate of such conversion is reasonable, payment shall be made to the Township of Middletown's affordable housing trust fund in care of the Municipal Treasurer who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked.
 - F. Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is site impracticable to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14.

(c) Maximum Rents and Sales Prices

1. In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC and in COAH, utilizing the regional income limits established by COAH.
2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of median income, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than 52 percent of median income.
3. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units. At least 10 percent of all low- and moderate-income rental units shall be affordable to households earning no more than 30 percent of median income.
4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70

percent of median income, and each affordable development must achieve an affordability average of 55 percent for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.

5. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be used:
 - i. A studio shall be affordable to a one-person household;
 - ii. A one-bedroom unit shall be affordable to a one and one-half person household;
 - iii. A two-bedroom unit shall be affordable to a three-person household;
 - iv. A three-bedroom unit shall be affordable to a four and one-half person household; and
 - v. A four-bedroom unit shall be affordable to a six-person household.
6. In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be used:
 - i. A studio shall be affordable to a one-person household;
 - ii. A one-bedroom unit shall be affordable to a one and one-half person household; and
 - iii. A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
7. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28 percent of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
8. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate household size as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
9. The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.
10. The rent of low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed nine percent in any one year.

Rents for units constructed pursuant to low-income housing tax credit regulations shall be indexed pursuant to the regulations governing low-income housing tax credits.

11. **Utilities.** Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.

Section 6. Affirmative Marketing Requirements

- (a) Township of Middletown shall adopt by resolution an Affirmative Marketing Plan, subject to approval of COAH, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- (b) The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward COAH Housing Region 4 and covers the period of deed restriction.
- (c) The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 4 comprised of Monmouth, Mercer and Ocean Counties.
- (d) The Administrative Agent designated by the Township of Middletown shall assure the affirmative marketing of all affordable units consistent with the Affirmative Marketing Plan for the municipality.
- (e) In implementing the affirmative marketing plan, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- (f) The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.
- (g) The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by Township of Middletown.

Section 7. Occupancy Standards

- (a) In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to:
 - 1. Provide an occupant for each bedroom;
 - 2. Provide children of different sex with separate bedrooms; and
 - 3. Prevent more than two persons from occupying a single bedroom.
- (b) Additional provisions related to occupancy standards (if any) shall be provided in the municipal Operating Manual.

Section 8. Control Periods for Restricted Ownership Units and Enforcement Mechanisms

- (a) Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this Ordinance until the Township of Middletown elects to release the unit from such requirements however, and prior to such an election, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, for at least 30 years.
- (b) The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- (c) Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the administrative agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value.
- (d) At the time of the first sale of the unit, the purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the requirements of this Ordinance, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
- (e) The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- (f) A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the applicable minimum control period provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

Section 9. Price Restrictions for Restricted Ownership Units; Homeowner Association Fees and Resale Prices

Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:

- (a) The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
- (b) The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
- (c) The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the low- and moderate-income unit owners and the market unit owners.
- (d) The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.

Section 10. Buyer Income Eligibility

- (a) Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50 percent of median income and moderate-income

ownership units shall be reserved for households with a gross household income less than 80 percent of median income.

- (b) The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33 percent of the household's certified monthly income.

Section 11. Limitations on indebtedness secured by ownership unit; subordination

- (a) Prior to incurring any indebtedness to be secured by a restricted ownership unit, the administrative agent shall determine in writing that the proposed indebtedness complies with the provisions of this section.
- (b) With the exception of original purchase money mortgages, during a control period neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95 percent of the maximum allowable resale price of that unit, as such price is determined by the administrative agent in accordance with N.J.A.C.5:80-26.6(b).

Section 12. Control Periods for Restricted Rental Units

- (a) Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Ordinance until the Township of Middletown elects to release the unit from such requirements pursuant to action taken in compliance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, and prior to such an election, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, for at least 30 years.
- (b) Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Monmouth. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
- (c) A restricted rental unit shall remain subject to the affordability controls of this Ordinance, despite the occurrence of any of the following events:
 1. Sublease or assignment of the lease of the unit;
 2. Sale or other voluntary transfer of the ownership of the unit; or
 3. The entry and enforcement of any judgment of foreclosure.

Section 13. Price Restrictions for Rental Units; Leases

- (a) A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
- (b) No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.

- (c) Application fees (including the charge for any credit check) shall not exceed five percent of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.

Section 14. Tenant Income Eligibility

- (a) Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:

1. Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30 percent of median income.
2. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of median income.
3. Moderate-income rental units shall be reserved for households with a gross household income less than 80 percent of median income.

- (b) The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:

1. The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
2. The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
3. The household is currently in substandard or overcrowded living conditions;
4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
5. The household documents proposed third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.

- (c) The applicant shall file documentation sufficient to establish the existence of the circumstances in (b)1 through 5 above with the Administrative Agent, who shall counsel the household on budgeting.

Section 15. Administration

- (a) The position of Municipal Housing Liaison (MHL) for Township of Middletown is established by this ordinance. The Middletown Township Committee shall make the actual appointment of the MHL by means of a Resolution.

1. The MHL must be either a full-time or part-time employee of Township of Middletown.
2. The person appointed as the MHL must be reported to COAH for approval.

3. The MHL must meet all COAH requirements for qualifications, including initial and periodic training.
4. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Township of Middletown, including the following responsibilities which may not be contracted out to the Administrative Agent:
 - i. Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;
 - ii. The implementation of the Affirmative Marketing Plan and affordability controls;
 - iii. When applicable, supervising any contracting Administrative Agent;
 - iv. Monitoring the status of all restricted units in the Township of Middletown's Fair Share Plan;
 - v. Compiling, verifying and submitting annual reports as required by COAH;
 - vi. Coordinating meetings with affordable housing providers and Administrative Agents, as applicable; and
 - vii. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by COAH.
- (b) The Township of Middletown shall designate by resolution of the Township Committee, subject to the approval of COAH, one or more Administrative Agents to administer newly constructed affordable units in accordance with N.J.A.C. 5:96, N.J.A.C. 5:97 and UHAC.
- (c) An Operating Manual shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body and subject to approval of COAH. The Operating Manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).
- (d) The Administrative Agent shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC and which are described in full detail in the Operating Manual, including those set forth in N.J.A.C. 5:80-26.14, 16 and 18 thereof, which includes:
 1. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by COAH;
 2. Affirmative Marketing;
 3. Household Certification;
 4. Affordability Controls;
 5. Records retention;
 6. Resale and re-rental;
 7. Processing requests from unit owners;

8. Enforcement, though the ultimate responsibility for retaining controls on the units rests with the municipality; and
9. The Administrative Agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

Section 16. Enforcement of Affordable Housing Regulations

- (b) Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- (c) After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
 1. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is found by the court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the court:
 - i. A fine of not more than \$500.00 or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;
 - ii. In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Township of Middletown Affordable Housing Trust Fund of the gross amount of rent illegally collected; and
 - iii. In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.
 2. The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- and moderate-income unit.
- (c) Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.
- (d) The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- and moderate-income

unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.

- (e) Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
- (f) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
- (g) Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.
- (h) The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.

Section 17. Appeals

Appeals from all decisions of an Administrative Agent designated pursuant to this Ordinance shall be filed in writing with the Executive Director of COAH.

Section 18. Repealer

Any and all Ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent of such inconsistencies.

Section 19. Severability

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent

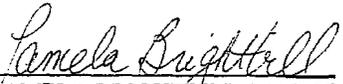
jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 20. Effective Date

This ordinance shall become effective upon final adoption and publication pursuant to law.

PASSED FIRST READING: October 19, 2009

PASSED AND APPROVED: November 16, 2009


PAMELA BRIGHTBILL, MAYOR
TOWNSHIP OF MIDDLETOWN

ATTEST:


HEIDI ABS, TOWNSHIP CLERK

**TOWNSHIP OF MIDDLETOWN
PLANNING BOARD**

**IN THE MATTER OF APPLICATION #2009-212
APPLICATION OF MEADOWVIEW, LLC**

**RESOLUTION GRANTING
PRELIMINARY AND FINAL
MAJOR SITE PLAN APPROVAL**

Middletown Township
Monmouth County, New Jersey
Dates of Hearings: January 6, 2010 and
February 3, 2010
Date of Action: February 3, 2010
Date of Resolution: March 3, 2010

WHEREAS, the applicant is the owner of property located at 628 Main Street in the Belford section of the Township, designated as Block 281, Lots 14 and 15 on the Tax Map of Middletown Township, and located in the RMF-1 Zone; and

WHEREAS, an application has been made to the Planning Board for preliminary and final major site plan approval to construct 38 condominium units on this 1.61 acre site; and

WHEREAS, the applicant submitted a Preliminary/Final Major Site Plan consisting of twelve sheets prepared by A. J. Garito, Jr., P.E., dated August 7, 2009, last revised December 3, 2009; and

WHEREAS, the application and plan was circulated to various agencies, commissions and offices regulated by the Township Ordinance; and

WHEREAS, public notice was given in accordance with the requirements of the Municipal Land Use Law for the meetings held on January 6, 2010 and February 3, 2010, and all interested parties

were given an opportunity to be heard and express their opinions;
and

WHEREAS, variance relief from Zoning Ordinance requirements is not required; and

WHEREAS, the applicant was represented by Paul N. Mirabelli, Esq., and testimony was presented by Marc S. Leber, P.E., and Maxine Gustus-Giordano, Architect; and

WHEREAS, several members of the public appeared on this application, and the Board and staff reviewed the materials submitted and have carefully considered all of the evidence and all of the applicant's testimony and the testimony of the public.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Board of the Township of Middletown does hereby find the following facts:

1. The applicant seeks preliminary and final major site plan approval to construct 38 condominium units on the subject property. Nine of the units will be subject to affordability controls as low and moderate income housing units.
2. The Township Committee adopted ordinance #2009-2979 in July 2009 to zone the property as Residential Multifamily (RMF-1) with a maximum residential density of 24 dwelling units per acre. A minimum 25% affordable housing setaside is required, which results in a 9.5 unit obligation. The

- proposed site plan specifies that 9 units will be reserved for low and moderate income households, which is consistent with the Zoning Ordinance. The applicant intends to provide payment in-lieu for the remaining 0.5 unit for affordable housing. This approach is consistent with COAH guidelines. Master and individual unit deeds shall specify the required controls on affordability for all proposed low and moderate income units.
3. The proposed use is permitted in the RMF-1 zone. No variances are requested.
 4. The 38 condominium units shall be contained in three multi-story buildings, with parking areas underneath the buildings on ground level.
 5. The applicant proposes all two bedroom units. A waiver from COAH is required.
 6. Old Drift Road, now a paper street, will be improved but not to RSIS standards. It will effectively function as a driveway for the project. The road will be sufficiently improved for that purpose. RSIS waivers are granted.
 7. The applicant will comply with the reports of the Township Planner dated January 27, 2010, and of the Planning Board Engineer dated January 28, 2010.
 8. The Board accepts the testimony and stipulations made by

the applicant during the January 6, 2010 and February 3, 2010 hearings, and such testimony and stipulations are part of the record and binding upon the applicant.

BE IT FURTHER RESOLVED, that the Planning Board of the Township of Middletown does hereby approve Application #2009-212 of Meadowview, LLC granting preliminary and final major site plan approval based upon the evidence and findings contained herein subject to the conditions listed on Exhibit A attached hereto and made a part hereof.

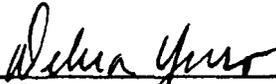
ON A MOTION BY Cliff Raisch and seconded by
Carl Rathjen the application is approved based upon
the following vote:

AYES: Deus, Hall, Raisch, Rathjen, Strong

NAYS:

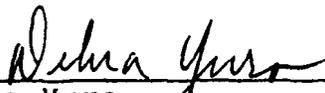
ABSTAIN:

ABSENT: Lawrence, Wilton



Debra Yuro
Planning Board Secretary

I, Debra Yuro, Secretary to the Township of Middletown
Planning Board do hereby certify that the foregoing is a true copy
of a Resolution adopted by the Planning Board on this 3rd day of
March, 2010.



