

MEDIATION AGREEMENT BEFORE THE AFFORDABLE HOUSING DISPUTE
RESOLUTION PROGRAM

In the Matter of the Application of the Borough of Bernardsville, County of Somerset,
Docket No. SOM-L-147-25

WHEREAS, the Borough of Bernardsville (the “Borough” or “Bernardsville” or “municipality”) having filed a resolution of participation in the Affordable Housing Dispute Resolution Program (the “Program”) and a declaratory judgment action pursuant to N.J.S.A. 52:27D-301 et. seq. (the “Fair Housing Act”) on January 28, 2025; and

WHEREAS, the Court entered an order on April 22, 2025 setting the Borough’s Fourth Round fair share obligations as a Present Need of zero (0) units and a Prospective Need of one hundred thirteen (113) units, which no party appealed, and ordering the Borough to file a Housing Element and Fair Share Plan (“HEFSP”) by June 30, 2025; and

WHEREAS, the Borough having filed its HEFSP on June 27, 2025 (“Adopted HEFSP”); and

WHEREAS, FSHC having filed a challenge pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) regarding the Borough’s HEFSP on August 28, 2025; and

WHEREAS, the Borough and FSHC have agreed to amicably resolve the issues set forth in the challenge through this mediation agreement and present this agreement for review by the Program and referral to the Mount Laurel judge pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) and Administrative Directive #14-24, which if approved will result in a compliance certification for the Borough for the Fourth Round; and

THEREFORE, the Borough and FSHC agree:

Fair Share Obligations

1. The Borough’s Present Need or Rehabilitation Obligation is zero (0), the Borough’s Prior Round Obligation (1987-1999) is one hundred twenty-seven (127), the Borough’s Third Round Obligation (1999-2025) is two hundred fifteen (215), and the Borough’s Fourth Round Prospective Need (2025-2035) is one hundred thirteen (113) units.

Satisfaction of Fair Share Obligations

2. The Borough does not have a present need obligation.

3. The Borough's Prior Round Obligation is 127 and has been met with the following mechanisms:

Prior Round Obligation – 127 Units				
Mechanism	Description	Units	Bonus Credits	Total Credits
Prior Cycle (20% Substantial Compliance Granted December 6, 1995 by COAH)			9	9
Regional Contribution Agreement (RCA)		77		77
100% Affordable Family for Sale	Pine Ridge Condo Units	26		26
100% Affordable Family for Sale	Rolling Hills at Bernardsville (Bernards Ave & Pine Street)	15		15
Total		127	9	127
Maximum Senior Obligation	25%	31		0
Minimum Rental Obligation	25%	9*		9*
Prior Round Total		127	9	127

* COAH permitted a reduction in required rentals for the Prior Round obligation.

4. The Borough's Third Round Obligation is 215 and has been met with the following mechanisms:

Third Round Obligation 215 Units				
Mechanism	Type	Units	Bonus Credits	Total Credits
Completed/Scattered Sites				
100% Affordable Family for Sale	Habitat for Humanity Mine Brook Road	4		4
100% Affordable – Family for Sale	N. Finley Condos	2		2
100% Affordable Group Home - Rental	Conti Site	4	4	8
100% Affordable – Scattered Site – Family Rental	63 Bernards Dev. Mine Brook Dev. Mt. Airy Dev.	59	49	108
Extension of Expiring Controls	Pine Ridge / Rolling Hills Condo Units	6		6
100% Affordable – Age Restricted Rental	210 N. Finley	46		46
Inclusionary Zone – Family Rental	Quimby Lane Dev. Quimby Lane Redevelopment	13		13
Inclusionary Zone – Family Rental	24-26 Claremont Road	5		5
Inclusionary Zone – Family Rental	Downtown Districts	23		23
Total Completed & Proposed Round 3		155	53	215
Minimum Family Units 50% (107)		161		
Age-Restricted Max 25% (53)		46		
Minimum Rental 25% (54)		203		
Minimum Family Rental 50% of Rental (27)		149		
Maximum Bonus 25% (53)		53		
Third Round Total		162	53	215

5. The Borough's Fourth Round Obligation of 113 will be addressed with the following mechanisms:

Obligation 113				
Mechanism	Description	Units	Bonus Credits	Total Credits
Inclusionary Zone -Family Rental	Bernards Avenue Redevelopment	36	18 ^A	54
Extension of Expiring Controls – Family for Sale	Pine Ridge Condos/ Rolling Ridge	29		29
Redevelopment Plan – Senior Rental	Clarus Redevelopment Plan	19	6 ^B	25
Inclusionary Zone – Family Rental	65 Claremont Road (Block 69, Lots 1-4)	6		6
Total		90	24	114^D
	Minimum Family Units 50% (57)		89	
	Age-Restricted Max 30% (25)		25	
	Minimum Rental 25% (29)		85	
	Minimum Family Rental 50% of Rental (15)		60	
	Maximum Bonus 25% (28)		24	

A. Pursuant to the Amended FHA, redevelopment of former commercial land generates an additional 0.5 credit.

B. Pursuant to the Amended FHA, sites within 0.5 miles of a New Jersey Transportation location can receive an additional 0.5 credit. The Clarus Redevelopment Area is approximately 0.2 miles from the Bernardsville Station (NJ Transit).

