

COAH-91-308

IN RE PETITION FOR SUBSTANTIVE)
CERTIFICATION FILED BY PASSAIC)
TOWNSHIP, MORRIS COUNTY)

COUNCIL ON AFFORDABLE HOUSING

OPINION

At its March 6, 1991 public hearing the Council on Affordable Housing (COAH) orally granted Passaic Township's (Passaic's) request for a waiver from N.J.A.C. 5:92-16.5. This rule requires a community that relies on accessory apartments to address its fair share obligation to develop an alternative method of fulfilling the obligation if the accessory apartment program does not produce the anticipated number of accessory apartments within a two year period. This opinion is intended to memorialize the oral decision.

Passaic received substantive certification on May 2, 1988. There were no objectors to the Passaic plan. The plan required the production of 56 accessory apartments during the six year certification period. Consistent with N.J.A.C. 5:92-16.5, the resolution granting substantive certification allowed two years, from the date of substantive certification, as a period to test the viability of Passaic's program. The accessory apartments actually created during those two years were then to be prorated over a six year period to determine how many units would have to be produced via an alternate method.

On November 19, 1990, the Passaic governing body adopted a resolution seeking additional time to make its accessory program work; an extension of the two year period set forth in N.J.A.C. 5:92-16.5; and (c) a waiver from the requirement that the Township provide an alternate method of fulfilling its fair share obligation. Passaic justified its requests, in

part, by citing the depressed housing market. Passaic claimed that affordable units would be more likely created through an accessory apartment program than by creation of additional inclusionary zoning.

During the two years since substantive certification, Passaic's accessory apartment program had yielded one accessory unit. Recent ordinance amendments deleting maximum square footage requirements and permitting accessory apartments in accessory buildings were implemented to foster interest in the program. The Township also represented in a February 7, 1991 letter from its attorney, Mr. John R. Pidgeon, that the Township applied for a \$20,000 grant from the Morris County Department of Community Development to subsidize its program. In addition, the Pidgeon letter represented that the Township committee had agreed to commit \$10,000 of the Township's money to subsidize accessory apartments.

In order to yield 56 accessory apartments in six years, N.J.A.C. 5:92-16.5 anticipates that Passaic would have produced at least 18 accessory units during the two years since substantive certification. Clearly one unit falls far short of the 18 required by COAH's rule. Also, COAH determines that the poor real estate market is an insufficient reason to grant the waiver request. Real estate markets are cyclical. If COAH required Passaic to zone land to accommodate the 55 unaddressed units, at least the zoning would be in place for development when the market rebounds.

However, COAH views the recent zoning amendments and, especially, the willingness to subsidize the accessory apartment program as encouraging signs. Although the subsidy offered is viewed by COAH as modest, COAH is interested in testing the possibilities of a subsidized accessory apartment program.

Therefore, COAH will allow Passaic another year to foster accessory apartments. The extension is based primarily on Passaic's willingness to subsidize the program. During the year extension (beginning March 6, 1991) Passaic is expected to produce at least 14 accessory apartment units. If the program does not yield the required units, Passaic will be required to develop an alternative method of addressing the unmet portion of the accessory apartment need. Even if Passaic does create the required 14 accessory apartments, COAH recognizes the importance of the subsidy in creating the units; and Passaic's ability to continue the program will likely be contingent on the Township's willingness to continue the subsidy.



Charles Griffiths, Chairman

DATED: *May 1, 1991.*

D0860r