Debra Yuro
Planning Board Secretary

EXHIBIT A

The following conditions of approval for Application #2009-212 for Meadowview, LLC shall be satisfied prior to the signing of final subdivision plans or release of deeds of subdivision unless otherwise noted.

1. The applicant shall comply with the Planning Board Engineer's letter dated January 28, 2010.
2. The applicant shall comply with the Township Planner's letter dated January 27, 2010.
3. Final approval or letter of no jurisdiction from the Township of Middletown Sewerage Authority shall be obtained.
4. Final approval or letter of no jurisdiction by the Monmouth County Planning Board shall be obtained.
5. All required permits from the NJDEP must be obtained, including CAFRA.
6. Final approval or letter of no jurisdiction of the Freehold Soil Conservation District shall be obtained.
7. A contribution to the Township's Environmental Disturbance Fund will be required prior to issuance of any construction permit.
8. Nine units must have affordability controls placed on them in accordance with COAH rules and Township regulations. The master deed and the deed to each unit must set forth these affordability controls.
9. Payment to the Township's Affordable Housing Fund in lieu of

- providing a 0.5 unit is required.
10. A waiver from COAH to permit all two bedroom units is required.
 11. The condominium master deed and unit deeds shall contain a disclosure that the property is adjacent to a marine commercial zone with an adjacent property now being used as the base of operations for a dredging company.
 12. The condominium master deed and unit deeds shall contain a disclosure that the property is in a flood zone.
 13. Lots 14 and 15 are to be consolidated by deed.
 14. A 30 foot wide depressed curb shall be added for fire access between the buildings. A subbase between the buildings shall be provided to support a firefighting apparatus. The applicant must demonstrate that the town's firefighting apparatus can negotiate the turning movements between the buildings.
 15. The trash cans must be secured with a wire and tether system.
 16. A conservation easement is required for wetlands and CAFRA transition areas. The easement is subject to review by the Planning Board Attorney and Planning Board Engineer.
 17. The condominium master deed shall be submitted to the Planning Board Attorney for review to ensure compliance with this approval.

ORDINANCE NO. 2013-3077

**TOWNSHIP OF MIDDLETOWN
COUNTY OF MONMOUTH**

**ORDINANCE AUTHORIZING DEVELOPER'S AGREEMENT AND
CONVEYANCE OF TOWNSHIP-OWNED PARCEL FOR
AFFORDABLE HOUSING ON BLOCK 869, LOT 71.01 (UNITY ROAD)**

WHEREAS, the Township of Middletown adopted a Housing Element and Fair Share Plan in accord with the requirements of the Council On Affordable Housing ("COAH"), and a significant element of the Township's Fair Share Plan is the "Scattered Sites" program by which affordable homes as defined and governed by COAH rules are built and provided on lots provided by the Township; and

WHEREAS, said Housing Element and Fair Share Plan was granted Substantive Certification by COAH on October 14, 2009; and

WHEREAS, the Township retains title ownership to Block 869, Lot 71.01 which is suitable for this "Scattered Sites" program; and

WHEREAS, the Township wishes to enter into a Developer's Agreement with Housing and United Services, Inc., ("HUS") a not-for-profit and/or a responsible owner entity to be formed at future date, to facilitate the construction on said lot of a four-bedroom licensed qualified supportive housing units, as defined in N.J.A.C. 5:97-6.10, with supportive housing facilities and services for blind or disabled adults, who qualify as very low income households; and

WHEREAS, the Township anticipates that construction of said supportive housing units will receive eight (8) credits towards its prior round affordable housing obligation through the construction of said supportive homes, i.e., four (4) bedroom credits as well as four (4) rental bonus credits at this site; and

WHEREAS, this Ordinance intends to authorize the conveyance of Block 869, Lot 71.01, which is not needed for any other public purposes, to HUS and/or a responsible not-for-profit owner entity to be formed at future date, for the purpose of constructing a four-bedroom licensed qualified supportive housing units as part of the Township's Fair Share Housing Plan.

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Middletown in the County of Monmouth, State of New Jersey that the Mayor and Township Attorney are hereby authorized and directed to execute a Developer's Agreements and contracts to convey Block 869, Lot 71.01 to HUS and/or a responsible not-for-profit owner entity to be formed at future date, for the purpose of constructing a four-bedroom licensed and qualified supportive housing units, as defined in N.J.A.C. 5:97-6.10, with supportive housing facilities and services for blind or disabled adults, who qualify as very low income households.

BE IT FURTHER ORDAINED that all Agreements set forth herein are subject to the final approval of the Mayor, Township Administrator and Township Attorney.

BE IT FURTHER ORDAINED that the Mayor, Township Attorney, Township Administrator and all other necessary Township officials are authorized to execute the necessary Deed, Affidavit of Title, Limited Power of

Attorney, Developer's Agreement, and other forms or documents, in a form approved by the Township Attorney, to perfect and finalize the conveyance of Block 869, Lot 71.01 to Housing and United Services, Inc., a not-for-profit entity and/or their responsible partner to be approved by the Township, for \$1 as part of the Township's Fair Share Plan and Scattered Sites program.

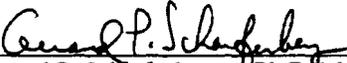
BE IT FURTHER ORDAINED that if a court of competent jurisdiction shall declare any section, subsection, clause or provision of the ordinance invalid, such decision shall not affect the validity of this ordinance as a whole or any part hereof.

BE IT FURTHER ORDAINED that all ordinances, or parts of ordinances which are inconsistent herewith, are hereby repealed to the extent of such inconsistency.

BE IT FURTHER ORDAINED that this ordinance shall take effect immediately upon final passage and upon notice of adoption being published as provided by law.

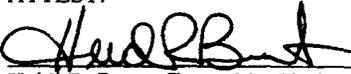
PASSED ON FIRST READING: January 6, 2013

PASSED AND APPROVED: January 22, 2013



Gerard P. Scharfenberger, Ph.D., Mayor

ATTEST:



Heidi R. Brunt, Township Clerk

AFFORDABLE HOUSING AGREEMENT

file
RIM
Housing & Unite
Services
(HUS)

THIS AGREEMENT (the "Agreement") is made on this ___ day of February, 2013 by and between the TOWNSHIP OF MIDDLETOWN, a municipal corporation of the State of New Jersey, with offices at 1 Kings Highway, Middletown, New Jersey 07748 ("Middletown" and/or "Township") and HOUSING AND UNITED SERVICES, INC., a not-for-profit corporation of the State of New Jersey, with offices at 47 Center Avenue, Leonardo, New Jersey 07737 ("HUS").

RECITALS

1. Southern Burlington County NAACP vs. Mount Laurel, 92 N.J. 158 (1983) ("Mount Laurel II") and the New Jersey Fair Housing Act, N.J.S.A. 52: 27D-301, et seq. ("FHA") requires Middletown, as well as most other municipalities in New Jersey, to create a realistic opportunity for the provision of low and moderate income housing ("Affordable Housing") during the cumulative first, second and third housing cycles spanning from December 15, 1986 to December 31, 2013.

2. The FHA authorized the creation of the New Jersey Council on Affordable Housing ("COAH") as the State administrative agency with primary jurisdiction over the administration of municipal affordable housing obligations and authorized COAH to adopt rules and regulations to guide affordable housing compliance in the first, second and third housing cycles in accordance with sound regional planning considerations.

3. COAH heretofore determined that Middletown has an affordable housing obligation which the Township is endeavoring to accommodate. As a result of Governor Christie's Reorganization Plan 001-2011, the review formerly to be conducted by COAH is now conducted by the Department of Community Affairs ("DCA").

4. Middletown has prepared a Housing Element and Fair Share Plan in accordance with the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq., the FHA and the Affordable Housing Regulations of the State of New Jersey, Department of Community Affairs, N.J.A.C. 5:96-1 et seq. and N.J.A.C. 5:97-1 et seq.

5. Middletown was approached by HUS to assist the Township with its provision of low and moderate income housing pursuant to the FHA through the proposed acquisition of Block 869, Lot 71.01 and Block 724, Lot 1 (collectively, the "Property").

6. HUS is an experienced developer of supportive affordable housing which owns, operates and manages supportive housing projects throughout the State of New Jersey, and as a result of Middletown's offer of contribution of the Property, HUS is moving forward with the acquisition of the Property and its development, operation, maintenance and management as a four (4) bedroom licensed and qualified supportive low income housing units development on Block 869, Lot 71.01 and a four (4) bedroom licensed and qualified supportive low income housing units on Block 724, Lot 1 (collectively, the "Project").

7. HUS indicates that it, or its affiliate, Allies, Inc., shall operate and manage the Project, and that HUS has formed or will form an entity to own the Property. The Township acknowledges that HUS will assign this Agreement to that entity prior to closing of the acquisition of the Property and the contribution by the Township.

8. The parties desire to memorialize their understandings and commitments with respect to the foregoing.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. RECITALS.

The Recitals set forth above are incorporated by reference herein as set forth herein at length.

2. PURPOSE OF AGREEMENT

The express purpose of this Agreement is to facilitate the construction, ownership, operation, maintenance and management of a four (4) bedroom licensed and qualified supportive housing rental project by HUS (which along with any entity created to facilitate the same shall be referred to collectively herein as "HUS") on Block 869, Lot 71.01 and a four (4) bedroom licensed and qualified supportive housing rental project on Block 724, Lot 1 (collectively, the "Property") to assist Middletown in satisfying its affordable housing mandates for this purpose to be conveyed to HUS for nominal consideration (the "Township Contribution").

3. ACQUISITION OF PROPERTY BY HUS; CONTRIBUTION BY THE TOWNSHIP; OBLIGATIONS OF HUS.

The parties acknowledge that the Property located at Block 869, lot 71.01 and Block 724, Lot 1 as further described in Exhibit A hereto (the "Property"), are appropriate locations for supportive low incoming housing. In order to assist HUS with the Project, the Township hereby agrees and to contribute the Property (the "Township Contribution"). In exchange for the Township Contribution, HUS agrees to construct the Project and obtain all necessary funding and approvals.

4. DUE DILIGENCE PERIOD.

The Township shall give HUS copies of all of the existing deeds, affidavits, environmental reports, title reports, surveys and any other conveyance documents relating to the Property (collectively, the "Documents") in the Township's possession or reasonable control. HUS shall advise the Township in writing within forty-five (45) days of receipt of the Documents that it will accept title to the Property. At all times prior to HUS Closing (as hereinafter defined), including times following the "Review Period Expiration Date" (which is defined as the date that is 180 days after the execution of this Agreement), HUS shall be entitled to conduct a "Due Diligence Inspection," which includes the right to: (i) enter upon the Property, to perform inspections and tests, including, but not limited to, inspections, and

evaluations; (ii) make investigations with regard to zoning, environmental, building, code and other legal requirements applicable to the Property, including, but not limited to, conducting environmental audits, investigations and studies of the Property; (iii) make or obtain market studies and real estate tax analyses; and (v) review any and all notices, filings, reports and other correspondence pertaining to the Property. HUS hereby releases and agrees to defend and hold the Township harmless from any death, personal injury, or property damage arising from its access to and inspections of the property and agrees to provide the Township with insurance coverage in such amounts and varieties as may be reasonably specified by the Township.

If, at any time prior to the Review Period Expiration Date, HUS, in its sole and absolute discretion, determines that the results of (i) any Due Diligence Inspection or (ii) any other review inspection or examination of (a) all or any portion of the Property, does not meet HUS's criteria for the purchase, financing or operation in the manner contemplated by HUS, HUS may (in its sole and absolute discretion) terminate this Agreement by written notice to Township given at any time not later than 5:00 P.M. Eastern Standard Time on the Review Period Expiration Date.

