

Bill Malloy

COUNCIL ON AFFORDABLE HOUSING
COAH DOCKET NO. COAH 91-311

IN RE SOUTH BRUNSWICK TWP.,)
MIDDLESEX COUNTY
WAIVE PHASING REQUIREMENTS)

OPINION

This Opinion is intended to memorialize the oral decision given at the Council's public meeting on November 4, 1991.

South Brunswick Township (Township), in Middlesex County received substantive certification on August 3, 1987. Prior to receiving certification and, in fact, prior to the effective date of the Council's rules (August 4, 1986), South Brunswick granted approval of 246 unit inclusionary development to Trafalgar Housing Property, Inc. There are to be 50 low and moderate income units within this development.

Thus far, the developer has built 82 of the 196 market units and 12 low and moderate income units. The developer and Township now realize that the approved site plan does not "phase-in" the low and moderate income units in total conformity to N.J.A.C. 5:92-10.4(c). Therefore both parties are requesting a waiver from this rule.

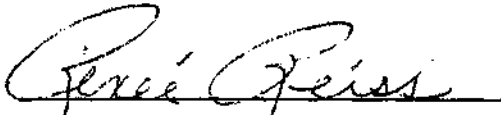
N.J.A.C. 5:92-10.4(c) allows developers to build up to 25 percent of the market units before building a single low and moderate income unit. The rule then requires the developer to build 10 percent of the low and moderate income units. By the time the developer has built 50 percent of the market units, half of the low and moderate income units must be built. All of the low and moderate income units must be built before 90 percent of the market units are complete.

The rule is designed to allow a developer some cash flow before absorbing the losses associated with the low and moderate income units. However, the intent of the rule is also to ensure that a developer cannot escape his or her responsibilities to the poor.

In examining the facts of this case, the Council notes that it has, as a matter of policy, "grandfathered" developments that received preliminary approval prior to the effective date of its rules. Also, in reviewing the site plan, the Council notes that the development is being constructed in separate courts. Each court includes at least four low and moderate income units. Thus, although the proposed phase-in of low and moderate income units does not conform to the precise letter of N.J.A.C. 5:92-10.4(c), it does address the spirit of the rule.

Therefore, the Council grants the requested waiver with the following conditions:

- 1) With the exception of the court containing the sales models, the developer shall not begin construction on any court until construction is complete on the previous court. A court may be deemed complete by the municipality if it determines that it will be able to issue final certificates of occupancy for the entire court within 90 days.
2. At least four low and/or moderate income units must be constructed in each court.


Renee Reiss, Council Secretary

DATED: *January 8, 1992*