

CA - North Brunswick

3/29/17

letter re: opposition to dismissals
on basis of ordinance amendments

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Pg 6

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RECEIVED

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March 29, 1977

Roger Rosenthal, Esq.
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Dear Roger:

At your request I have reviewed the ordinance amendments adopted by the Township of North Brunswick submitted to the court in response to the Urban League decision, as well as the additional material sent you by Mr. Burns on March 22, 1977. I strongly believe, for the reasons set forth below, that we should strenuously oppose any dismissal on the basis of these ordinance amendments. They do not represent, in my judgement, a good faith effort to comply with the Order, or with the general principles of this decision, not to mention either the Mt. Laurel or Madison decisions.

In essence, the Township has (a) adopted a limited number of amendments to existing ordinance provisions; (b) created a R-T-D zone permitting townhouses and duplex houses; and (c) created an R-M zone permitting mobile home parks. I will discuss each one of these, and in the end try to provide some context for evaluating this submission. I am mindful that, unlike the 'little eleven' municipalities, where the sole concern was the removal of obnoxious provisions, in the case of North Brunswick we are dealing with a community that is obligated to provide for a fair share of regional needs for low and moderate income housing, as per Mt. Laurel.

(1) The sum total of changes to existing ordinance provisions are as follows:

(a) the requirement that private garages be provided in each home have been deleted in the R-2, R-3, and R-4 zones, and made optional. This has also been done with regard to single family homes in the R-6 zone.

(b) minimum floor area requirements have been reduced, as follows: in the R-2 zone from 1400 ft² to 1200 ft²; in the R-3 zone from 1200 to 1000; and in the R-4 zone from 1000 to 900.

(c) in the R-5 garden apartment zone the provision of air conditioning has been deleted as a mandatory requirement; a change that I see as technical and of little significance to us has been made regarding the provision of (optional) swimming pools.

(d) minimum off-street parking requirements have been set at 1.5 spaces per dwelling unit for all zones and housing types, with the exception of garden apartments which remain 2 spaces per dwelling unit.

It is worth noting that the Township initially entertained the idea of making far more extensive changes to existing ordinance provisions, but deleted them before final passage of the amendments. This resulted in the deletion of such points as elimination of an 80:20 bedroom provision, reduction of parking requirements, etc.

It is my impression that the first step incumbent on a municipality found exclusionary in the meaning of Mt. Laurel is to 'clean up its act'; i.e., remove all existing provisions of a clearly exclusionary character. Certainly, this has been established as the minimum by Judge Furman of even those municipalities not obligated to provide for a fair share of regional need. North Brunswick has failed to do so. The North Brunswick ordinance still contains after amendment, the following provisions, among others:

(a) excessive lot size requirements in R-1, R-2, R-6 and possibly R-3 (borderline) zones; excessive frontage (width) requirements in R-1, R-2, R-3, and R-6 zones.

(b) extensive exclusionary provisions governing garden apartments in the R-5 and R-6(ERD) zones; e.g.,

1. an 80:20 1 bedroom 2 bedroom regulation, and a prohibition on units larger than 2 bedrooms.

2. a requirement that 2 parking spaces be provided per dwelling unit.

3. a requirement that 420 ft³ of storage space and 450 ft² of playground space be required per dwelling unit

4. numerous other requirements, including a 'zigzag' provision on ostensibly aesthetic grounds, and a requirement that 1 parking space per dwelling, in developments over 10 acres, be in a carport or garage.

(c) exclusionary provisions in the PUD zone, including elaborate percentage requirements regarding unit types, an 80:20 regulation affecting garden apartments, and provisions for townhouses including (1) no more than 50% 3 bedroom units, and (2) no units with more than 3 bedrooms.

I would argue that the first obligation of North Brunswick Township should be to remove such unequivocally exclusionary ordinance features as are cited above, as a minimum response to the decision.

(2) The R-T-D zone permits duplex homes and townhouses under what are generally reasonable provisions. The only significant exception is that a density of 7 dwelling units per acre is low with regard to townhouse development, and should be higher. It is unclear to me why garden apartments have not been permitted in this zone, inasmuch as they are wholly compatible uses with those permitted.

There are, according to information provided by Mr. Burns, approximately 20 vacant acres zoned R-T-D in the Township, which can accommodate under the ordinance approximately 140 dwelling units, either duplex houses or townhouses.

(3) the R-M zone provides for mobile home parks in the designated part of the Township (see below). The provisions regarding mobile homes are not unreasonable, with the following exceptions:

(a) although the prohibition on mobile homes has been deleted from the ordinance, mobile homes are still prohibited outside the mobile home park; i.e., they cannot be used elsewhere in the Township as an alternative to conventional housing.

(b) a minimum of 25% of the units in a mobile home park must be occupied by individuals aged over 55 (or a couple, one of whom is over 55).

(c) the requirement that interior streets be 36 or more feet in width is excessive.