5. **THE DEVELOPMENT APPROVAL PROCESS.**

Upon execution of this Agreement, HUS agrees to work with the Township's staff and the staff of the Planning Board to develop conceptual development plans for the Project. A minimum of four (4) bedrooms shall be occupied by low and moderate income individuals requiring supportive services on Block 869, Lot 71.01 and a minimum of four (4) bedrooms shall be occupied by low and moderate income individuals requiring supportive services on Block 724, Lot 1. Thereafter, HUS agrees to submit the concept plans that have been preliminarily endorsed by the staff to the full Planning Board for its review, input and recommendations. No application or escrow fees shall be charged to accomplish the foregoing and the Planning Board shall be instructed by the Township to give the concept plan review its full and prompt attention.

HUS shall then proceed to secure preliminary and final approvals in accordance with the Municipal Land Use Law, N.J.S.A. 40:55D-1, *et seq.* ("MLUL") with the Township and the Planning Board affording HUS the cost reduction and reasonable variance entitlements in Subchapter 10 of COAH's second cycle rules N.J.A.C. 5:93-10.1, *et seq.*, if applicable. The Township shall waive any required Township fees, including but not limited to administrative application fees, inspection fees, building permit fees, recreation fees, tree removal or tree clearing permit fees, street lighting and fire hydrant fees. Additionally, the Township shall cooperate with HUS on the Planning Board application including appearing before the Board if requested by HUS; and further shall support HUS, if necessary.

6. **QUALITY AND TRANSFER OF TITLE.**

Fee Simple Title shall be transferred by the Township to HUS by Bargain and Sale Deed within thirty (30) days after written notice of its intent to take title and commence construction (the "HUS Closing"). HUS shall be permitted to terminate this Agreement if the Township is either unwilling or unable to cure and/or satisfy title and survey impediments if said defects will render title uninsurable at regular rates by a title company authorized to conduct business in New Jersey.

7. **SITE PLAN APPROVAL/CERTIFICATE OF OCCUPANCY.**

The Township and the Planning Board shall afford HUS the cost reduction and, if needed, reasonable variance entitlements, as are permitted by any State or local rules regarding the development of Affordable Housing. The Township shall waive any required Township fees, including but not limited to administrative application fees, inspection fees, building permit fees, recreation fees, tree removal or tree clearing permit fees, street lighting and fire hydrant fees. Additionally, the Township shall cooperate with HUS on the Planning Board application including appearing before the Board if requested by HUS. No application fees shall be charged to accomplish the foregoing and the Planning Board shall be instructed by the Township to give the site plan review its full and prompt attention; provided however, that any third party costs incurred or to be incurred by the Township in connection with the above process, including but not limited to engineering fees, shall be borne by HUS and may be required to be paid into escrow.

8. **GOVERNMENT SUBSIDIES AND FINANCING.**

HUS represents and warrants that it has applied to and received approval of financing through the United States Department of Housing and Urban Development ("HUD"). HUS shall apply for and obtain approval for the sites through HUD at its sole cost and expense.

9. **COMPLIANCE WITH COAH'S AND HUD'S RULES AND MAINTENANCE OF PROJECT.**

HUS agrees that all affordable rental units shall be constructed, marketed, rented and managed in accordance with COAH's and HUD's rules including, but not limited to: (a) controls on affordability, (b) affirmative marketing, etc. Further, HUS shall assume responsibility for income qualification and the filing of COAH's and/or HUD's monitoring and reporting forms as the Administrative Agent. The controls on affordability shall remain in effect for not less than thirty (30) years. If the Township desires to extend controls on affordability to derive new construction credits when they are scheduled to expire in accordance with Uniform Affordability Controls [N.J.A.C. 5:80-26], HUS, in its sole discretion, will after being notified by the Township of its desire to extend the affordability controls, have the option to either (i) agree to extend the affordability controls and maintain ownership of the Project, or (ii) grant the Township an option to purchase the Project at its then fair market value, which fair market value shall be based upon the value of the Project as a market rate project. If HUS decides to grant the Township the option to purchase the Project, such option must be exercised by the Township within thirty (30) days of the date that the Township notifies HUS of its intention to exercise the option.

10. **CONVEYANCE LAWS.**

HUS warrants, covenants and agrees that the entity that will receive title to the property will satisfy any requirements of the applicable conveyance laws such that the Township can lawfully convey title to the entity for nominal consideration absent the need for public bidding. HUS's noncompliance with this covenant shall constitute a material breach of this Agreement.

With Copy to:

Archer & Greiner PC
830 Broad Street, Suite B
Shrewsbury, New Jersey 07702
Attention: Brian M. Nelson, Esq.
Telecopier No. (732) 741-9944

13. **MISCELLANEOUS.**

- (a) **Captions.** Captions and titles to this Agreement are inserted for the purposes of convenience and reference only, and are in no way to be construed as limiting or modifying the scope and intent of the various purposes and provisions of this Agreement.
- (b) **Cooperation.** The parties expressly agree to cooperate with each other in order to effectuate and carry out the purposes of this Agreement in addition to the Mount Laurel II doctrine, the FHA, COAH, HUD and HMFA's Rules. HUS further agrees to participate in any proceedings before the Superior Court, COAH, or the HMFA that may be necessary to accomplish the purpose of this Agreement.
- (c) **Waiver.** Each of the parties waives all rights to challenge the validity and enforceability of this Agreement. Failure to enforce provisions or obligations in this Agreement by any party shall not be construed as a waiver of these provisions and obligations.
- (d) **Entire Agreement.** This Agreement and its prefatory statements and recitals constitute the entire agreement between the parties. No representative, agent or employee of any party has been authorized to make any representation and/or promises that are not contained herein or to otherwise modify, amend, vary or alter the terms hereof except as stated herein. No modifications, amendments, variations or alternations shall be binding unless reduced to writing and signed by the parties.
- (e) **Validity.** In the event that one or more of the provisions of this Agreement shall be held to be invalid, unenforceable or void, the parties shall within thirty (30) days of such determination, attempt to restructure this Agreement consistent with its underlying intent. If the parties fail to resolve such a restructuring, any party may seek Court review and a ruling to restructure the Agreement in a legally acceptable manner reflecting the underlying intent of the parties as expressed herein.
- (f) **Preparation.** The parties acknowledge that this Agreement has been jointly prepared by the parties' attorneys. Therefore, this Agreement shall be construed on a parity among the parties and any presumption for resolving ambiguities against the drafter shall not apply.
- (g) **Counterpart Signature.** This Agreement may be executed simultaneously or in one or more counterparts, each of which, when so executed and delivered, shall

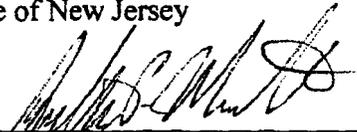
constitute an original, fully enforceable counterpart for all purposes. Facsimile counterparts shall be accepted and enforceable. Immediately upon the delivery of a facsimile counterpart, the sending party shall deliver a counterpart with the original execution page.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year appearing below their names.

Attest:

TOWNSHIP OF MIDDLETOWN
A Municipal Corporation of the
State of New Jersey


Print Name: HEIDI R. BRUNT, RMC

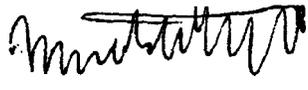
By: 
Anthony Mercantante, Administrator
Date: February 7, 2013

[SEAL]

Attest:

HOUSING AND UNITED
SERVICES, INC.
a New Jersey Not-for-Profit Corporation


Print Name: David J. Dugan

By: 
Michael T. Marrazzo, President
Date: February 7, 2013

[SEAL]

TOWNSHIP OF MIDDLETOWN PLANNING BOARD

**IN THE MATTER OF APPLICATION #2013-204
APPLICATION OF ATLANTIC PIER CO., INC.**

**RESOLUTION GRANTING
PRELIMINARY AND FINAL
MAJOR SITE PLAN APPROVAL**

Middletown Township
Monmouth County, New Jersey
Dates of Hearing: July 3, 2013,
September 3, 2013, October 2, 2013
and April 2, 2014
Date of Action: April 2, 2014
Date of Resolution: May 7, 2014

WHEREAS, the applicant, Atlantic Pier Co., Inc., is the owner of property located at Highway 36 between Sears Avenue and Lakeside Avenue, now or formerly designated as Block 732, Lots 10-13, 21 and 22, on the Tax Map of Middletown Township, and now consolidated as Block 732, Lot 10.01, and located in the RTH-9 Zone; and

WHEREAS, an application has been made to the Planning Board for preliminary and final major site plan approval to construct 40 housing units in two buildings on a 5.528 acre tract with frontage on Highway 36; and

WHEREAS, the applicant submitted Preliminary and Final Plat--Major Site Plan drawings, prepared by Kennedy Consulting Engineers, LLC dated April 19, 2013, revised through March 14, 2014, consisting of fifteen (15) sheets, and architectural plans, prepared by James J. Monteforte, AIA, dated October 4, 2012, revised through November 18, 2013, consisting of three (3)

sheets; and

WHEREAS, the application and plans were circulated to various agencies, commissions and offices regulated by Township Ordinance; and

WHEREAS, public notice was given in accordance with the requirements of the Municipal Land Use Law and all interested parties were given an opportunity to be heard and express their opinions; and

WHEREAS, the applicant was represented by Stephen E. Barcan, Esq., who presented the testimony of James A. Kennedy, P.E., P.P., James J. Monteforte, architect, Gary Dean, P.E./ traffic engineer, and Joseph Pandozzi, Sr. Vice-President of Atlantic Pier Co., Inc.; and

WHEREAS, Donald Gates from the Atlantic Highlands Environmental Commission appeared to read a letter from the Atlantic Highlands Borough Administrator; and

WHEREAS, members of the public appeared to object to this application; and

WHEREAS, the Board and staff reviewed the materials submitted and have carefully considered all of the evidence.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board of the Township of Middletown does hereby find the following facts and conclusions of law:

1. The applicant is the owner of property located on

Highway 36 between Sears Avenue and Lakeside Avenue. The property is designated as Block 732, Lots 10-13, 21 and 22 on the Tax Map of Middletown Township (recently consolidated with a vacated portion of Plattmount Drive into Block 732, Lot 10.01). The property is 5.528 acres and is in the RTH-9 zoning district. The property is presently vacant with only a permitted billboard on the site, which shall remain.

2. The applicant seeks preliminary and final major site plan approval to construct 40 housing units in two buildings. The buildings will be two stories in height in the front, and three stories in the rear. The plan includes a playground, 80 parking spaces and storm water management infrastructure. No variances are required.

3. The proposed units feature a mix of 8 one-bedroom units, 26 two-bedroom units, and 6 three-bedroom units. Ten units, or 25 percent of the units, are set aside for affordable housing. The property is included in the Township's Affordable Housing Plan. The site plan is consistent with the RTH-9 zone and the Township's Affordable Housing Plan. The 10 affordable units shall be rental units, and shall be governed by the general requirements of COAH and the Uniform Housing Affordability controls set forth at N.J.A.C. 5:80-26.1 et seq. The affordable housing units shall be deed restricted to comply with COAH requirements for a period of thirty years under those regulations.

4. Several design exceptions are required, and were addressed in testimony, especially that of Mr. Kennedy and Mr. Dean:

- Maximum disturbance of slopes (Ordinance Section 16-636.D.2). A maximum of 30 percent of the slopes between 10 and 15 percent of the site is allowed to be disturbed, and no disturbance of slopes greater than 15 percent is permitted under ordinance unless the applicant can demonstrate that the disturbance is essential to the project. The applicant proposes some disturbance of slopes greater than 15 percent and a disturbance of approximately 41.6 percent of slopes ranging from 10 to 15 percent. The property is in a steep area and without this design exception this site cannot reasonably be developed.

