

AFFORDABLE HOUSING AND ZONING TECHNIQUES

**Erie County Community Development Block
Grant (CDBG) Consortium**

Prepared for Erie County
Department of Environment and Planning

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FAIR HOUSING AND LOCAL LAND USE LAW HANDBOOK

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Introduction

The intent of this handbook is to provide local officials with information regarding fair housing and zoning and other land use controls available to further fair housing. As our region experiences demographic change, promoting fair and affordable housing within our local municipalities will become increasingly important in order to maintain a diverse housing stock that meets the needs of local residents and fosters stronger communities.

Erie County Department of Environment and Planning is responsible for administering Community Development Block Grant and HOME funds through the federal Department of Housing and Urban Development (HUD). As part of this responsibility, the County is required to prepare a report on *Analysis of Impediments to Fair Housing Choice in Erie County, NY (AI)*. The most current AI report was prepared by the Center for Urban Studies at the State University of New York at Buffalo, and accepted by the County in November 2008. An important finding of the AI report pertained to barriers presented by local zoning regulations in Erie County. Zoning can serve as a significant impediment to fair housing choice for many area residents.

This handbook is the result of a planning effort designed to address this issue. It includes information on how zoning presents impediments and presents alternative zoning options to promote fair housing choice. This planning effort also entailed a comprehensive training program for local officials concerning best practices in zoning tools. A series of 10 presentations were provided across the Erie County municipalities that are members of the Erie County Consortium. Section 3 of this handbook includes a printout of the powerpoint presentation used for these training sessions.

The fourth section of the Handbook provides some sample land use ordinances designed to achieve greater diversity, fairness and affordability of housing. The final section includes some relevant articles and reports, along with a bibliography of research consulted as part of this planning effort.

Fair Housing and Local Land Use Law

Introduction

Zoning and other land use laws have a major influence on housing. These regulations govern where housing can be built, the type of housing that is allowed, the form it takes and many other factors. Land use regulations can directly or indirectly affect the cost of developing housing, making it harder or easier to accommodate affordable housing. It is unusual that zoning ordinances are written to openly discriminate, but in many cases, the unintended consequences of certain regulations are to limit housing choice, unnecessarily increase the cost of housing, or otherwise reduce opportunities for fair and affordable housing.

Why Fair Housing?

The Fair Housing Act (FHA) was passed in 1968 for the purposes of providing fair housing throughout the United States. The law prohibits discrimination in the sale or rental of housing, as well as other related activities, such as advertising available units, or financing homes. Originally, discrimination was limited to race, color, religion, sex, or national origin. An amendment in 1988 added protections for persons with disabilities and families with children.

The law requires all executive departments and agencies with activities relating to housing and urban development “affirmatively to further” fair housing. Due to this provision, any municipality that accepts Community Development Block Grants or other funding through the Department of Housing and Urban Development (HUD) must comply with the Fair Housing Act, and must certify that they are furthering fair housing as a condition for receiving funds.

Who Must Comply?

Any municipality that receives HUD funds is responsible for certifying their compliance with the provisions of the FHA. In Erie County, municipalities receive HUD funds either directly, as what is known as an “entitlement community” or through being a member of a Consortium that administers the program on behalf of their members. In Erie County, municipalities receive HUD funds through one of the following groups:

- Amherst, Cheektowaga and Town of Tonawanda Consortium (includes the Villages of Williamsville, Sloan and Kenmore)
- City of Buffalo
- Erie County Consortium:
 - Cities: Lackawanna and Tonawanda
 - Towns: Alden, Aurora, Boston, Brant, Clarence, Colden, Collins, Concord, Eden, Elma, Evans, Grand Island, Holland, Lancaster, Marilla, Newstead, North Collins, Orchard Park, Sardinia, Wales and West Seneca

- Villages: Alden, Akron, Angola, Depew, East Aurora, Farnham, Gowanda, Lancaster, North Collins, Orchard Park and Springville
- Town of Hamburg (includes Villages of Blasdell and Hamburg)

What is Fair?

The FHA protects specific classes (race, color, religion, sex, national origin, family status, persons with disability). It does not specifically address income. In effect, however, there is a close relationship between fair housing and affordable housing, due to the overlap between these protected categories and income. As a result, affordable housing has become a proxy for fair housing. Housing is considered affordable if total housing costs (rent/mortgage payment; utilities; real estate taxes) comprise no more than 30% of the household income. Families are considered cost burdened if housing costs exceed 30%.

