

North Brunswick Twp

(1985)

Revised N. Brunswick Affordable
Housing Ordinance comments from
Alan Mallack

5 pgs

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E. Eugene Cross Associates

PROFESSIONAL PLANNERS AND LANDSCAPE ARCHITECTS

235 LIVINGSTON AVE., P.O. BOX 1288, NEW BRUNSWICK, N.J. 08903
1-201-545-0018

470 MANTOLOKING ROAD, BRICK, N.J. 08723
1-201-477-7750

E. EUGENE CROSS, P.P., AICP
Principal

JOHN T. CHADWICK IV, P.P.
Director of Planning

PETER M. TOLISCHUS, P.P.
Professional Planner

THOMAS A. VIGNA, P.P.
Professional Planner
& Housing Specialist

HEATHER C. ROSBERGER
Landscape Architect

LAWRENCE SKELSON
Housing Rehabilitation
Specialist

August 30, 1985

PLEASE REPLY:

NEW BRUNSWICK OFFICE
 BRICK OFFICE

Carla Lerman
413 W. Englewood Avenue
Teaneck, NJ 07666

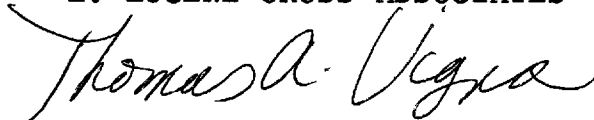
Re: Revised North Brunswick Affordable
Housing Ordinance

Dear Ms. Lerman:

Enclosed please find a copy of the above as per
your request.

Respectfully,

E. EUGENE CROSS ASSOCIATES



Thomas A. Vigna, P.P.

TAV/cep
encl.

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report 12/6/85 sent

ALAN MALLACH
15 PINE DRIVE
ROOSEVELT NJ 08555

*Brunswick
Memor
6907*

MEMORANDUM

TO: Bruce Gelber, Esq.

DATE: January 7, 1985

FROM: Alan Mallach 

RE: North Brunswick Township Draft Affordable Housing Ordinance

As you requested, I have reviewed the proposed Affordable Housing Ordinance submitted by North Brunswick Township. The ordinance, for the most part, is a sound one; as you will see below, most of my comments are technical in nature. There are, however, a substantial number of such comments reflecting matters which should be reconsidered or modified, and language which should be changed or clarified.

1. Sec. III. Wherever the term "family" appears, it should be replaced by "household"; there are a number of usages in which the term "family" is a term of art referring to households of two or more members, which we do not want to infer here. *sh*

2. Sec. III. The definition of regional median income should provide both (a) for periodic updating, by the affordable housing agency; and (b) for use of our "94% standard" in the absence of an officially-determined set of income ceilings for the eleven county present need region. *sh*

3. Sec. IV.B. There is a serious potential problem with the composition of the affordable housing agency. By identifying membership of the agency with specific, narrow, interests, the Township is creating a serious potential of internal conflict and breakdown within the agency, well beyond the intrinsic difficulties that the agency will have in developing the ability to work together effectively; people who perceive themselves as a "landlord representative" or a "single family homeowner representative" will potentially bring a destructive perspective to the board. The only "interest", other than the overriding public interest of the Township itself, that should be represented is that of the lower income population. *agree*

Many communities which are creating, or contemplating creating, such agencies simply provide for ___ members (five should be ample) appointed by the mayor with consent of council. I strongly suggest that that be followed, with possibly one appointment reserved for a lower income representative. In that way, the members are more likely to see their interest as the Township's, rather than pertaining to a specific interest group.

4. Sec. IV.D.1. To provide for "review and modification by the Township Council" with no specific procedures or conditions to govern that review creates a potentially open-ended process

*See
Kaplan
to
comment
on.*

which could add make the effective working of the agency substantially more difficult. I see no compelling reason why the Council should have anything to do with the rules and regulations of the affordable housing agency. If, however, the Township considers a Council role in this matter essential (and, if that is the case, I believe they should explain to us why this is so) then it should be spelled out to be one or the other of the following:

a. That the rules and regulations must be adopted (as an ordinance) by Council;

b. That upon receipt of the proposed rules and regulations from the affordable housing agency, the Council has 30 days to review and modify them, any modifications to be embodied in a resolution, upon which time they become effective.

reasonable

The ordinance should also provide that the agency must adopt these rules and regulations (and forward them to Council, if that provision is retained) no later than six months from their organizational meeting.

5. Sec. IV.D.5. The Ordinance should spell out the standards and criteria to be used in establishing the maximum resale prices of the lower income units. This is too important, and too easily subject to exercise of poor judgement in the choice of formulae and criteria, to be left completely to the administrative discretion of the agency.