- Amount of wooded area to be maintained (Section 16-651.B). The ordinance requires that 60% of wooded areas must remain. The applicant proposes to retain 57.6%. This is a *de minimis* request.

- Internal parking lot sidewalk connections (§16-627.E) which were described as impractical; instead rumble strips and some signage will be provided for pedestrian safety. A sidewalk at the southern side would not connect to a building, and, given the waiver for sidewalks on Route 36, there is no reason for sidewalks at the driveways.

- No recreational vehicle parking is provided (§16-

627.N.9). The applicant has requested a design exception for the requirement of one dedicated parking space for recreational vehicles per 25 dwelling units. The waiver helps to preserve trees. The applicant has specified that RV parking will be prohibited in all leases.

- Lighting levels (Section 16.623.A1.B). There will be a minor deviation at some places. Revised plans have reduced the deviation.

- Sidewalks along Route 36. See Paragraph 6 below.

- Curb radii (Section 16-612.H). Internal radii have been revised to accommodate an emergency vehicle, pursuant to the request made by the Fire Department Planning and Advisory Board. Curb radii at the site driveways were approved by NJDOT which has jurisdiction over Route 36 and has issued an access permit; the Board defers to NJDOT.

- Length of entrance and exit driveways. (Sections 16-627.Q.2 and 3) This waiver was for parking location relative to length of driveways; the waiver is generated due to placement of all parking in front of the buildings to preserve the rear of the site. The setbacks meet DOT criteria and are reasonable, as Mr. Kennedy testified; as he also said, the ordinance has specific front yard parking setback requirements in §16-627.B which are met.

- Location of refuse enclosures (Section 16-638.B).

They are proposed in the front yard, rather than the rear, as is required by ordinance. Placing them in the rear would require more disturbance and make them more visible to the neighbors.

- Landscaping in front of the buildings. (Section 16-622.A.5). Shrubs will be provided instead of trees; drainage pipes prevent installation of trees.

- Waiver for front yard parking (Section 16-627.B) is justified by the design which does not disturb the area behind the buildings. This benefits the neighbors.

Conformance with the design standards is impracticable and would result in an unjust hardship on the applicant due to the peculiar conditions of the site such as topography and the desire to preserve the rear area toward the homes. The grant of the waivers is reasonable and within the purpose and intent of the Township's Planning and Development Regulations, and N.J.S.A. 40:55D-51.

5. Route 36 is under the jurisdiction of the New Jersey Department of Transportation (NJDOT). The applicant revised its drawings to provide islands as required by NJDOT. The applicant has obtained an NJDOT access permit for that design. The Planning Board jurisdiction is limited to on-site traffic issues.

6. The Police Department issued an email report on March 12, 2014 recommending a denial of the application based upon traffic safety concerns, primarily pedestrian safety

concerns, all related to the site location. The Board finds that Route 36 is under the exclusive jurisdiction of the NJDOT. The Board recognizes that is a high speed, highly traveled roadway. Pedestrian safety is a major concern of the Board. However, the approved NJDOT plan does not require sidewalks on Route 36. In addition, the slope of the sidewalk would exceed ADA standards, unless extensive switchbacks were provided which is not advisable. The Board waives sidewalks along Route 36 and grants waivers from Section 16-634.A. The Route 36 sidewalks are impracticable. The applicant has agreed to provide a contribution to the Township sidewalk fund in lieu of constructing sidewalks on Route 36.

7. Much of the tract shall remain as open space, in non-contiguous areas. Undisturbed critical areas shall be included in conservation easements in form acceptable to the Planning Board and Township Professionals.

8. The applicant proposes porous pavement for the parking spaces. The porous pavement requires routine maintenance. The applicant has provided an Operations and Maintenance (O&M) Manual. The obligation of the applicant and its successors to maintain the porous pavement area, and the Township's ability to inspect and make necessary repairs at the expense of the owner if the necessary maintenance and repairs are not done by the owner pursuant to the O&M Manual, shall be set forth in a recordable restrictive covenant/maintenance easement in form

acceptable to the Planning Board and Township Professionals.

9. The development's sanitary sewer line requires an easement from adjacent property owner to cross Block 732, Lot 7. The applicant indicated that such an easement would be obtained. It is a condition of this approval.

BE IT FURTHER RESOLVED that the Planning Board of the Township of Middletown does hereby grant preliminary and final major site plan approval and the requested design waivers or exceptions to Atlantic Pier Co., Inc. for Application #2013-204 based upon the evidence and findings contained herein, and subject to the conditions listed on Exhibit A attached hereto and made a part hereof.

ON A MOTION BY Carl Rathjen and seconded by
Mark Davis the application is approved based upon
the following vote:

AYES: Davis, Kardel, Ostrander, Rathjen

NAYS:

ABSTAIN:

ABSENT: Heck, Settembrino, Wilton


Debra Yuro
Planning Board Secretary

I, Debra Yuro, Secretary to the Township of Middletown
Planning Board do hereby certify that the foregoing is a true copy
of a Resolution adopted by the Planning Board on this 7th day of
May, 2014.


Debra Yuro
Planning Board Secretary

EXHIBIT A

The following conditions of approval for Application #2013-204 for Atlantic Pier Co., Inc. shall be satisfied prior to the signing of the site plan unless otherwise noted.

1. The applicant shall comply with the Township Engineering Consultant's report dated March 24, 2014 to the extent not already addressed in testimony.
2. The applicant shall comply with the Township Planner's report dated March 26, 2014 to the extent not already addressed in testimony.
3. Approval from the Township of Middletown Sewerage Authority is required. An easement from the owner of Block 732, Lot 7 is required.
4. Approval or letter of no jurisdiction from the Freehold Soil Conservation District is required.
5. The applicant will be required to secure all necessary approvals and permits from NJDEP for CAFRA approval and/or any other approvals that may be necessary.
6. A contribution to the Township's Environmental Disturbance Fund is required in an amount to be calculated pursuant to Township Ordinance.
7. The 10 affordable units shall be rental units, and shall be governed by the general requirements of COAH and the Uniform Housing Affordability Controls set forth at N.J.A.C. 5:80-26.1 et seq. The affordable housing units shall be deed restricted to comply with COAH requirements

for a period of 30 years.

8. A contribution in lieu of sidewalks is required, to be calculated pursuant to Township ordinance.
9. A conservation easement for the non-contiguous undisturbed critical areas is required, subject to review by the Planning Board and Township professionals.
10. A restrictive covenant/maintenance easement for the porous paving portion of the parking lot is required, to require that the owner of the property maintain the porous pavement in conformance with the O&M Manual submitted, and granting the Township the right to maintain such area in the event the owner does not do so, in which event the Township can impose a lien on the property for all reasonable costs and expenses incurred by the Township.
11. The landscaping plans shall be revised to eliminate the sweet gum trees and replace them with landscaping acceptable to the Township Planner.

TOWNSHIP OF MIDDLETOWN PLANNING BOARD

**IN THE MATTER OF APPLICATION #2014-211
APPLICATION OF BAYSHORE VILLAGE, LLC**

**RESOLUTION GRANTING
PRELIMINARY AND FINAL
MAJOR SITE PLAN APPROVAL**

Middletown Township
Monmouth County, New Jersey
Date of Hearing: October 29, 2014
Date of Action: October 29, 2014
Date of Resolution: December 3, 2014

WHEREAS, the applicant, Bayshore Village, LLC is the partner with the owner of property located Main Street, Port Monmouth, and designated as Block 122, Lot 2 on the Tax Map of Middletown Township, and located in the RHA Multi-Family Mid-Rise Apartment Residential Zone; and

WHEREAS, an application has been made to the Planning Board for preliminary and final major site plan approval to construct 110 housing units in a new three story building with surface parking and associated site improvements on a previously developed property which suffered significant damage from Superstorm Sandy; and

WHEREAS, the applicant submitted numerous documents including the following:

- Preliminary and Final Major Site Plan, prepared by Partner Engineering and Science, Inc. dated October 14, 2014 consisting of eleven (11) sheets.
- Architectural plans, prepared by Barton Partners, Inc., dated October 14, 2014, consisting of six (6) sheets.

- Location & Topographical Survey Map, prepared by Yorkanis & White, Inc., consisting of one (1) sheet, dated February 11, 1998 and revised through August 21, 2014.

WHEREAS, the application and plans were circulated to various agencies, commissions and offices regulated by the Township Ordinance; and

WHEREAS, public notice was given in accordance with the requirements of the Municipal Land Use Law for the hearing held on October 29, 2014, and all interested parties were given an opportunity to be heard and express their opinions; and

WHEREAS, the applicant was represented by Meryl A. G. Gonchar, Esq., who presented the testimony of Barbara K. Schoor, Vice-President of Community Investment Strategies, Inc., Rocco P. Palmieri, P.E., L.S., and Thomas Barton, architect; and

WHEREAS, one member of the public appeared on this application to ask questions related to drainage; and

WHEREAS, the Board and staff reviewed the materials submitted and have carefully considered all of the evidence.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board of the Township of Middletown does hereby find the following facts:

1. The applicant is a partner with the owner of property located along Main Street in Port Monmouth, designated as Block 122, Lot 2 on the Tax Map of Middletown Township. The property is in the RHA Multi-Family Mid-Rise

Apartment Residential Zone.

2. The applicant seeks preliminary and final major site plan approval to construct 110 housing units in a new three story building to replace the existing twelve single story buildings that contained 96 housing units, 40 of which were rendered uninhabitable by Superstorm Sandy. All units will be rental units reserved for income qualified households and restricted for residents age 62 and older. There will be 96 one bedroom units and 14 two bedroom units proposed.

3. The building will be subject to a 30 year deed restriction. The units shall be credited against the Township's fair share obligation, pursuant to N.J.S.A. 45:22A-46.16.

4. Parking will be limited to one vehicle per unit by their leases. An adequate area for collection of solid waste is provided inside the building and in the refuse enclosure. This application does not provide a structure for storage of maintenance equipment on-site. The buildings will have common rooms inside and areas outside for recreation.

5. The use is permitted. No variances are required. One design exception is required. Ordinance Section 16-623.A.1 requires the minimum lighting level at any location within the parking area to be 75% of the average lighting level. The applicant indicates the average lighting level in the parking area is 0.8 footcandles. The minimum lighting

level provided in the parking area is 0.5 footcandles; whereas, 0.6 footcandles is the 75% minimum requirement. There are several areas throughout the parking area that do not meet this 75% requirement. Conformance with the design standards is impracticable and would result in an unjust hardship on the applicant.

6. An RSIS de minimis exception is required for the number of parking spaces. RSIS requires 184 parking spaces. The plan provides 114 spaces. The applicant provided the testimony of Barbara Schoor who stated that in similar projects the parking demand is less than one space per unit. She testified the tenants are older, on limited income, and many no longer drive. The Board finds that a de minimis exception is warranted under N.J.A.C. 5:21-3.1. Literal enforcement of the parking standard is impractical and would exact undue hardship when the Board considers the unique use of the property.

BE IT FURTHER RESOLVED that the Planning Board of the Township of Middletown does hereby grant preliminary and final major site plan approval, design exception and RSIS de minimis exception to Bayshore Village, LLC for Application #2014-211 based upon the evidence and findings contained herein, and subject to the conditions listed on Exhibit A attached hereto and made a part hereof.

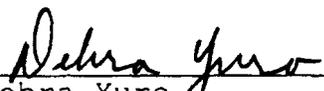
ON A MOTION BY Mark Davis and seconded by
Carl Rathjen the application is approved based
upon the following vote:

AYES: Davis, Deus, Kardel, Rathjen, Wilton

NAYS:

ABSTAIN:

ABSENT:



Debra Yuro
Planning Board Secretary

I, Debra Yuro, Secretary to the Township of Middletown
Planning Board do hereby certify that the foregoing is a true
copy of a Resolution adopted by the Planning Board on this 3rd
day of December 2014.