HUD has established income levels for very low, low, and moderate-income families, based on statistics for the region. For the Buffalo-Niagara region, these categories are as follows:

Category	% of Area MFI*	Income for Family of Four
30%	30%	\$19,600
Very Low Income	50%	\$32,650
Low Income	80%	\$52,250
Median Family Income (MFI)	100%	\$65,300

Source: HUD, for FY 2011

Persons are considered low income if the family income falls below the area’s median family income. Income levels are adjusted for family size. In Erie County, a family of 8 can qualify as low income with an income of \$69,000. Clearly, these incomes are not poverty levels, yet they can be too low to easily afford housing in some communities. Often, there is a stigma associated with ‘low income’ but as these figures demonstrate, many families could fall into this category, particularly young families, seniors, or families where one spouse stays home with young children. Minneapolis-St. Paul Minnesota has adopted the term “life cycle housing” in referring to affordable housing to emphasize that discriminatory practices are harming the children and parents of existing residents of their communities.

Demonstrating Compliance with FHA

The major tool for demonstrating appropriate compliance of fair housing planning is the Analysis of Impediments to Fair Housing Choice (AI). This document looks at the range of impediments, or barriers, to fair housing choice that exist throughout the community and recommends actions that would address or overcome those barriers. In Erie County, the Erie County Community Development Block Grant Consortium and the Towns of

Amherst, Cheektowaga and Tonawanda sponsored a joint AI. It was prepared by the State University of New York at Buffalo and Housing Opportunities Made Equal (HOME).

Impediments to fair housing choice are defined as:

- Any actions, omissions, or decisions taken because of race, color, religion, sex, disability, familial status or national origin which restrict housing choices or the availability of housing choice.”

~ or ~

- Any actions, omissions, or decisions *which have the effect of* restricting housing choices or the availability of housing choice on the basis of race, color, religion, sex, disability, familial status or national origin

While overt discrimination has not been totally eliminated, impediments to fair housing choice are more often the unintended result of the actions that have the *effect of* restricting choice. Often, these actions were undertaken for legitimate reasons and their impact on housing choice was never part of the decision-making process. Nevertheless, a community can be found liable for actions that result in restricting housing choice, even if that was not the intent of the action. As an example, if a local zoning ordinance is so restrictive that it results in an inability to provide fair or affordable housing, that ordinance would constitute an impediment that must be addressed. Because of the real likelihood that local policies, procedures or regulations could have a discriminatory effect, communities are encouraged to take a proactive approach to looking at their practices to make sure they are fair to all residents.

Many states take a comprehensive, statewide approach to fair housing. In New Jersey and Connecticut, municipalities are required to address the issue of fair and affordable housing, with each community assigned a specific ‘fair share’ of providing housing for low-income residents. California and Florida both require local comprehensive plans to address the issue of affordable housing. In Massachusetts, a State law (General Law Chapter 40B) allows developers of affordable and mixed-income projects to by-pass local zoning requirements in communities where less than 10% of the Town’s housing stock is considered affordable, if 20% of the proposed units will be affordable units.

In New York State, there is no specific State law or policy requiring fair housing, but the State has passed enabling legislation that authorizes local municipalities to implement a variety of innovative approaches. The responsibility for furthering fair and affordable housing has been left to the local level.

Fair Housing and Zoning

A locality’s zoning can have a very real effect on the availability of affordable housing. A study in 2000 determined that a ‘heavy’ regulatory environment can add 17% to the

cost of rents and 51% to home values. A study in 2003 concluded that the strictness of a community's zoning is highly correlated with higher housing costs.¹

One of the first cases establishing the link between zoning and fair housing was a lawsuit in New Jersey: the South Burlington County NAACP v. Mt. Laurel Township, NJ (1975), also known as Mt. Laurel I. The NAACP sued the Town because the town's zoning had the effect of making it physically and economically impossible to provide low- or moderate-income housing in Mt. Laurel. The Town's zoning was found unconstitutional. As a result of the Mt. Laurel ruling, in companion with a follow-up case known as Mt. Laurel II in 1983, each community in New Jersey is required to provide their "fair share" of affordable housing for the region. New Jersey passed a State Fair Housing Law in 1985 that established the Council on Affordable Housing (COAH) to help enforce this requirement.