6. Sec. IV.D.6. The author of the ordinance has apparently missed the point with this section. There is no compelling reason to "restrict the installation of improvements or amenities" in and of itself; the point is to make clear that only reasonable and appropriate improvements will have their value counted toward the allowable resale price. That can be facilitated by establishing a procedure whereby a homeowner who wants to make an improvement can submit it to the agency, and get a prior approval, on the basis of which he can be certain it will be credited toward the resale price (otherwise he runs the risk of having it not credited, at the time he applies for a price determination).

7. Sec. IV.F. The provision under which determinations by the agency, particularly those dealing with qualifications of prospective buyers or tenants, can be appealed to Township Council is very risky, and could create innumerable difficulties. The image of the Township Council re-reviewing individual household application forms, and income determinations, is very questionable. An appropriate provision would be for such determinations to be made by agency staff, with appeal (if necessary at all) to a committee or the board of the agency.

8. Sec. V.B. This section is not properly worded; it should make clear that no low income unit shall be offered except as a

*Calber
suggestion
simpler*

price affordable to a low income household, and no moderate income unit except at a price affordable to a moderate income household. The present phrasing allows for a loophole (substituting moderate for low income occupancy or affordability) which is clearly not intended.

sh

9. Sec. VI.B. Change "family" to "household".

10. Sec. VII.A.2. There is no need to require developers to provide financing for lower income homebuyers. The only requirement should be that the developer must show that the financing, which he has used to establish his sales prices, is realistically available from representative local lending institutions. It is only if the developer proposes to set his price on the basis of an interest rate other than that generally available from local lending institutions that he must provide the financing.

11. Sec. VII.A.3. This provision should make clear that it does not apply to so-called "deep discount" ARMs, where the first year rate has been set artificially low as a come-on to the buyer, but only to rates with reasonable caps on annual adjustments and total adjustments.

This provision could be moved to level 100 burden to agency.

12. Sec. VII.A.4. A provision worth serious consideration would be something along the following lines: that the agency, upon a finding that the 90% standard set forth in the ordinance was not allowing for an adequate range of affordability, could reduce the maximum price below that level, after a further finding that such a reduction could be made without impairing the financial feasibility of developments subject to this ordinance.

?

This can only go so far trying to keep the balance -

13. Sec. VII.C.3. This section should be reworded to provide that individual rents can be either higher or lower than 90% of the base rent, as long as the average of the gross rents in any development not exceed 90% of the base rent. That way the rents can be individualized, and a wider spectrum of households reached. The provision given in (12) above, appropriately rephrased, should be considered for inclusion here as well.

14. Sec. VII.C.5. This appears to be two separate points. The provision embodied in the first sentence is clear, and reasonable. The second sentence does not appear to follow logically, and it is not clear what its purpose is. This should be reworded, so as not to give the impression that rents can fluctuate in an irregular fashion (if it is made clear that rents are individualized, this problem may not necessarily arise).

15. Sec. VII.D. This should be changed as follows:

a. The appropriate household size for a 2 bedroom unit should be a 3 (not 3.5) person household.

No comment

January 7, 1985

b. The appropriate household size for a 4 bedroom unit (if one is ever built) should be a 6 (not 6.5) person household.

The material contained in the interpolated footnotes should be deleted.

16. Sec. VIII.B. This is either wrong or unclear. The clear purpose of the restrictions, as I understand them to be, in the event of conversion of rental units to cooperative or condominium occupancy, is to preserve low and moderate income occupancy and affordability across the conversion process. Thus, at a minimum, the ordinance should provide as follows: if rental units are converted within 30 years of initial occupancy, the same number of low and moderate income units, respectively, must be maintained after conversion, subject to resale controls ensuring their continued affordability and occupancy for the balance of the 30 year period (or, alternatively, for a 30 year period beginning with the date the conversion becomes effective). The ordinance should also provide that any rental units must remain rental housing for some minimum term, which should be no less than ten years (and, arguably, in view of the effect on depreciation, perhaps no more than fifteen years).

I hope you find these comments useful. Please let me know if you need any more information, or need clarification of any of the points raised above.

cc: B. Williams, Esq.

As there is no requirement that any developer build rental units, I cannot see why they should be required to maintain units as rental. This alone could discourage any developer from even considering building rental units. The issue is not the # of LMI units remain the same, regardless of tenure - but displacement of low/mod inc. holders should be restricted - i.e., another rental unit found for them at right rent, or unlimited rental occupancy à la NYC.