Debra Yuro
Planning Board Secretary

EXHIBIT A

The following conditions of approval for Application #2014-211 for Bayshore Village, LLC shall be satisfied prior to the signing of the site plan unless otherwise noted.

1. The applicant shall comply with the Township Engineering Consultant's report dated October 22, 2014.
2. The applicant shall comply with the Township Planner's report dated October 24, 2014.
3. Approval or letter of no jurisdiction from the Freehold Soil Conservation District is required.
4. Approval or letter of no jurisdiction from the Monmouth County Planning Board is required.
5. Approval or letter of no jurisdiction from the Township of Middletown Sewerage Authority is required.
6. Final approval from the NJ DEP, including CAFRA permit and Flood Hazard Area permit, shall be obtained.
7. Additional lighting shall be shown on the existing pole on Main Street nearest the Henry Hudson Trail.
8. A drainage inlet is to be added in the driveway. No surface flow onto Main Street will be permitted.
9. Bollards will be added along the pedestrian walkway between the building and Main Street, with said lights to be on from dusk to dawn.
10. The applicant shall comply with the report of the Fire Department Advisory Board dated October 28, 2014.

11. The applicant has agreed to install a knock-box. In addition, the Fire Department will be provided with a key or coded access to the building. All living areas will be sprinkled. These are continuing conditions.
12. All leases shall limit the tenant(s) to one motor vehicle per unit. This is a continuing condition.
13. A drainage/access easement to the Township shall be provided for the stormwater discharge area, in form acceptable to the Township Engineering Consultant, the Planning Board Attorney and the Township Attorney.
14. All wetlands and buffer areas shall be placed in a conservation easement, which easement shall be in form acceptable to the Township Engineering Consultant, the Planning Board Attorney and the Township Attorney.
15. The emergency generator, if not exempt, shall operate in compliance with N.J.A.C. 7:29.

**TOWNSHIP OF MIDDLETOWN
PLANNING BOARD**

**IN THE MATTER OF APPLICATION #2012-207
APPLICATION OF AMERICAN PROPERTIES AT MIDDLETOWN, LLC**

**RESOLUTION APPROVING
PRELIMINARY/FINAL MAJOR SITE PLAN
AND PRELIMINARY/FINAL MAJOR SUBDIVISION APPROVAL**

Middletown Township
Monmouth County, New Jersey
Dates of Hearings: December 5, 2012,
January 16, 2013, February 20, 2013,
March 20, 2013, April 3, 2013,
April 17, 2013, May 1, 2013,
August 7, 2013, October 2, 2013,
November 6, 2013, December 18, 2013,
and January 21, 2015
Date of Action: January 21, 2015
Date of Resolution: March 4, 2015

WHEREAS, American Properties at Middletown, LLC, the applicant, sought approval for preliminary and final site plan approval, preliminary and final major subdivision approval, design exceptions, and RSIS relief to construct a residential development with 196 townhouses and 49 affordable units on property located on Taylor Lane at its intersection with Route 35, designated as Block 600, Lots 34, 35.01 and 35.02 on the Tax Map of Middletown Township, in the RMF-3 Residential Multi-Family Zone, with additional property known as Block 51, Lot 14 in Holmdel Township; and

WHEREAS, the applicant submitted numerous plans and reports, including but not limited to:

- Preliminary and Final Plat - Major Site Plans prepared by Alfred R. Coco, P.E., of Menlo Engineering, dated February 28, 2014, without revision, consisting of thirty-seven (37) sheets.
- Preliminary and Final Major Subdivision Plans prepared by Menlo Engineering, dated February 28, 2014 consisting of three (3) sheets.
- Boundary and Topographical Survey Map of Property prepared by David B. Dixon, P.L.S., of Omland Engineering Associates, Inc., dated October 28, 2005 and revised through September 10, 2014, consisting of one (1) sheet.
- Architectural plans prepared by Gregg S. Sonnenfield, A.I.A., dated March 14, 2014, consisting of twelve (12) sheets.

WHEREAS, the application and plans were circulated to various agencies, commissions and offices pursuant to Township ordinance; and

WHEREAS, noticed public hearings were originally held on December 5, 2012, January 16, 2013, February 20, 2013, March 20, 2013, April 3, 2013, April 17, 2013, May 1, 2013, August 7, 2013, October 2, 2013, November 6, 2013, and December 18, 2013; and

WHEREAS, after the original public hearings were concluded on December 18, 2013 the application was denied by the Planning Board; and

WHEREAS, that denial was memorialized by resolution dated February 19, 2014; and

WHEREAS, the denial was based upon the Planning

Board's finding that proposed Taylor Lane will be a collector road requiring certain design widths and setbacks; and

WHEREAS, the applicant filed an action in lieu of prerogative writs against the Planning Board challenging the February 19, 2014 denial and also included a count against the Township as to the use and ownership of Taylor lane, MON-L-753-14; and

WHEREAS, on May 5, 2014 the applicant filed an amended application with amended plans showing Taylor Lane as a collector road and showing conforming setbacks of buildings on Taylor Lane; and

WHEREAS, a Case Management Order was entered by the Honorable Paul A. Kapalko, J.S.C., on July 8, 2014, which remanded the matter to the Planning Board which directed the Planning Board to hear "testimony and public comments regarding the Amendment to the Application without re-hearing the entirety of the Application"; and

WHEREAS, a noticed public hearing was held on January 21, 2015 on the applicant's amended plan which eliminated a setback variance that had been the basis for the Planning Board's prior denial; and

WHEREAS, Ronald L. Shimanowitz, Esq., represented the applicant throughout the hearings, and testimony was heard

from Alfred R. Coco, P.E., L.S., Jay Troutman, P.E., Traffic Engineer, Paul Phillips, P.P., Richard Arzberger, A.I.A., and Randy Csik, a principal of the applicant; and

WHEREAS, during the hearings in 2012 and 2013, Ronald S. Gasiorowski, Esq., appeared on behalf of one objector, Brian Johnson, and cross-examined the applicant's witnesses, and presented the testimony of Alex Litwornia, P.E. and Peter Steck, P.P.; and

WHEREAS, throughout the hearings other members of the public appeared to object, question witnesses and present testimony; and

WHEREAS, on January 21, 2015 the applicant recalled Mr. Coco and Mr. Arzberger as witnesses; the public had an opportunity to cross-examine those witnesses, and to present testimony; and Mr. Johnson appeared pro se; and

WHEREAS, the Planning Board and staff reviewed the materials submitted and have carefully considered all of the evidence; and

WHEREAS, the Planning Board reviewed and considered evidence marked at the Planning Board public hearings as Exhibits A-1 through A-33 (Applicant's Exhibits) and Exhibits O-1 through O-9 (Objector's Exhibits).

NOW, THEREFORE, BE IT RESOLVED that the Planning Board of the Township of Middletown does hereby find the

following facts and conclusions of law:

1. The applicant is the contract purchaser of the subject property totaling approximately 31.01 acres. The property is located on Taylor Lane, near the intersection of Route 35. It is identified on the tax map as Block 600, Lots 34, 35.01 and 35.02 in Middletown Township. The property is currently undeveloped. The property in Middletown is approximately 29.54 acres before additions and subtractions for right-of-way changes.

2. The applicant is also the contract purchaser of property in Holmdel known as Block 51, Lot 14 on the Holmdel Township tax map, that portion in Holmdel being part of the larger tract. The property in Holmdel is approximately 1.47 acres. No use or development is proposed on that portion of the property in Holmdel. The property in Holmdel is included in the 31.01 acre pre-development parcel size pursuant to the rationale expressed in Nunziato v. Edgewater, 225 N.J. Super. 124 (App. Div. 1988). The 30 acre gross lot area requirement of the RMF-3 zone is satisfied.

3. The Township of Holmdel through its attorney had expressed concern about the amended plan, but did not appear at the January 21, 2015 hearing. Holmdel Township did not appear at any of the prior hearings.

4. The applicant seeks preliminary and final major site plan approval to construct 245 residential units, consisting of 196 townhouses and 49 affordable units. A clubhouse, a pool, a tot lot and other site improvements are proposed. The plan provides for 606 parking spaces, in excess of the ordinance requirement of 576 spaces.

5. A subdivision is required to create two lots, one on each side of Taylor Lane. The subdivision complies with the ordinance.

6. The property in Middletown is in the RMF-3 residential multifamily zoning district and the proposed use is permitted. The 49 multifamily units were proposed as affordable housing units. The project is part of the Township's affordable housing plan, previously granted substantive certification by COAH. The townhomes would be market rate units.

7. The amended plan is similar to the original plan, with the same number of units. Pursuant to the Planning Board's prior finding that newly aligned Taylor Lane will be a collector road, applicant amended its plans to provide a collector road right-of-way of sixty feet and a collector road cartway of forty feet. The amended plans also now provide a 50 foot setback to Taylor Lane, which was previously found by the Planning Board to be a collector

road. That finding triggered the 50 foot setback requirement. With the amended plans, some buildings were slightly reduced in size and some buildings were shifted to provide the required 50 foot setback.

8. The applicant proposes to make improvements to Taylor Lane, realigning it at its terminus with Route 35. The realignment is consistent with the master plan recommendations. The jughandle will be reconfigured as required by the N.J.D.O.T. Realigned Taylor Lane will be dedicated as a public road by the filing of a final map by applicant. If existing Taylor Lane is found by the Court to be a public road, those rights are subject to vacation by the Township.

9. The internal streets will be private, as will be the other recreation and storm water improvements. The internal roads and the other improvements will be maintained by a condominium association.

10. As stated above, the amended application did not require any variances. However, several design exceptions are required:

- Section 16-651.B - The maximum clearing of wooded area is 40%, and 45% is proposed. The Planning Board finds that literal compliance is impracticable or would exact undue hardship for the

following reasons:

- a. The project is not developed to the maximum density allowed by ordinance. Only 7.9 units/acre are propose, versus the 12 units/acre permitted. Likewise, building coverage is only 12% vs. 20% permitted. The project provides for 48% open space, where only 20% is required.
 - b. This is a COAH site, and reasonable accommodation is required in the effort to produce affordable housing.
 - c. Some of the additional disturbance results from the required 60 foot right-of-way of Taylor Lane, the 40 ft. cartway of Taylor Lane and the 50 foot setback from Taylor Lane.
 - d. The trees being cleared are relatively young, successional forest with low value, scrub type vegetation.
- Section 16-623.A.1 - The minimum light intensity at the ground level is required to be 75% of the average. The plan provides a minimum of 0.2 foot-candles for parking and driveways. Therefore, the site average should be 0.26 foot-candles. The plan provides an average of 1.3 foot-candles. The

Planning Board finds that literal compliance is impracticable or would exact undue hardship. Generally accepted industry standards usually specify a ratio of 3:1 or 4:1. The requirement does not provide for a practical difference between the average and minimum levels

- Section 16-604.B.7 - All roof and wall projections such as flues and vents shall be painted with an anodized or acrylic finish in a color to match adjacent surfaces. The applicant proposes roof and wall projections which do not match adjacent surfaces. The Planning Board finds that literal compliance is impracticable or would exact undue hardship. These items are factory finished by the manufacturer, and are limited in color selection, so "matching adjacent surfaces" may not be achievable. Painting in the field is not advisable because of durability and maintenance concerns.
- Section 16-604.C.7.a - The exteriors of all principal buildings shall be brick or stone or maintenance free natural wood siding, applicant proposes vinyl siding supplemented with manufactured stone accents. The Planning Board finds that literal compliance is impracticable or

would exact undue hardship. The use of these materials is not common in multifamily construction, due to expense and complexity of construction. "Maintenance free" natural wood siding does not exist. The materials proposed, vinyl supplemented by manufactured stone, are commonly used in residential construction and are the predominant siding material throughout the township and within the adjacent neighborhood.