In New York State, the connection between zoning and fair housing was established in the case of Berenson v. Town of New Castle (1973). The Town of New Castle did not permit multi-family housing under its zoning code. A land developer sued on the basis that this prohibition was discriminatory. The courts held in Berenson that municipalities may not practice "exclusionary zoning", and established a two-prong test to assess the reasonableness of local zoning ordinances. The municipality must demonstrate that it has considered and met expected housing needs of its residents; and it must also take regional needs into consideration. Unlike the Mt. Laurel case, however, Berenson did not establish any quantitative measures for what is 'fair.' Each case must be evaluated on the individual circumstances as to whether it is reasonable.

Changing Attitudes: Westchester County

The most direct connection between housing and zoning was established in the recent Westchester County case. The requirement to affirmatively further fair housing ("AFFH") as a condition for receiving federal HUD moneys has been in place since the passage of the Fair Housing Act, but the federal government did not set specific goals for compliance. Communities routinely certified that they were meeting their AFFH requirements without having to demonstrate specific proof.

In 2007, Westchester County was sued by the Anti-Discrimination Center, a nonprofit housing group, on the basis that the County was not meeting their federal requirement to address fair housing in a proactive manner. A major argument in the case was that local zoning and land use approval processes in many of the wealthier municipalities in the County were deliberately exclusionary, resulting segregation and a lack of racial diversity.

Rather than continuing to fight the case in court, in 2009 Westchester County entered into a \$62.5 million settlement. As part of the settlement, Westchester County agreed to spend

¹ Both studies are cited in "Why Not in Our Community? Removing Barriers to Affordable Housing, US Department of Housing and Urban Development Office of Policy Development and Research, 2007.

\$51.6 million over 7 years to create 750 below-market rate units in 31 of the County's communities that had the lowest proportion of black and Hispanic residents. Part of the settlement also required the County to return HUD monies obtained during the period under dispute, although HUD allowed the county to use some of those monies to help fund the \$51.6 million affordable housing fund.

The importance of the Westchester ruling is two-fold. First, it establishes the precedent that a community could be forced to give back millions of dollars in community development block grant and housing funds if they are found to have not met their duty to affirmatively further fair housing. Second, it defined this duty in terms of specific targets (numbers of units).

As of the summer of 2011, the County had made significant progress on constructing the required new units. There were 164 units approved: 154 with financing in place and 107 with building permits. These numbers exceed the terms of the agreement, which required financing for 100 units and permits for 50 units by the end of 2011. An additional 102 units are in the approval process. In Westchester County, where incomes are typically fairly high, a family of four with an income of \$106,500 is eligible for these units.

While Westchester County has moved forward on constructing new units, the County is currently battling HUD over what is required to affirmatively further fair housing. HUD is arguing that the county's Analysis of Impediments needs more specificity, particularly in regard to how the county intends to overcome the identified barriers to its goals. The most controversial issue being disputed is the county's role in encouraging local communities to adopt fairer land use policies and zoning regulations. HUD is asking for specific strategies that the county will undertake to overcome exclusionary local zoning practices and promote greater housing choice across the county. Despite traditional deference to local home rule in New York State, the Berenson case clearly established the precedent that local zoning can be overturned if it is exclusionary and does not take into consideration the housing needs of the region.

This report is partly motivated by a desire on the part of the Erie County and the Amherst-Cheektowaga- Tonawanda Consortiums to demonstrate a good faith effort to encourage local municipalities to consider their duty to promote fair housing, and to educate the population and localities about their rights and obligations under the FHA.

Analysis of Impediments in Erie County

The AI for Erie County looked at a range of data and obtained input from several focus groups and a variety of housing stakeholders. It identified a number of barriers in Erie County to fair housing. These included the following:

- The composition of planning and zoning boards suggests underrepresentation of minority individuals or persons with disabilities.
- There is a limited supply of subsidized rental units for families and low-income residents.

- Inadequate CDBG resources are being allocated to fair housing activities or to tenant/ landlord counseling.
- There is a need for greater coordination among available housing programs assisting low income groups, minorities and persons with disabilities, particularly among CDBG recipients (consortiums and entitlement communities).
- NFTA’s fare structure does not offer discounts to low-income residents unless they are seniors or disabled.
- Families, particularly families with children, are underrepresented among recipients of Section 8 housing subsidies.
- More information is needed on patterns of predatory lending.
- Local zoning ordinances do not adequately address fair housing needs.

The AI provides a number of strategies for addressing these impediments. This report focuses on the last finding. The following sections provide some ideas for local municipalities on ways they can ensure their land use controls are not barriers to affordable housing in their communities, along with strategies for encouraging more inclusive practices. These strategies can help promote greater diversity of housing types for all ages, incomes and family types.

