

IN RE WAIVER REQUEST OF)
CHASBOB, INC./FERRUGGIA)
ASSOCIATES)

NEW JERSEY COUNCIL ON
AFFORDABLE HOUSING
DOCKET NO. COAH 93-502

OPINION

This motion was brought by Chasbob, Inc./Ferruggia Associates (hereinafter "Ferruggia"), the builder of a 177 unit inclusionary development in Warren Township. Ferruggia requests a waiver from the strict application of N.J.A.C. 5:92-10.4(c), which regulates the phase-in schedule of low and moderate income units within inclusionary developments. This regulation states that after 25% of an inclusionary development's market units plus one unit have been completed, 10% of the low and moderate income units must be completed; after 50% of the market units have been completed, 50% of the low and moderate income units must be completed; after 75% of the market units have been completed, 75% of the low and moderate income units must be completed; and after 90% of the market units have been completed 100% of the low and moderate income units must be completed. N.J.A.C. 5:92-10.4(c).

Ferruggia's 177 unit inclusionary development includes 60 low and moderate income rental units. Ferruggia has already constructed 24 low and moderate income rental units in two buildings of 12 rental units each, as well as 34 single family detached units. Ferruggia requests a waiver of N.J.A.C. 5:92-

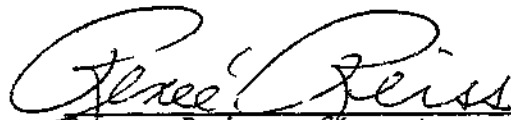
10.4(c) because of the development's high set-aside and because Ferruggia has also negotiated agreements to sell building lots to other developers. A strict application of N.J.A.C. 5:92-10.4(c) would require Ferruggia to build 30 low and moderate income units prior to constructing 59 market units; 45 low and moderate income units prior to constructing 87 market units; and 60 low and moderate income units prior to constructing 105 market units. Ferruggia's requested waiver from N.J.A.C. 5:92-10.4(c) is that upon completion of 24 low and moderate income units, it may complete 94 market units, which is 80% of the market units; upon completion of 36 low and moderate income units, it would be allowed to complete 105 market units, which is 90% of the market units; and upon completion of 100% of the low and moderate income units it would be allowed to complete the remaining 12 market units. Ferruggia also notes in its application that in addition to the high density of Mt. Laurel units in relation to the number of market units in its development, it has also agreed to pay \$1,300,000.00 to Warren Township for its RCA with New Brunswick and is current with its RCA payments.

The Township of Warren responded by letter to this waiver request. The Township did not object to Ferruggia's request that 80% of the market units' certificates of occupancy be issued once 24 low and moderate income units have been constructed. However, Warren did not agree with the remainder

of Ferruggia's request. The Township stated it was concerned that the remaining Mount Laurel units would not be built if the Council agreed to Ferruggia's proposed schedule. Therefore, Warren suggested that the Council require Ferruggia to issue a performance bond to the Township if the Council granted Ferruggia's request.

After careful consideration, the Council has determined that Ferruggia should comply with the following schedule. Ferruggia should complete 24 low and moderate income units prior to the construction of the 57th market unit; 36 low and moderate income units prior to the construction of the 71st market unit; 48 low and moderate income units prior to the construction of 87th market unit and 60 low and moderate income units prior to the construction of the 105th market unit. The Council believes that this construction schedule provides adequate protection for the completion of the low and moderate income units without the necessity of a performance bond and provides relief to Ferruggia during the early phases of development, as Ferruggia requests. However, prior to the construction of the 87th market unit the developer under this schedule will be conforming to the phasing requirements of N.J.A.C. 5:92-10.4(c), which the Council considers to be important to assure that all of the low and moderate income units within the Ferruggia development are completed. Without

this schedule there would be no assurance that the low and moderate income units would be completed.


Renee Reiss, Secretary

DATED: August 4, 1993