- a) 65 Claremont (Block 69, Lots 1, 2, 3, and 4) – the Borough proposes to rezone this 0.88-acre property to permit multi-family housing at a density of 32 du/acre, which would produce a development that includes at least twenty-eight (28) total units with an affordable housing set-aside of six (6) affordable housing units. The property owner of three of the four lots is proposing to move forward with a project once the site is rezoned.
- b) Clarus Redevelopment Area (Block 66, Lots 10, 11, 12, 14, and a portion of Lot 22) – the Borough will seek to designate this approximately 2.0-acre property (a density of 49 units per acre) as an Area in Need of Redevelopment. The Borough anticipates a Redevelopment Plan that would permit approximately 96 units (a density of 48 units per acre) with a 20 percent set-aside, which would provide for 19 age-restricted affordable rental units. The area is approximately 0.2 miles from the Bernardsville Station, a NJ Transit facility. Pursuant to the Amended FHA, the site would be entitled to an additional one-half credit per affordable unit up to the 25% maximum for bonuses. There is a proposed redeveloper for the site.

- c) I-2/Bernards Avenue Inclusionary/Redevelopment Zone – (Block 100, Lots 2, 2.01, and 13 (Bernards Avenue) - this site is 6.14 acres and is currently zoned I-2 Light Industrial Zone. The Borough is proposing an area in need of redevelopment designation and a redevelopment plan to permit 180 units of multifamily housing on the site, with a 20% set-aside for affordable units, yielding up to 36 affordable units. The site is proposed for family rental housing. There is a proposed redeveloper for the site. The site is a proposed redevelopment of an existing commercial site, generating up to 0.5 credit bonus up to the 25% maximum.
- d) Extension of expiring controls – the Borough proposes to address a portion of its Fourth Round obligation by extending expiring controls on at least twenty-nine (29) family for-sale units at the Rolling Ridge and Pine Ridge Condo developments. The Pine Ridge Condo units include 26 family for sale units that were generally constructed in 1995-1996 with 30-year affordability controls that are set to expire in 2025 and 2026. Three (3) of the units were extended in the Third Round. The Rolling Hills at Bernardsville Condo units include 15 family for sale units that were generally completed in 1995-1998 with 30-year affordability controls that are set to expire in 2025-2028. Three (3) units were extended in the Third Round. A total of 35 units are eligible for extensions. The Borough proposes to pay \$20,000 to homeowners who agree to extend the affordability controls on their units. The Borough is proposing 29 credits for extensions of expiring controls in the Fourth Round; however, if funding is available and property owners are agreeable, the Borough will extend up to 35 units. Thus far, 29 property owners have expressed an interest in extending their controls.

Unit Type and Income Distribution Requirements

6. The Borough and FSHC agree that the Borough's HEFSP as presented above, satisfies the following standards set forth in P.L. 2024, c. 2, including but not limited to with respect to the following, and that the Borough shall maintain satisfaction with such requirements for the Fourth Round:
- a) Age Restricted Cap. The Borough agrees that it shall not exceed the age-restricted cap found in N.J.S.A. 52:27D-311(l), which requires age-restricted units to be capped at 30 percent of the overall Fourth Round affordable housing units that address the Fourth Round Prospective Need obligation, exclusive of any bonus credits.
 - b) Family units. Pursuant to N.J.S.A. 52:27D-311(l), the municipality shall satisfy a minimum of 50 percent of the actual affordable housing units, exclusive of any bonus credits created to address its Fourth Round Prospective Need affordable housing obligation through the creation of housing available to families with children and otherwise in compliance with the requirements and controls established pursuant to section 21 of P.L.1985, c.222 (C.52:27D-321).
 - c) Rental and family rental units. Pursuant to N.J.S.A. 52:27D-311(l), at least 25 percent of the actual affordable housing units, exclusive of any bonus credits, created to address its Prospective Need affordable housing obligation shall be addressed through rental housing, including at least half as available to families with children.
 - d) Very Low-Income Units. Pursuant to N.J.S.A. 52:27D-329.1, thirteen percent (13%) of all affordable units referenced in this Agreement addressing the municipality's Prospective Need obligation shall be very-low-income units for households earning thirty percent (30%) or less of the median income, with half of the very low-income units being available to families.
 - e) All new construction units shall be adaptable in conformance with P.L.2005, c.350/ N.J.S.A. 52:27D-311a and -311b and all other applicable law.
 - f) All Prior Round and Third Round compliance shall continue to meet the applicable percentages and standards for bonuses, family and senior housing,