Land Use Strategies for Furthering Fair Housing

A. The Comprehensive Plan

The Comprehensive Plan can be a very effective tool for furthering fair housing goals. It is in the best interest of a community to promote fair housing in order to assure a diversity of housing types to accommodate a range of family types, ages, and preferences. It is clear that changing demographics nationally suggest a changing demand for housing. Trends suggest more demand for smaller homes, for quality rental units, condominiums and for greater diversity in housing stock in general. Communities that have planned for these changes will be stronger and more resilient into the future. Housing quality, affordability and choice are not just issues of fairness, but contribute community viability. The municipal comprehensive plan should provide for a range of housing styles, prices, and configurations to widen choice in location, type and affordability to all members of the community.

The comprehensive plan should include a profile of existing housing types (single-family, two-family, apartments, ownership, rental, etc.) and prices in order to identify where there may be gaps. The goals of the plan should explicitly address housing issues and set forth locally appropriate objectives. Visioning and public outreach in developing the comprehensive plan can be an important tool to educate community leaders about why fair housing is important. “Lifecycle Housing” can help ensure that

youths and seniors can find housing in their hometowns, and that workers at local businesses can live close to work if they so choose.

The document should include policies and strategies for increasing the availability of affordable housing, filling identified gaps in housing types and ensuring appropriate housing is available to a wide range of citizens. The plan should also identify appropriate areas for different types of housing, ideally sited near shopping, schools, and services, and served by appropriate infrastructure and transit (if available). If a municipality fails to identify areas suitable for housing, it could be forced to allow it in an area where it is not appropriate, if sued.

It is also recommended that the plan address policies supporting the renovation and improvement of the existing housing stock. Substandard housing contributes to community decline, while renovated housing stock can help a community meet fair housing goals in an affordable manner. Research demonstrates that high quality renovations, as well as new affordable housing projects, can result in increased property values in the surrounding neighborhood. Energy efficiency improvements also can be an important tool for lowering total housing costs. Depending upon the community, other options could be policies or strategies in support of infill housing (new units built on vacant or underutilized properties in existing developed neighborhoods), conversions (converting older public/ institutional or commercial buildings into residential use) and/or mixed uses (residential units in commercial buildings, such as second floor apartments over a retail strip).

Specific implementation tools including zoning, subdivision regulations, regulatory procedures and other actions that municipalities can undertake are addressed below.

B. Zoning Strategies

There are two issues with a community's zoning in regard to affordable housing. First, there are a number of zoning provisions that can discourage the development of affordable housing. Communities should review their zoning ordinances to see if they inadvertently include some of these provisions. Second, a community can use zoning techniques to proactively encourage the development of a wider range of housing choice.

1. "Exclusionary" Zoning (Obstacles)

Quite frequently, a community may prohibit housing choice not through design, but through neglect. For example, many rural towns do not provide for multi-family housing. Elements to consider include:

- ***Are maximum densities set at the right level, based on what is appropriate for your community and the carrying capacity of the land?***

Not all areas are appropriate for higher densities. On the other hand, density does not need to mean high-rise apartments. There are creative ways to accommodate more units on less land, which helps keep housing costs down. Overly large lot requirements can quickly 'use up' available land for housing.



Small lot homes

- ***Multi-family housing: is it allowed by right anywhere in your community?***

Many codes do not provide for any type of multi-family housing, or if it is allowed, it must go through a special permit process that tends to add time, and therefore cost, to its development. As with the case of density, multi-family housing is not necessarily appropriate everywhere, but multi-family housing can include two-, three- or four-family homes, residential in converted schools, or small apartment buildings. Housing in many older communities routinely had a mix of single-family, two-family and multi-family units side by side in the village core. Appropriately designed multi-family housing can be very compatible with other residential development.



Multi-family developments can look like traditional housing

- ***Are your standards for setbacks, frontages and other factors appropriate?***

Standards for setbacks, minimum frontages can add costs to development. A study in Wisconsin found that increasing required minimum frontage by only 10 feet increased prices by 6% to 8%.² Added distance means added costs for pipes, paving, curbs, sidewalks and other infrastructure. Excessive lot widths also do not promote walkable communities. Particularly in village and hamlet centers, smaller frontages and setbacks can promote a better sense of community, as long as health and safety considerations are met.



