

IN THE MATTER OF THE)
 BOROUGH NORTHVALE)
)

NEW JERSEY COUNCIL ON
 AFFORDABLE HOUSING
 DOCKET NO. COAH 93-527

A motion was filed by the Borough of Northvale seeking the approval of the Council on Affordable Housing of the Borough's proposal to satisfy its fair share obligation, which consists solely of an indigenous need obligation to rehabilitate ten units of affordable housing, by converting a former convent into ten units of low and moderate income housing restricted to senior citizens.

Northvale was granted conditional substantive certification by Council Resolution No. 157 on August 4, 1993. The Resolution recognized that the precredited need of the Borough was a 160 units, of which 10 were the rehabilitation component and 150 the inclusionary component. The Council granted the Borough a vacant land adjustment to zero pursuant to N.J.A.C. 5:92-8, so the Borough was only required to provide for its 10 units of indigenous need. Therefore, the grant of substantive certification was conditioned on the Borough submitting to the Council within sixty days: (1) a housing rehabilitation policies and procedures manual setting out the Borough's rehabilitation program; (2) a copy of a proposed lien to maintain affordability for at least six years on

* This decision was reached by the Council at its meeting of May 10, 1994, prior to June 6, 1994, the effective date of the Council's new rules, N.J.A.C. 5:93-1 et seq. Therefore, all citations will be made to N.J.A.C. 5:92-1 et seq., the rules in effect on May 10, 1994.

the rehabilitation units; (3) a resolution adopted by the governing body of the Borough committing \$40,000 to the rehabilitation program during the first year of substantive certification and also stating that the Borough would fund any shortfall in the required \$100,000 needed to rehabilitate the full ten unit obligation; and (4) an amendment to the Borough housing element and fair share plan reflecting the Council's determination that the Borough's fair share obligation was an indigenous need obligation of 10 units. On November 10, 1993 the Council voted to extend conditional substantive certification for another sixty days. The reason for this extension was that a controversy had developed with regard to the way the Borough wished to meet its ten unit rehabilitation obligation.

On August 12, 1993 Jill A. Hartmann, P.P., a planning consultant for the Borough wrote a letter to the Council asking if the conversion and adaptive reuse of St. Anthony's convent to provide 10 low and moderate income rental units restricted to senior citizens would satisfy Northvale's rehabilitation obligation. The convent contained 17 units of congregate living facilities for the nuns of St. Anthony's church. The facility consisted of individual bedrooms and common bathrooms, kitchen and living facilities. The Borough had purchased the convent and intended to sell it to the Housing Development Corporation of Bergen County (HDC), the non-profit corporate arm of the Housing Authority of Bergen County. The HDC had received a Community Development Block Grant of \$592,000 to create 10 low and moderate income senior citizen housing units out of the convent. Each new

unit would contain all customary plumbing and kitchen facilities for the individual senior citizen occupant.

On August 19, 1993 Denton S. Layman, P.P., of the Council responded to Hartmann's letter by stating that "COAH considers the adaptive reuse and substantial rehabilitation of this nature to be construed as new construction." Therefore, because the project would be limited to senior citizens only two of the units could be included in the Northvale compliance plan as meeting its rehabilitation obligation, pursuant to N.J.A.C. 5:92-14.3. Layman noted that Northvale had a period of 60 days from August 4, 1993 to comply with the conditions of the COAH substantive certification.

On September 10, 1993 Hartmann wrote to Layman objecting to COAH's determination that the convent conversion was not a rehabilitation project that would meet Northvale's indigenous obligation. Hartmann indicated the Borough would require the Council's determination of this problem before it would begin to meet the conditions outlined in the conditional substantive certification resolution. In a further letter dated October 5, 1993 the Borough requested an extension of its conditional substantive certification until the problem of the convent could be resolved. Further, Hartmann stated that the Borough found COAH's position "unacceptable" with regard to the convent conversion. Hartmann noted that in addition to the proposed convent conversion the Borough would be creating three overlay zones to encourage affordable housing through redevelopment in a commercial center of Northvale. Finally, Hartmann indicated that

the Borough was not willing to dedicate the \$40,000 to rehabilitation as required by Resolution No. 157 until the full Council ruled on the crediting of the convent conversion.