rental and family rental, very low-income units, and adaptability set forth in any prior settlement agreement between FSHC and the municipality, statutory requirements, and the Prior Round and Third Round regulations.

7. In all developments that produce affordable housing, the Borough and FSHC agree that, unless varied by a prior court order of the trial court, the following terms shall apply:
 - a) All of the affordable units, except as otherwise noted below, shall fully comply with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et seq. (“UHAC”), including but not limited to the required bedroom and income distribution, length of affordability controls, and phasing of affordable units.
 - b) The applicability of the updated form of UHAC versus the prior form of UHAC shall be as set forth in the statute and the most current form of UHAC adopted by HMFA. Any terms of a prior agreement, judgment, or grant of substantive certification as to prior rounds of obligations modifying UHAC as to affordability controls longer than the now-current regulations or as to very-low-income units shall remain in effect as to those prior rounds of obligations.
 - c) The municipality agrees that in order to meet the low income and very low income requirement of the Fair Housing Act that it shall adopt an ordinance requiring for all affordable housing developments in its HEFSP that fifty percent (50%) of the affordable units within each bedroom distribution shall be required to be for low income households earning fifty percent (50%) or less of median income, including thirteen percent (13%) of the affordable units within each bedroom distribution shall be required to be for very low income households earning thirty percent (30%) or less of median income.
 - d) The municipality agrees to review its Affordable Housing Ordinance and other ordinances to ensure that it complies with the most up-to-date requirements of UHAC and revise those ordinances accordingly as part of its Fourth Round HEFSP and implementing ordinances.
 - e) The affordable units shall be affirmatively marketed in accordance with UHAC and applicable law. The affirmative marketing shall include posting of all affordable units on the New Jersey Housing Resource Center website in accordance with applicable law. The affirmative marketing plan shall include the

following community and regional organizations: FSHC; the Latino Action Network; Willingboro NAACP; Southern Burlington County NAACP; and the Supportive Housing Association.

Process for Approval and Implementation

8. Pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) and Administrative Directive #14-24, the municipality and FSHC recognize that the Program and/or county-level housing judge must still review this agreement and the resulting HEFSP and implementing ordinances and resolutions for compliance with the Fair Housing Act prior to issuing a compliance certification, as follows:
 - a) The municipality and FSHC shall present this mediation agreement to the Program member for review upon full execution by both parties.
 - b) The Program member shall review the agreement and, if satisfied with compliance with the Fair Housing Act, shall refer this matter to the Mt. Laurel judge for review and entry of certification of compliance, conditioned on adoption of all implementing ordinances and resolutions.
 - c) The municipality shall adopt all implementing ordinances and resolutions no later than March 15, 2026, including but not limited to the outstanding items identified in the next paragraph. No later than 48 hours after adoption or March 15, 2026, whichever is sooner, the Borough shall file the information required by Paragraph 10 and any other adopted ordinances and resolutions on eCourts.
 - d) No later than April 15, 2026, the Borough and FSHC shall provide via filing on eCourts a form of consent order granting final compliance certification for the Court's review, or identify any remaining issues of compliance that may be disputed, at which point the court shall schedule a conference to review any such areas.
 - e) Both parties agree to implement the terms of this Agreement. If the Program, county-level housing judge, or any appellate court rejects this Agreement, the Parties reserve their right to rescind any action taken in anticipation of the Program's approval and return to status quo ante. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement, unless to do so would be inconsistent with the final, unappealable adjudication of any Program or

court ruling or judgment. The terms of this agreement may be enforced through an enforcement motion in this declaratory judgment or a separate action before the Program or the Superior Court, Law Division.