Homes with small setbacks, frontages

- ***What is a “family”?***

Many zoning codes include a definition of a family that may unintentionally discriminate against group homes for persons with handicaps. As long as the impacts are no greater than would be expected from a standard household, the community should not subject these types of facilities to differential standards.

- ***Think about your other requirements.***

Many communities require a minimum unit size, particularly for multi-family housing. If these are included in the zoning, they should be based on health and safety issues. As the demand for smaller units increases, the minimum unit size in your zoning code may no longer be appropriate. Minimum parking requirements may also be excessive, particularly for apartments located in a

² Green, as cited in “Why Not in Our Community? Removing Barriers to Affordable Housing, US Department of Housing and Urban Development Office of Policy Development and Research, 2007.

downtown area where allowances could be made for sharing the parking with adjacent commercial properties, or where transit is available.

Zoning in some communities may specify specific building materials, landscaping or other amenities, such as garages. While these requirements may be appropriate, they may not be needed in all areas. Utilization of these types of design standards should be a conscious choice, applied where needed, not wholesale.



Smaller unit multi-family side-by-side with single family housing

- ***Manufactured Housing: Not the same as Mobile Homes***
Many codes either do not allow or actually prohibit manufactured housing. While this policy made sense when building standards for mobile homes were fairly lax, manufactured housing is now subject to HUD regulations that make this housing type as safe as standard construction. Manufactured or pre-fab housing can be built much more affordably, and increases options.



Manufactured Housing

2. “Inclusionary” Zoning (Incentives)

There are affirmative zoning techniques that municipalities can implement to promote greater housing choice.

- *Mixed Use Zones/ Neo-Traditional Zoning:*

Traditional development included a mix of uses, with stores, homes and businesses clustered together. With the advent of zoning, uses were segregated, which had benefits (separation between industry and housing) but is not always necessary. In many older villages, the existing buildings are “grandfathered” non-conforming uses which could not be rebuilt if they were burned down. Allowing mixed uses provides much greater flexibility in choice. It would allow apartments over stores, which can help make downtown retail financially more viable. It would support the conversion of a former school or church into housing.



Mixed uses in the Village of Lewiston

The Town of Clarence adopted a Traditional Neighborhood Development Zoning district that promotes mixed uses and accommodates new uses that are compatible with the traditional development patterns of the hamlet areas. The intent section directly supports a mixture of uses and mixed-use structures. If the site has shared parking agreements, lot coverage (all buildings and impervious surfaces) may be increased from 60% to 85% of the lot.

<i>Article 7</i>	TRADITIONAL NEIGHBORHOOD	TND
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229-57 INTENT

The purpose of this district is to require the usage of traditional neighborhood design criteria within the boundaries of the district in order to implement the principals of the Town's adopted comprehensive plan. This district is intended to achieve the following:

- A. Provide incentives to encourage the adaptive reuse of existing structures.
- B. Allow and encourage a mixture of uses and mixed-use structures.
- C. Accomplish and continue a sense of community.
- D. Provide a walkable, pedestrian friendly environment.
- E. Respect and preserve unique natural features within the district.
- F. Provide design regulations that encourage compatible building arrangements, bulk, form, character, and landscaping to establish a livable, harmonious, and diverse environment.
- G. Discourage the demolition of existing structures that posses significant historic or other essential elements that contribute to the character of the district.
- H. Create a small town, historic style business district that limits large scale, out of character commercial developments.

229-58 PERMITTED USES

The following uses are allowed as vested rights in facilities measuring no more than ten thousand square feet (10,000 sq. ft.) in gross area:

Personal service shops	Professional offices
Small retail shops	Diners or small restaurants
Banks	Churches
Mixed-use buildings	Single-family residences
Community facilities	Two-family residences
Second-floor multi-family dwelling units	Bed & Breakfast Inns

Town of Clarence Traditional Neighborhood district (excerpt)

- ***Incentive Zoning***

Many communities across the country have adopted incentive zoning to encourage the provision of affordable housing. Incentive zoning can be mandatory or voluntary. Areas with high housing costs, such as Boston, California, or the Washington, D.C. area, are more likely to have mandatory programs. For example, California state law requires that municipalities offer density bonuses to developers building affordable or senior housing. In New York State, incentive zoning is voluntary and at the discretion of the local community.