On October 18, Stanley C. Slachetka, Jr., P.P. Chief Housing Specialist of the Council, informed the Borough that the Council would consider a request for an extension of the conditional substantive certification period at its meeting of November 10, 1993. The letter also suggested that the Borough present by motion its request to the Council that the convent conversion be considered a rehabilitation program.

Northvale's motion seeking a determination that the conversion of St. Anthony's Convent constitutes a rehabilitation project meeting the Borough's indigenous need obligation was based upon a certification by Jill A. Hartmann laying out the history of the dispute between the Borough and the Council, as outlined above. The certification described the conversion project and stated "It is the Borough's belief that both the intent and letter of N.J.A.C. 5:92 et seq. has been met through Northvale's overlay zoning and proposed rehabilitation project of St. Anthony's Convent." The Borough then requested that the Council review the matter and determine that the project was a rehabilitation project that would meet the Borough's 10 unit rehabilitation obligation or, if the Council determined the project to be new construction, that it grant a waiver of the N.J.A.C. 5:92-14.3 limitation that 25% of new construction may be restricted to senior citizens, so that the convent conversion would fulfill the Borough's fair share obligation of 10 units of indigenous need.

The Council first considered this motion at its meeting of January 5, 1994 and denied Northvale's motion, reasoning that the creation of 10 new senior citizen units did not address the needs of Northvale's existing households living in substandard units. This decision was based on the Council's past application of its adjustment rule requiring municipalities receiving a vacant land adjustment to develop a rehabilitation program. Northvale asked the Council to reconsider its decision and at its March 14, 1994 meeting the Council withdrew the earlier decision and appointed a subcommittee to reconsider the Northvale motion.

At its meeting of May 20, 1994 the Council considered the recommendation of its subcommittee and voted to allow Northvale to address its rehabilitation component with the convent conversion, because the convent was an existing vacant structure that was not included in determining Northvale's fair share obligation pursuant to N.J.A.C. 5:92-8.1 et seq. However, the Council decided that the convent project would be subject to its rules on inclusionary developments, including N.J.A.C. 5:92-14.3, which limits credits for age restricted units to 25%. Therefore, 2 of the units in the convent conversion project could be counted toward meeting Northvale's rehabilitation obligation.

THE DECISION

Northvale Borough has sought and received a vacant land adjustment pursuant to N.J.A.C. 5:92-8.1 et seq. based on documentation that it has no land to create new low and moderate income units. In granting the vacant land adjustment the Council relies on N.J.A.C. 5:92-8.2(a), which states:

The Council shall only adjust reallocated present and prospective need which the municipality proposes to address through inclusionary developments. The Council shall not adjust indigenous need.

This rule states that the adjustment process does not apply to deficient housing units occupied by low and moderate income households within the municipality, i.e. indigenous need. N.J.A.C. 5:92-8.2(a) has been consistently interpreted by the Council so that the vacant land adjustment process is only used to adjust the number of new low and moderate income units that must be planned for by the municipality and built within the town. The rule recognizes that the potential to create new units in Northvale is limited due to lack of vacant land. However, the Borough here proposes to use a vacant structure that was not included in the vacant land adjustment calculation to meet its indigenous need obligation. Since the borough is using a structure that it is not required to use pursuant to N.J.A.C. 5:92-8.1 et seq. the borough has agreed to created more units then were required by the councils' rule. Thus, although the creation of new units do not directly benefit low and moderate income house household living within substandard housing, low and modetate households do

benefit based on the creation of more units than were required to by N.J.A.C. 5:92-8.1 et seq. Therefore, the Council will allow Northvale to use the conversion to meet its rehabilitation obligation, subject to the limitations in N.J.A.C. 5:92-14.3 that only 25% of new construction may be age restricted.

The Council, therefore, grants Northvale conditional substantive certification, conditioned upon the Borough creating a rehabilitation program to meet its indigenous need. Northvale may count 2 of the units created in the convent conversion toward its indigenous need to partially satisfy the conditions for substantive certification as listed in Resolution No. 157.



Renee Reiss,
Council Secretary

Date: July 20, 1994