

November 16, 2016

Medford Affordable Housing Settlement

In the Mount Laurel II decision, the New Jersey Supreme Court required all municipalities in New Jersey to provide for their fair share of the State's affordable housing needs. There have been three rounds to determine each municipality's affordable housing need for different periods of time.

Medford Township's share of its affordable housing need for a portion of the second round (1987-1999) and its third-round obligation (1999-2025) has been the subject of a Declaratory Judgment Action filed by the Township to establish Medford's fair share. As part of the Court action, the Fair Share Housing Center, an Affordable Housing advocate, has been a party to the litigation and reviewed Medford Township's proposed Fair Share Housing Plan. On November 15, 2016, the Medford Township Council authorized a settlement of the litigation with Fair Share Housing Center. The settlement still requires Court approval. A summary of the settlement follows.

Under regulations of the Council on Affordable Housing (COAH), builders and developers are required to include a percentage of affordable housing in every market rate project. The customary set aside is that 15% of the units in a housing development be allocated for affordable housing units, which would mean for every 15 units of affordable housing that is developed, 100 "market" price homes have to be approved. Fair Share Housing Center and the Courts have insisted that municipalities satisfy their housing need primarily through market rate developments with affordable housing set asides.

Under the calculations by Fair Share Housing's expert witness, Medford Township would have been required to provide for 805 affordable housing units to satisfy its affordable housing need. Using the customary set aside of 15%, the Township would have needed to allow builders to develop 5,366 market units to subsidize the cost of the 805 affordable housing units for a total of 6,171 units. Unless the Township reached a resolution of the litigation, builders would have been entitled to a "Builder's Remedy" to develop affordable housing at these densities anywhere in Medford Township. Recent cases in other municipalities have resulted in the Court's taking control of the local Planning Boards and permitting Builder's Remedy developments approved by a Court Master, and not the local Township Officials.

Through over a year of negotiation, the Township has reached a settlement with Fair Share Housing Center that resulted in a 40% discount from the 805 units of affordable housing otherwise required, or 483 affordable homes. Based on credits from prior rounds and other credits to which the Township is entitled for providing for family rental housing in some of the developments, the actual number of affordable houses that will be developed to satisfy the Township's obligation is 298 affordable homes. This settlement will avoid prolonged litigation and the uncertainty of an unfavorable decision.

The Township's obligation will be satisfied through the development of four sites in Medford Township that the Township Council has determined to be appropriate to satisfy the Township's Constitutional obligation. One of the sites is the Hartford Square property already developed with commercial development including a CVS and bank site, at the corner of Route 70 and Hartford Road. This site will be developed with stand-alone affordable housing project of 70 rental units for senior citizens, veterans and disabled individuals. The remaining 228 affordable housing units will be constructed in three market rate developments with affordable housing set asides. The first development, owned by the Tofamo family, will surround the Hartford Square development, with a mix of 174 market rate single family homes and townhouses and 48 affordable apartments. The second development, Arc Wheeler, located on Evesboro Road at the Evesham Township border, will develop 210 units of market housing and 90 affordable housing units. The final development will be a redevelopment of that part of the Flying W Airport located in Medford Township, with 360 market homes and 90 affordable homes. Another site, known as Stokes Square, previously anticipated for office development at Stokes and Himmelein Roads, will be developed with 120 independent living apartment units for senior citizens and the developer will contribute funds to the Township's Affordable Housing Trust Fund to subsidize the other affordable housing developments. No affordable units will be developed at this site.

The Township is pleased that it was able resolve the litigation with the least possible impact on Township services, utilities and quality of life for the residents of Medford Township recognizing that it had to satisfy its Constitutional obligation or be subject to the risk of large housing developments on sites completely out of the control of the Township. Even at the reduced number of 298 required affordable units, with the presumptive 15% set aside, the Township would be required to permit the development of 1,987 market units. Instead, by negotiating higher than customary set asides and using a 100% affordable project, the Township will satisfy its affordable housing obligation with 744 market homes and 298 affordable housing units. The total number of units in the settlement is almost 50% less than the number of units that would have been required with the 15% set aside and more than 80% less than the total number of units in the worst case scenario discussed in the fourth paragraph above.