9. The municipality and FSHC agree that the following conditions remain to be met prior to March 15, 2026, as conditions of compliance certification, and that the municipality shall provide these documents to FSHC in draft form for comment by January 15, 2026:
 - a) The Borough will provide a specific update on all sites addressing the Borough's Third Round obligation and a description of whether any sites that remain unbuilt need to be replaced.
 - b) The Borough will provide draft zoning ordinances for the new sites it proposes to FSHC and the Special Adjudicator before January 15, 2026. FSHC and the Special Adjudicator shall provide comments and/or requests for revisions by January 31, 2026. The Borough shall adopt the ordinances by March 15, 2026. Any disputes concerning the form of ordinance shall be resolved by the Program.
 - c) The Borough will provide resolutions appointing the Municipal Housing Liaison and Administrative Agent(s).
 - d) The Borough will provide the affordability assistance program manual.
 - e) The Borough will provide the rehabilitation program manual.
 - f) The Borough will adopt a Fourth Round Spending Plan in accordance with P.L. 2024, c. 2 and the forthcoming regulations at N.J.A.C. 5:99.
 - g) The Borough will update and adopt its affordable housing ordinance, development fee ordinance, affirmative marketing plan, and other administrative documents in accordance with the forthcoming regulations at N.J.A.C. 5:80-26.1, et seq., and N.J.A.C. after they are adopted and before March 15, 2026.
10. The Borough shall provide the following additional information and/or commit to the following requirements on the proposed program to extend affordability controls:
 - a) The Borough shall provide, by January 15, 2026, a draft Spending Plan that outlines any expenditures related to the Borough's proposed program to extend affordability controls on Pine Ridge / Rolling Ridge. FSHC shall provide any comments by January 31, 2026. The Borough shall adopt the final Spending Plan by March 15, 2026.

- b) The Borough shall provide by January 15, 2026 the existing deed restrictions that demonstrate these units are eligible to be extended during the compliance period, as well as any existing Master Deed created to govern the Homeowners Association and/or Condo Association or other such similar entity that demonstrates no fee increases of the HOA fee, condo fee, amenity fee, or other such fee will be increased upon the expiration of the original deed restricted period. The Borough shall provide by January 15, 2026, the proposed deed restriction that the Borough intends to utilize in extending the affordability controls, which shall be in a form consistent with the requirements of the Uniform Housing Affordability Controls (UHAC) regulations that are finalized by the end of 2025. The Borough shall also provide any form of agreement it has utilized or intends to utilize with property owners of existing affordable housing units to extend the affordability controls.
 - c) The Borough shall provide a plan to ensure that all units being extended receive a “continuing certificate of occupancy” and that any units that need repairs to receive a certificate of occupancy or be brought up to code will receive the required repairs as part of the process of extending the controls.
 - d) The Borough shall provide an analysis of the extent of the costs associated with anticipated rehabilitation of the units, which shall include: a pro forma of the costs for the rehabilitation, documentation of the source of funding, a resolution of intent to fund those rehabilitation costs, and a rehabilitation manual.
 - e) The Borough shall demonstrate that it has complied with all other requirements of the updated UHAC regulations.
11. The Borough’s Compliance Certification shall be subject to ongoing monitoring required by the Fair Housing Act as follows:
- a) The Borough by February 15, 2026, and annually, agrees to electronically enter data into the AHMS system of the Department of Community Affairs of a detailed accounting of all development fees and any other payments into its trust fund that have been collected including residential and non-residential development fees, along with the current balance in the municipality’s affordable housing trust fund as well as trust funds expended, including purposes and

amounts of such expenditures, in the previous year from January 1st to December 31st.

- b) The Borough by February 15, 2026, and annually, agrees to electronically enter data into the AHMS system of the Department of Community Affairs of up-to-date municipal information concerning the number of affordable housing units actually constructed, construction starts, certificates of occupancy granted, and the start and expiration dates of deed restrictions. With respect to units actually constructed, the information shall specify the characteristics of the housing, including housing type, tenure, affordability level, number of bedrooms, date and expiration of affordability controls, and whether occupancy is reserved for families, senior citizens, or other special populations.
 - c) For the midpoint realistic opportunity review as of July 1, 2030, pursuant to N.J.S.A. 52:27D-313, the Borough or other interested party may file an action through the Program seeking a realistic opportunity review and shall provide for notice to the public, including a realistic opportunity review of any inclusionary development site as set forth in the adopted HEFSP that has not received preliminary site plan approval prior to the midpoint of the 10-year round. Any such filing shall be through eCourts or any similar system set forth by the Program, with notice to any party that has appeared in this matter.
12. This Agreement may be executed in counterparts, all of which together shall constitute the same agreement, and any exhibits or schedules attached hereto shall be hereby made a part of this Agreement. This Agreement shall not be modified, amended, or altered in any way except by a writing signed by each of the Parties. Each party acknowledges that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each signatory is the proper person and possesses the authority to sign the Agreement, and that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause, or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses, or provisions hereof. If any section of

this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections. No member, official, or employee of the municipality shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.

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