- Section 16-604.C.7.b - All party fire-walls shall be of masonry construction. The applicant proposes fire walls of non-masonry construction (gypsum core walls proposed). The Planning Board finds that literal compliance is impracticable or would exact undue hardship. Use of gypsum core walls in lieu of masonry construction has been the industry standard for over thirty years. The NJUCC, which solely governs construction, permits its use and considers it acceptable in terms of performance.
- Section 16-604.D.1 - This section requires particular accessible walkway standards. The Planning Board finds that literal compliance is impracticable or would exact undue hardship. Accessible walkway widths are governed by the NJ

Barrier free code, part of the NJUCC, and the applicant will comply with its provisions, as required.

- Section 16-604.D.2 - At least one toilet on first floor shall be 19 inches from floor to seat. The applicant proposes toilets compliant with superseding law. The Planning Board finds that literal compliance is impracticable or would exact undue hardship. The NJ Barrier Free Code supersedes and governs specifications for accessible dwellings.
- Section 16-624A - The applicant is disturbing approximately 2000 sq. ft. of a man-made steep slope area. The Planning Board finds that literal compliance is impracticable or would exact undue hardship. The ordinance is intended to protect natural slopes, not a man-made slope resulting from the demolition of an old building.
- Section 16-624A - The ordinance requires RV parking, and none is provided. The Planning Board finds that literal compliance is impracticable or would exact undue hardship. The homeowners' documents shall prohibit RV parking.

- Section 16-624A - Wetland Buffers/Class 2 Critical Area are being disturbed. The Planning Board finds that literal compliance is impracticable or would exact undue hardship. The DEP regulates wetland Transition Areas (buffers) and permits buffer averaging.
- Section 16-606A - Buffer areas and screening are not being provided in strict compliance with the ordinance. The Planning Board finds that literal compliance is impracticable or would exact undue hardship. The ordinance requires staggered evergreens at 10' on center around the perimeter. The Planning Board accepts the applicant's proposal to supplement existing wooded areas adjoining homes with same number of evergreens in locations field determined by the Township's landscape architects. In addition, a buffer is not needed along unoccupied adjacent property.
- Section 16-622.A.5 - The ordinance provisions as to landscaping climate control are not being met. The Planning Board finds that literal compliance is impracticable or would exact undue hardship. Columnar evergreens are proposed in lieu of required shade trees in driveway islands between

units at garages. These evergreens are a more appropriate plant material within the proposed islands.

11. The amended plan also requires several agreements to exceed the RSIS standards.

- RSIS NJAC 5:21-4 (Table 4.3) - Private multifamily access drives require a 21' cartway (with parking)/20' cartway (without parking). The applicant proposes a 24' cartway to maintain a consistent cartway width throughout the development.
- RSIS NJAC 5:21-4 (Table 4.3) - 60' ROW/40' Cartway proposed which exceeds RSIS Standard for a minor collector road. The increased width is needed to conform with the Township's Municipal Subdivision Ordinance.

12. The applicant agreed to comply with the report of David Hoder, P.E., the Planning Board Consulting Engineer, dated January 13, 2015, and the report of the Township Planner, dated November 26, 2014, with the following exceptions:

a. As to the David Hoder, P.E. report:

- Item C6 - The applicant will construct the connecting off-site sidewalk if there is

sufficient existing right-of-way to do so in front of adjacent Lots 32 & 33.

- Item D6 - NJAC39:4-138 will be used as a guideline for parking within the development driveways.
- Item F - Traffic- Nos. 1-9 were addressed by the testimony of the applicant's traffic engineer, Jay Troutman. Nos. 10-18 are no longer applicable since Roundabout is eliminated.

b. As to the Township Planner's report:

- Item C1 - The roundabout has been eliminated.
- Item 4b - The applicant agreed to install two crosswalks with push-button actuated, solar powered pedestrian crossing warning signs with lights, to be owned and maintained by the Township after acceptance of the improvements.
- Item 9a - JCP&L and applicant will not install underground the existing transmission main that will be relocated in newly aligned Taylor Lane.

13. Over the course of the earlier public hearings, other issues beyond the setback to Taylor Lane were raised by the applicant, the Board or by the objectors. The Board previously made findings of fact and conclusions of law so

that those issues were then resolved. Those findings are incorporated here by reference.

14. As to the first of these issues, the property includes a small lot in adjacent Holmdel Township of approximately 1.47 acres (Block 51, Lot 14 on the Holmdel Township tax map). That property is not being developed by the applicant. Since there is no development in Holmdel, it is the finding of the Middletown Township Planning Board that any approval granted by it should not be conditioned upon approval by Holmdel Township. If Holmdel Township requires any approvals for the lot in that municipality, that is up to Holmdel.

15. On a second issue, pursuant to Nunziato v. Planning Bd. Of the Borough of Edgewater, 225 N.J. Super. 124 (App. Div. 1988), the land in Holmdel may be included in the calculation of gross lot area of the subject property. The RMF-3 zone requires a minimum gross lot area of 30 acres and the property in Holmdel is properly included in the calculation of the total parcel size of 31.01 acres.

16. The objectors appear to raise a third issue, arguing that the post-development area must be at least 30 acres, and that a variance is required. The pre-development size, or gross lot area, is 31.01 acres. The

ordinance requires a minimum of 30 acres. The Board finds that this application meets that criteria. The only reasonable way to read the ordinance is to look at the pre-development size of 31.01 acres. This is the only property in the RMF-3 zoning district; the ordinance would make no sense if the gross area was to be calculated after development. The Board finds that a variance is not required for gross lot area. The post-development net acreage will be approximately 29.67 acres, but that is irrelevant.

17. On a related fourth issue, the objectors argue that, the resulting parcels on each side of Taylor Lane must be a minimum of 30 acres. Taylor Lane bisects the subject property. The resulting post-development lots are 16.38 acres and 13.29 acres in size. Again, the requirement in the ordinance of a minimum gross lot area of 30 acres can only be reasonably read to require a total of 30 acres pre-development, not post-development.

18. Lastly, several objectors raised issues concerning whether or not Taylor Lane was a public or private road. The Board finds that a determination of the nature of Taylor Lane is beyond its jurisdiction. That issue is now before the Superior Court of New Jersey as the remaining count in the litigation against the Township. The

applicant is proceeding at its own risk on this issue.

BE IT FURTHER RESOLVED that the Planning Board of the Township of Middletown that Application #2012-207 filed by American Properties at Middletown, LLC, for preliminary and final major site plan approval, preliminary and final major subdivision approval, with the design exceptions and RSIS agreements to exceed as listed above, based upon the evidence and findings contained herein, is hereby approved for the reasons set forth above, subject to conditions in Exhibit A attached.

BE IT FURTHER RESOLVED that this resolution memorializes an action taken by the Planning Board on January 21, 2015.

ON A MOTION BY Frank Wilton and seconded by John Deus this resolution to memorialize the approval is adopted upon the following vote:

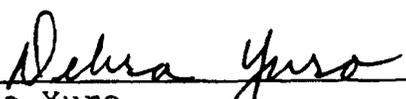
AYES: Carroll, Deus, Kardel, Rathjen, Siwiec, Wilton

NAYS: None

ABSTAIN:

ABSENT:

INELIGIBLE:


Debra Yuro
Planning Board Secretary

I, Debra Yuro, Secretary to the Township of Middletown Planning Board do hereby certify that the foregoing is a true copy of a Resolution adopted by the Planning Board on this 4th day of March 2015.



Debra Yuro
Planning Board Secretary

EXHIBIT A

The following conditions of approval for Application #2012-207 for American Properties at Middletown, LLC shall be satisfied prior to the signing of the site plan and subdivision plat, unless otherwise noted.

1. The applicant shall comply with the Township Engineering Consultant's letter dated January 13, 2015, except as noted herein.
2. The applicant shall comply with the Township Planner's letter dated November 26, 2014, except as noted herein.
3. Final approval or letter of no jurisdiction from the Monmouth County Planning Board is required.
4. Prior to any land disturbance, approval or a letter of no jurisdiction shall be obtained from the Freehold Soil Conservation District.
5. Approval or letter of no jurisdiction from the Township of Middletown Sewerage Authority is required.
6. Approval for all required utilities is required.
7. NJDEP sewer and water extension permits are required.
8. NJDEP Wetlands Permit is required.

9. Approval from NJ DOT shall be obtained.
10. Applicant and Planning Board shall enter Agreements to Exceed Standards in accordance with N.J.A.C. 5:21-3.6.
11. Applicant shall dedicate newly aligned Taylor Lane as a public street to be shown on the filed subdivision map.
12. To the extent it is determined that public rights exist in currently aligned Taylor Lane, applicant this approval is subject to the vacation of such public rights by the Township Committee.
13. The plans shall be revised to provide that applicant shall provide sidewalks and contributions in lieu of sidewalks as shall be determined in the reasonable discretion of the Township Engineer taking into account the comment and responses in Section C-5 of the Township Engineer review letter.
14. The plans shall be revised to provide that the applicant will construct the connecting off-site sidewalk if there is sufficient existing right-of-way to do so in front of adjacent Lots 32 and 33.
15. Applicant shall have the option to either sell or rent the affordable units. The affordable units shall be constructed, marketed and phased in

accordance with all applicable COAH and UHAC (Uniform Housing Affordability Controls) regulations. If affordable units are for sale, then no unit shall be required for a superintendent. This is a continuing condition.

16. A contribution to the Township's Environmental Disturbance Fund will be required prior to issuance of any construction permit.
17. The condo documents are subject to the review and approval of the Planning Board Attorney.
18. All easements and dedications shall be shown on the filed plat, and shall also be provided in writing, subject to approval of the Township Attorney, the Township Engineering Consultant, and the Planning Board Attorney.
19. If the Township's Consulting Engineer determines that the right-of-way for Taylor Lane has insufficient width for shade trees, the shade trees shall be installed on the association property and become the responsibility of the association.
20. The applicant shall provide all documentation to comply with Title 39 requirements for the proposed roadways on site.

**TOWNSHIP OF MIDDLETOWN PLANNING BOARD
IN THE MATTER OF APPLICATION #2013-208
APPLICATION OF 190 MAIN STREET, LLC**

**RESOLUTION GRANTING
PRELIMINARY AND FINAL
MAJOR SITE PLAN APPROVAL**

Middletown Township
Monmouth County, New Jersey
Date of Hearing: February 4, 2015
Date of Action: February 4, 2015
Date of Resolution: March 4, 2015

WHEREAS, the applicant, 190 Main Street, LLC, is owner of property located at 190 Main Street, Port Monmouth, and designated as Block 260, Lot 2 on the Tax Map of Middletown Township, and located in the B-3 Commercial Zone; and

WHEREAS, an application has been made to the Planning Board for preliminary and final major site plan approval to construct a three story 9,406 square foot mixed use building that will contain three, two-bedroom apartments and office space; and

WHEREAS, the applicant submitted numerous documents including the following:

- Preliminary and Final Major Site Plan, prepared by A. J. Garito, Jr., P.E., of Two River Engineering, dated October 4, 2013, last revised January 15, 2015, consisting of ten (10) sheets.

- Architectural plans, prepared by Maxine Giordano, A.I.A., dated September 10, 2013, last revised July 3, 2014 consisting of five (5) sheets.

WHEREAS, the application and plans were circulated to various agencies, commissions and offices regulated by the Township Ordinance; and

WHEREAS, public notice was given in accordance with the requirements of the Municipal Land Use Law for the hearing held on February 4, 2015, and all interested parties were given an opportunity to be heard and express their opinions; and

WHEREAS, the applicant was represented by Martin A. McGann, Jr., Esq., who presented the testimony of A. J. Garito, P.E., Maxine Giordano, A.I.A., Justin Auciello, P.P., and Jim Davis, one of the owners; and

WHEREAS, no members of the public appeared on this application; and

WHEREAS, the Board and staff reviewed the materials submitted and have carefully considered all of the evidence.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board of the Township of Middletown does hereby find the following facts:

1. The applicant is the owner of property located at 190 Main Street, Port Monmouth, designated as Block 260, Lot 2 on the Tax Map of Middletown Township.