There are, according to Mr. Burns, 112.14 acres in the R-M zone after

the utility right of way is subtracted. This is capable of accomodating just under 900 mobile homes under the ordinance provisions.

With modest revisions, the provisions of the R-T-D and R-M zones are not inappropriate for their purpose. This, however, is not the central issue. I believe that there are a series of issues raised by the establishment of these zones:

(1) meaningful rezoning: According to the Township, there are 2717 acres of vacant and undeveloped land in North Brunswick, exclusive of agricultural uses, water, and watershed land. DCA, in their housing allocation report, cites a figure of 2537 acres of vacant and developable land. Although the Township never provided plaintiffs with information on vacant land by zone, a review of the zoning map makes clear that the majority of vacant land is in non-residential zones (I2, I1, ERR, and SPD) and the majority of residential land is in R-1, R-2, R-6 and PUD zones. There appears to be no noticeable amount of vacant land in the R-4 zone, the only zone prior to the recent amendments that can be considered non-exclusionary.

The Township has now zoned a total of \pm 5% of the available vacant land for ostensibly meeting their fair share. The remaining 95% of the land is zoned either for non-residential purposes, or for exclusionary residential purposes. This is not responsive either to the general thrust of Judge Furman's opinion, nor to the specific language in which he stated that "The Township is overzoned for industry by nearly 1,000 acres and 200%" (slip opinion at 24). From a purely numerical standpoint, the rezoning that North Brunswick has carried out is a blatantly inadequate response to the decision.*

(2) meeting housing needs: assuming arguendo that all the units theoretically possible are constructed in the two 'fair share' zones, a total of roughly 1,040 units will ensue, of which 900, or 86.5%, would be mobile homes. Although we will readily accept that mobile homes can meet some part of low and moderate income housing need, we argue that it is a small part of such needs, and should be only a small part of the total program to meet the municipality's fair share.

The rationale for such a position is clear. Under currently available programs for low income housing needs, particularly Section 8, it is nearly impossible to participate in these programs through mobile home development. Section 8 housing, particularly for senior citizens, is multifamily housing.

* If a township zoned "15% for low income and 19% for moderate income on the basis of 100% zoning for housing" (slip opinion at 34), this would yield by my calculation a rezoning of 924 acres for North Brunswick's fair share.

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Section 515 housing (assuming one can build under Farmers Home Administration in North Brunswick, which we are not certain of) is multifamily housing. Indeed, a program to meet low income housing needs must provide extensive land area in which it is possible to build (a) garden apartments and townhouses with no exclusionary constraints; and (b) mid-rise apartments for senior citizens. The Township has provided a token amount of land for townhouses, and no land for either garden or mid-rise apartments on a non-exclusionary basis. The Township has provided no land for modest single family homes (either conventionally constructed or individual mobile homes) on small lots.

Furthermore, even if the number of units were theoretically feasible to build, there is no assurance that they will be built. As Justice Conford recognized in his Madison opinion (and as housing experts have long recognized), if you want to make possible construction of X number of low and moderate income units, you must rezone far more land than the acreage on which X units can theoretically fit. Unless I am seriously misreading the ordinance amendments, the language of the R-M zone does not limit that zone to mobile homes, it merely permits mobile homes in that zone, along with other uses. Since this zone is surrounded by industrial uses and industrially zoned land, and backs onto the railroad line, it is not unreasonable to expect some landowners to utilize that land for industrial purposes. Secondly, even if all land in both zones were developed as per the zoning ordinance, there is no assurance that the units would be available for low or for moderate income families. The proposed R-D-T zone, for example, might be developed for luxury housing similar to other development nearby along State Highway 27.

Finally, there is no indication that the Township has paid any attention whatsoever to the language in Judge Furman's decision to the effect that "in implementing this judgement the 11 municipalities charged with fair share allocations must do more than rezone not to exclude the possibility of low and moderate income housing..." (slip opinion at 34).

To summarize, I suggest that we oppose any dismissal at this time; in my judgement it would be premature to dismiss North Brunswick until or unless the township will:

(a) rezone significantly more acreage for uses appropriate to meeting fair share low and moderate income housing needs;

(b) rezone substantial amounts of that acreage for (1) garden apartments at densities of at least 15 DU/acre; (2) mid-rise apartments up to six stories in height; and (3) small houses on small lots (preferably allowing mobile homes as well as conventional structures);

Roger Rosenthal, Esq. (6)

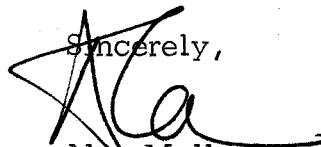
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(c) remove exclusionary provisions affecting all other residential zones in the Township, as outlined earlier in this memorandum; and

(d) undertake responsible and appropriate action to facilitate development of low and moderate income housing consistent with the language of the Urban League decision and Order.

I am looking forward to following the progress of this matter.

Sincerely,



Alan Mallach

cc: M. Morheuser