2. The applicant seeks preliminary and final major site plan approval to construct a three story 9,406 square foot mixed-use building. The building will contain three two-bedroom apartments and office space. The first floor and a portion of the second floor will be used as office space. A

portion of the third floor will be used for storage of records for the office use. Two affordable two-bedroom apartments are proposed for the second floor, and a single market-rate two-bedroom apartment is proposed for the third floor. A parking area of 19 spaces and a storm water retention basin are also proposed along with site lighting, landscaping features and signage.

3. Variances are required for the following:

- a) Deficient Lot Size. 0.70 acres is provided, where 3 acres is required in the B-3 zone. This is an existing condition that will not be altered by this proposal. This variance is justified under N.J.S.A. 40:55D-70(c)(1) because of the unusual shape of the property.
- b) Deficient Lot Frontage. 186 feet is provided where 200 feet is required in the B-3 zone. This is an existing condition that will not be altered by this proposal. This variance is justified under N.J.S.A. 40:55D-70(c)(1) because of the unusual shape of the property.
- c) Deficient Front Setback (Principal Structure). The proposed front setback is 10 feet, where 75 feet is required. The existing front setback is 4.34 feet. This is a pre-existing non-conformity that will be improved by the proposed development. This

variance is justified under N.J.S.A. 40:55D-70(c)(1) because of the unusual shape of the property.

- d) Deficient Side Setback (Principal Structure). The proposed side setback is 10 feet where 75 feet is required. This is a new variance required for the proposed development. This variance is justified under N.J.S.A. 40:55D-70(c)(1) because of the unusual shape of the property.
- e) Deficient Rear Setback (Principal Structure). The proposed rear setback is 60.78 feet where 75 feet is required. The existing rear setback is 29.98 feet. This is a pre-existing non-conformity that will be improved by the proposed development. This variance is justified under N.J.S.A. 40:55D-70(c)(1) because of the unusual shape of the property.
- f) Deficient First Floor Area. The proposed structure has a first floor area of 3,185 square feet where 5,000 square feet is required. The existing structure on the site has a first floor area of 1,305 square feet. This is a pre-existing non-conformity that will be improved by the proposed development. This variance is justified under N.J.S.A. 40:55D-70(c)(2) because of the unusual

shape of the property.

g) Deficient Parking. The applicant has proposed 19 parking spaces where 19.5 are required. Since a portion of the third floor will be used for storage of office records, without occupancy, this variance can be granted under N.J.S.A. 40:55-D-70(c)(2).

h) Two Façade Signs. The applicant seeks two façade signs where one is permitted. Two signs will provide better identification of the building, and are justified under N.J.S.A. 40:55D-70(c)(2).

4. These variances improve the existing conditions and bring the site into better conformance with the standards of the B-3 zoning district. The affirmative criteria has been satisfied. The variances can be granted without substantial impairment of the zone plan and zoning ordinance, and without substantial detriment to the public good.

5. Design exceptions are required as noted in the reports of the Township Engineering Consultant dated January 27, 2015, and the Township Planner, also dated January 26, 2015. Conformance with the design standards is impracticable and would result in an unjust hardship on the applicant.

BE IT FURTHER RESOLVED that the Planning Board of the Township of Middletown does hereby grant preliminary and final major site plan approval, variances and design exceptions to 190 Main Street, LLC for Application #2013-208 based upon the

evidence and findings contained herein, and subject to the conditions listed on Exhibit A attached hereto and made a part hereof.

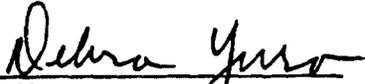
ON A MOTION BY John Deus and seconded by Carl Rathjen the application is approved based upon the following vote:

AYES: Davis, Deus, Kardel, Ostrander, Rathjen, Settembrino, Siwiec, Wilton.

NAYS:

ABSTAIN:

ABSENT:


Debra Yuro
Planning Board Secretary

I, Debra Yuro, Secretary to the Township of Middletown Planning Board do hereby certify that the foregoing is a true copy of a Resolution adopted by the Planning Board on this 4th day of March 2015.

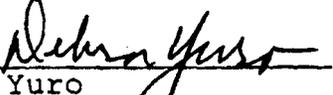

Debra Yuro
Planning Board Secretary

EXHIBIT A

The following conditions of approval for Application #2013-208 for 190 Main Street, LLC shall be satisfied prior to the signing of the site plan unless otherwise noted.

1. The applicant shall comply with the Township Engineering Consultant's report dated January 27, 2015.
2. The applicant shall comply with the Township Planner's report dated January 26, 2015.
3. A contribution to the Township's Environmental Disturbance Fund will be required prior to issuance of any construction permit.
4. Approval or letter of no jurisdiction from the Freehold Soil Conservation District is required.
5. Approval or letter of no jurisdiction from the Monmouth County Planning Board is required.
6. Approval or letter of no jurisdiction from the Township of Middletown Sewerage Authority is required.
7. Approval or letter of no jurisdiction from the NJ DOT shall be obtained.
8. The storage area for office records on the third floor shall not be occupied or used as an office, or for any use other than storage of records. This is a continuing condition.
9. The plans shall be revised to dedicate two parking spaces for each of the three residential apartments.

10. The freestanding sign shall be moved closer to the entrance driveway.
11. Written consent from MCBOA to permit the encroachment on its easement is required. The consent shall be recorded.
12. The entire building shall have a sprinkler system. This is a continuing condition.
13. The two apartments on the second floor shall be affordable rental units. The applicant shall comply with the general requirements of COAH and UHAC regulations at N.J.A.C. 5:80-26.1 et seq. for non-age restricted rental housing. The two units shall be deed restricted, as directed by the Township Planner and Affordable Housing Administrator. This is a continuing condition.

TOWNSHIP OF MIDDLETOWN PLANNING BOARD

IN THE MATTER OF APPLICATION #2014-216
APPLICATION OF VILLAGE 35, LP

RESOLUTION GRANTING
GENERAL DEVELOPMENT PLAN APPROVAL

Middletown Township
Monmouth County, New Jersey
Date of Hearing: April 15, 2015
Date of Action: April 15, 2015
Date of Resolution: July 1, 2015

WHEREAS, Village 35, LP, (hereinafter the "applicant") is the contract purchaser of a portion (the "Commercial Tract") of property designated as Block 825, Lots 53-57, 59-69, 72-79 and 81 on the Tax Map of Middletown Township, consisting of slightly more than 118 acres located in the Planned Development (PD) Zone (collectively, the "Property"); and

WHEREAS, Toll Brothers ("Toll Bros.") is the contract purchaser of the other portion of the subject property (the "Residential Tract"); and

WHEREAS, the owner of the Property, Mountain Hill, LLC, has authorized the applicant to make this application; and

WHEREAS, an application has been made to the Planning Board by the applicant for general development plan ("GDP") approval to develop the Residential Tract with up to 350 residential units, of which 70 are to be affordable (collectively, the "Residential Component"), and, the Commercial Tract with up to

400,000 square feet of commercial space (the "Commercial Component"); and

WHEREAS, the Planning Board is considering only the GDP application at this time, and will consider at a later date subsequent applications for subdivision and site plan approvals for the respective development of each of the Commercial Component and Residential Component, by the appropriate applicants (each a "Future Development Application" and, collectively, the "Future Development Applications"); and

WHEREAS, the applicant submitted the Mountain Hill General Development Plan, prepared by Langan Engineering consisting of ten (10) sheets, dated October 31, 2014 and revised through April 1, 2015 (the "GDP Plan"); and

WHEREAS, public notice was given in accordance with the requirements of the Municipal Land Use Law for the public hearing held on April 15, 2015, and all interested parties were given an opportunity to be heard; and

WHEREAS, there had been a prior public hearing on and approval of this application on March 4, 2015, but subsequent to that hearing, potential notice issues were discovered; and

WHEREAS, this decision is based entirely on the hearing held on April 15, 2015; and

WHEREAS, the applicant was represented by Marc D. Policastro, Esq., and testimony was presented by Gerard Fitamant, P.E., Karl Pehnke, P.P./Traffic Engineer, Paul Phillips, P.P., John Orrico, an officer of the applicant and Matt Marcovitch, a Toll Bros. representative; and

WHEREAS, members of the public appeared on this application to question witnesses and to testify, and the Board and staff reviewed the materials submitted and have carefully considered all of the evidence and all of the applicant's testimony and the testimony of the public.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board of the Township of Middletown does hereby find the following facts:

1. The applicant is the contract purchaser of the Commercial Tract. Toll Bros. is the contract purchaser of the Residential Tract. The Property, which is designated as Block 825, Lots 53-57, 59-69, 72-79, and 81, is slightly more than 118 acres with frontage along the northbound side of Highway 35, with additional frontage on Kings Highway East and on Kanes Lane. The Property is located in the PD Planned Development zoning district.
2. The GDP proposal is to develop the Property with up to 350 residential units, of which 70 are to be

affordable, and up to 400,000 square feet of commercial space, in separate and multiple phases. The applicant submitted architectural renderings of both the Residential and Commercial Components and the respective buildings in each. Any future land use approvals (including subdivision and/or site plan approval, as appropriate) for either the Commercial Component or Residential Component (collectively, "Future Approvals") shall require that the architectural plans be in substantial conformance with the renderings submitted to the Planning Board during this application. Mr. Orrico from National Realty, the developer of the commercial component testified at pages 167 - 168 of the transcript:

MR. ORRICO: What we're looking at here is, if the concern is are we doing a Super Walmart, no, we're not doing Super Walmart. Yes, I do have Super Walmarts in my portfolio, in our portfolio. That's not what this site should be. Will there be boxes that may be 45,000 square feet? Yes, but there's only going to be one, maybe two. Cause the site isn't really designed for that. This is a, this is 80 feet deep, this is only a hundred feet deep. So my only opportunity is here. And we're talking to two different cinemas for movie and dining to go in here. And it won't be this big at the end of the day because those theaters are only 35, 40,000 square feet.

The Planning Board interprets this representation to mean that no stores shall have a floor area in excess of 45,000 square feet and this approval is subject to that representation. "The record is the best evidence of what the board considered and decided." *Sherman v. Harvey Cedars Board of Adjustment*, 242 N.J. Super. 420, 430 (App. Div. 1990). And see *Fieramosca v. Barnegat*, 335 N.J. Super. 526, 534 (Law Div. 2000).

3. The project meets the criteria for General Development Plan approval under N.J.S.A. 40:55D-45.1. The proposed development is larger than 100 acres as required for a General Development Plan, pursuant to N.J.S.A. 40:55D-45.3.
4. The proposed development satisfies the statutory criteria for a general development approval, N.J.S.A. 44:55D-45.1 thru -45.8 ("General Development Plan Statute").
5. The Land Use Plan shows the general proposed layout of the development. The applicant proposes separate lots for the Residential Component and Commercial Component with a private roadway running from Kings Highway East to Kanes Lane between the properties (the "Connector Road"). At this stage, the lot layout is meant for

informational purposes. Additional details will be required at the time of Future Development Applications.

6. As to the Circulation Plan:

- a. The proposed development will have a significant impact on the circulation and traffic patterns in the area. The plans show re-alignment of existing jug-handles and access points from Highway 35. All highway improvements, are subject to review and approval by NJDOT and the Planning Board. The Planning Board reserves the right to require completion of the proposed improvements to the Route 35 intersections as a condition of Future Approvals. The Planning Board reserves the right to require these improvements as a condition of any Future Approval for either the Residential component or the Commercial component. In connection with Future Approvals, easements may be necessary for the adjacent property owners whose access to the highway will be modified and easements or rights-of-way may be required by the NJDOT.
- b. The applicant shall provide a traffic impact study prior to any Future Approvals to analyze existing

and future traffic volumes and levels of service at major intersections along Highway 35 and the surrounding area that will be impacted by this project. Attention should also be given to traffic volumes through Twin Brooks Road and Woodland Drive, as this neighborhood has great potential to be used as a cut-through alternative to Highway 35.

c. Kanes Lane - The 2004 Master Plan identifies the intersection of Woodland Drive, Route 35, and Kanes Lane as an area that should feature improved access and jug-handle reconfiguration as part of development on the subject property. The applicant has proposed realigning a portion of Kanes Lane and some alterations to the jug-handle at Woodland Drive. The NJDOT has jurisdiction over access to Highway 35. The Planning Board reserves the right to require improvements to Kanes Lane at Route 35 as a condition of a Future Development Approval. The applicant shall make a request to the U.S. Navy to permit Kanes Lane to connect to Normandy Road.

d. Kings Highway East:

i. The 2004 Master Plan designates Kings Highway East as one of a number of scenic roads in the

Township. The Master Plan states that scenic corridors contribute to the quality of life for Township residents and function as important landmarks. It states: "Creative design techniques, context-sensitive structure locations, the retention of an agrarian atmosphere, and identification and delineation of important viewsheds are all essential components of scenic corridor preservation."

- ii. At the time of the Board's consideration of the Future Development Applications the applicant shall demonstrate design techniques that preserve the scenic nature of the Kings Highway East corridor in accordance with the Master Plan.
- iii. The applicant has proposed a realignment of a portion of Kings Highway East. At the time of the Board's consideration of the Future Development Applications, the appropriate applicant should (a) discuss how this realignment may impact the scenic and historic value of this corridor, and (b) provide

additional details regarding this proposed realignment.

- iv. The Planning Board reserves the right to limit or eliminate direct access from Kings Highway East to the Residential Tract as a condition of a Future Approval.
- e. Proposed Connector Road--The applicant has proposed a Connector Road through the subject property between Kings Highway East and Kanes Lane. This will be a private roadway, to be maintained by the Homeowner's Association of the Residential Component, with unrestricted public access. In addition, the 2014 Re-Examination states that this road should be developed using complete streets and traffic calming principals to ensure accessibility and safe circulation of pedestrians and cyclists as well as automobiles. When the Connector Road becomes the subject of a site plan in a Future Development Application, the appropriate applicant shall demonstrate design standards for the connector road in accordance with the recommendations of the Master Plan prior to any Future Approvals. The Planning Board reserves the right to require the

construction of the Connector Road as a condition of any Future Approval. Adequate provisions for access and maintenance of the Connector Road shall be required as a condition of Future Approvals.

- f. Prior to any Future Approvals, additional details will be required regarding internal pedestrian circulation and connections between the proposed portions of the development. In particular, connections between the residential units and existing and future transit stops at Highway 35 are essential.
- g. The internal road network and proposed parking for the Residential Component shall comply with RSIS. Conformance with this requirement should be confirmed during the appropriate applicant's Future Development Application for site plan approval for the Residential Component.
- h. At the time of the Board's consideration of the site plan as part of the Future Development Application for the Commercial Component, additional information will be required for parking calculations, driveways sizes and orientation, and access aisles.

- i. At the time of the Board's consideration of the site plan as part of Future Development Applications, the appropriate applicant shall provide turning templates for emergency vehicles and delivery trucks to demonstrate safe and effective circulation throughout the site.
 - j. At the time of the Board's consideration of the site plan as part of the Future Development Applications, the Planning Board reserves the right to require a review of a revised internal driveway alignment, as well as revised locations for ingress and egress.
7. As to the Open Space Plan:
- a. Per the zone requirements at 16-939.A.5, the PD Zone requires a 30% open space set aside. The total area of the tract is 118.292 acres; thus the required set aside is 35.488 acres. The applicant has proposed an open space set aside of 36.136 acres.
 - b. Section 16-939.A.5 references the definition of open space contained at 16-203. This definition reads, in part: "Where open space is a requirement of a zone, not more than 50% shall consist of wetlands, open bodies of water, watercourses, sloped areas of 25% or greater, detention or retention basins,

swales, and other drainage structures." Large areas of wetlands and an area of steep slopes are located in the southeasterly portion of the site near Kaness Lane. In addition, the entirety of the proposed storm water management infrastructure is included in the open space area. The applicant has represented that the overall project will comply with these requirements. However, in order to ensure compliance with the zoning ordinance, at the time of the Board's consideration of the site plan as part of the Future Development Applications, the appropriate applicant shall provide additional details to confirm that no more than 50% of the proposed open space area consists of the constrained features listed in the definition.

- c. The Planning Board reserves the right to determine prior to any subsequent Future Approval if areas within DOT jug-handles shall be counted towards the open space calculations.
- d. At the time of the Board's consideration of the site plan as part of the Future Development Application for the Residential Component, the appropriate

applicant shall discuss any recreational amenities that are proposed for the open space areas.

e. The Planning Board reserves the right to condition Future Approvals to insure the preservation of the proposed farm lot as open space.

8. As to the Local Service and Utility Plan:

a. The applicant has provided the locations of proposed underground utility lines and connections throughout the Property. At the time of the Board's consideration of site plan as part of the Future Development Applications, additional details shall be provided.

b. The applicant has indicated that both the Commercial Component and Residential Component will contract with a private refuse hauler to provide the necessary service. Review of truck turning templates and dumpster locations, as well as any additional details that may be necessary, will be conducted at the time of the Board's consideration of the site plan which is part of Future Development Applications.

c. As a condition of the Future Approvals, the appropriate applicant will be responsible for

securing approvals for the appropriate Component of the Project from all appropriate utilities. TOMSA has indicated that a capacity study had been performed and that there are some concerns that need to be addressed. Future applicants shall work with TOMSA to address these concerns and secure its approval as a condition of site plan approvals.

9. As to the Storm Water Management Plan:

- a. The applicant indicates that a mixture of infiltration and detention basins are to be proposed to manage the onsite storm water. Each portion of the development will be responsible for its own storm water management.
- b. At the time of the Board's consideration of the respective Commercial and Residential site plan applications, the appropriate applicant shall provide a full storm water management report for its respective property, i.e., for the Commercial Component or Residential Component, as the case may be, all for the Board's review and consideration. Any additional information that is required at that time shall be provided for review by the Board Engineer.

10. As to the Environmental Inventory:

- a. At the time of the Board's consideration of Future Development Applications, the appropriate applicant shall provide an inventory of critical areas on its respective portion of the Property as defined by the Township ordinance at 16-624. That applicant shall make every effort to minimize any potential disturbance of critical areas including wetlands and steep slopes.
- b. The applicant has indicated that portions of the tract have been used for agriculture in the past, but there is no mention of potential soil contamination from pesticides. At the time of the Board's consideration of the contemplated Commercial and Residential site plan applications, the appropriate applicant shall provide testimony as to whether onsite soils for the applicable portion of the Property were tested for potential contaminants.
- c. The applicant has provided an Environmental Impact Report for the project. However, additional information may be necessary at the time of the Board's consideration of Future Development Applications.

11. As to Community Facility Plan:

The applicant has provided a community facility plan showing amenities for the Residential Component. A clubhouse, tennis court, and two "tot-lots" are proposed. At the time of the Board's consideration of the site plan application as part of a Future Development Application as to the Residential Component, the appropriate applicant must provide the necessary additional construction details for these amenities.

12. As to the Housing Plan:

- a. The Property is included in the Township's 2008 Housing Plan. That plan identified the significant opportunity for the provision of affordable housing on this site. The plan projected the development of 400 units, of which 80 (or 20%) would be affordable rental units.
- b. The applicant has proposed 350 dwelling units in a mix of 280 market rate townhouses and 70 affordable flats. The 70 affordable units represent 20% of the development, which conforms to the PD zoning ordinance and is the same proportion described in the Housing Plan.

c. At the time of the Board's consideration of the site plan for a Future Development Application for the Residential Component, the appropriate applicant shall provide additional information about the design and bedroom mix of the units.

13. As to the Fiscal Impact Report:

The applicant has provided a fiscal impact report as required by the Township ordinance. The report finds that the GDP proposal will represent a significant tax ratable for the Township. If necessary, the appropriate applicant shall discuss the findings of this report, at the time of the Board's consideration of the site plan as part of Future Development Applications.

14. As to the Timing Schedule:

a. The applicant has provided a Phasing Plan for the project. If necessary, the appropriate applicant shall provide additional testimony regarding the phasing of its portion of the project and the potential for concurrent development of the Residential and Commercial Components, at the time of the Board's consideration of the site plan for Future Development Applications.

- b. Additional details with respect to project phasing may be required at the time of the Board's consideration of the site plans for Future Development Applications.
15. The applicant requests a period of protection of 20 years to allow sufficient time to complete this development in an economic downturn. Based upon the number of dwelling units and commercial space proposed, as well as the infrastructure improvements necessary for the development, the Board finds that this 20-year period of protection is appropriate and hereby confirms that the General Development Plan approval granted in this resolution is valid for twenty (20) years from the date that the Board adopts a resolution memorializing a final approval for the first component to be developed (whether the Residential Component or Commercial Component) in accordance with N.J.S.A. 40:55D-45.1.b.
16. The terms and conditions of this approval are intended to adequately protect the interest of the public and of the residents, occupants and owners of the proposed development, and the total completion of the development.

BE IT FURTHER RESOLVED that the Planning Board of the Township of Middletown does hereby grant Village 35, LP General Development Plan approval for the development of a maximum of 350 residential units and a maximum of 400,000 square feet of commercial space on the subject property based upon the evidence and findings contained herein subject to the conditions listed on Exhibit A attached hereto and made a part hereof.

ON MOTION BY Michael Ostrander and seconded by

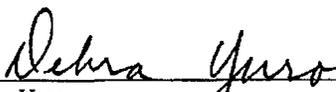
Carl Rathjen the application for General Development
Plan is approved based upon the following vote:

AYES: Carroll, Davis, Deus, Ostrander, Rathjen, Wilton

NAYES:

ABSTAIN:

ABSENT: Settembrino



Debra Yuro
Planning Board Secretary

I, Debra Yuro, Secretary to the Township of Middletown
Planning Board do hereby certify that the foregoing is a true
copy of a Resolution adopted by the Planning Board on this 1st
day of July 2015.



Debra Yuro
Planning Board Secretary

EXHIBIT A

The following conditions of approval for Application #2014-216 for Village 35, LP shall be satisfied by the applicant:

1. To the extent not already complied with or modified by the testimony provided in connection with this application, the applicant shall comply with the Planning Board Engineer's letter dated February 24, 2015 related to General Development Plan approval.
2. To the extent not already complied with or modified by the testimony provided in connection with this application, the applicant shall comply with the Township Planner's letter dated February 26, 2015 related to General Development Plan approval.
3. The terms and conditions of this General Development Plan approval are valid for a period of twenty (20) years from the date that the Board adopts a resolution memorializing a final approval for the first component to be developed (whether the Residential Component or Commercial Component) in accordance with N.J.S.A. 40:55D-45.1.b.
4. The Planning Board reserves the right to condition Future Approvals as set forth above.

5. The Planning Board reserves the right to require a developer's agreement as a condition of Future Approvals.
6. Approval, or letter of no jurisdiction, from all required outside agencies including the Monmouth County Planning Board, Freehold Soil Conservation District, NJDOT, NJDEP and TOMSA shall be required to be obtained as a condition of any Future Approval.
7. The requirements of the General Development Plan Statute are hereby incorporated by reference as if set forth at length herein.
8. This approval is conditioned upon the conditions and requirements set forth in the resolution.