If incentive zoning is mandatory, a developer is required to provide a specific amount of affordable housing in a new residential project, although the requirement usually does not apply to smaller projects. Typically, the proportion of affordable housing is set at 10 to 25% of the

units, but the specific amount required varies from community to community, and can be higher. Typically, units must be affordable to families earning “moderate incomes” as defined by HUD standards, although some areas require set asides for lower income households, particularly for rental projects. Often, the value of incentives is directly tied to the proportion of affordable housing being provided.

The general preference is for affordable units provided on-site, mixed in with market rate housing, although sometimes the lower rate housing can be built off-site, at another location. Some legislation allows cash payments in lieu of construction, which gives the locality greater flexibility in siting and developing the proposed affordable units.

Voluntary incentive zoning establishes incentives, such as a density bonus, to encourage developers to include affordable units in their project. For either mandatory or voluntary programs, a variety of incentives can be offered:

- Density bonuses (allowed to put more units than zoned)
- Reduced setbacks or design standards such as street widths (helps reduce infrastructure costs)
- Increased heights (to accommodate an extra floor of units)
- Flexibility on open space requirements (to accommodate creative site planning)
- Expedited approval process (to reduce development costs associated with delays)
- Greater flexibility in the types of uses allowed (can help the fiscal feasibility of a project)
- Reduced parking requirements (particularly for properties in a developed area, such as a downtown or a village center, or for projects near transit)
- A variety of financial incentives: reduced permit fees, local property tax abatements, assistance with installation of infrastructure, other subsidies.

In practice, given the range of variables (types of incentives; income limits; triggering factors (i.e. size of project); rental vs. ownership; duration of affordability requirements, etc.) each inclusionary zoning code is different. Often, communities who offer incentive zoning target it toward residents who live and/or work in the community, such as public employees (police, fire, teachers) or low-wage employees (retail, restaurants, etc.) Incentive zoning is also frequently used to help promote new housing for the elderly.

New York State enabling legislation allows incentive zoning for Cities, Towns and Villages (City Law §81-d; Town Law §261-b; Village Law §7-703). The enabling legislation leaves a great deal of discretion to the municipality. Bonuses explicitly mentioned are adjustments to allowable density, area, height, open space, use, “or other provision of a zoning ordinance or local law for a specific purpose authorized” by the legislative body. Incentive zoning is allowed not only for low- to moderate income housing, but also for parks, elder care, day care or other “specific physical, social or cultural amenities”. Cash payments in lieu of specific benefits are also authorized. This flexibility means that incentive zoning programs in New York State can be tailored to the specific needs of the community.

Incentive zoning can be attached to specific geographic areas of the municipality. Some communities have created a floating zone or zoning overlay to allow incentive zoning.

- ***Accessory Apartments***

One way to accommodate ‘life-cycle’ housing is to allow accessory apartments, or “in-law” apartments. These units are generally small, one-bedroom apartments with their own kitchen and bathroom facilities, attached to single-family homes. They can be located in an addition to the primary unit, or constructed in converted space, such as the attic, basement or former family room. The intent is to allow intergenerational living, providing living space for elders or youth to live in a situation where they have independence, but can rely on the family support system. In exchange, rents on the units can help out the primary home owner.



Homes with Accessory Units typically look like single-family homes

Accessory units offer affordable units that blend in with the existing neighborhood. They present no additional infrastructure costs to the community, since these services are already being provided to the primary residence. These types of units are particularly useful as a means to increase the diversity of housing in communities where there is a shortage of land available for development, such as built out villages and cities. While they are frequently occupied by family members, they can be rented out to other small households.

Regulations governing accessory apartments can be “by-right” or by special use permit. Generally, the regulations address potential impacts by establishing criteria for the unit. These criteria can include maximum unit size, minimum lot size, off-street parking requirements and allowable number of bedrooms. Usually, the property owner must live in one of the units (primary or accessory). Ordinances often limit the structure to one main entrance. Case studies demonstrate many communities offer incentives to encourage accessory units. These incentives include loan programs, tax incentives, streamlined permitting, and reduced development fees. Barnstable, Massachusetts even offered an amnesty program for non-conforming existing accessory units.

Accessory apartments can also be detached units, located on the same parcel as the single-family homes, but in structures separate from the main home. They can be self contained cottages or constructed over an existing accessory structure, such as a garage. As with the attached accessory units, they are generally limited in size. This approach was common in the era before zoning, and carriage houses and guest cottages are frequently seen in older cities or villages.



Detached Accessory Apartment over a garage

- ***Elder Cottages/ “ECHO” Housing***

Elder cottages are a subcategory of Accessory Apartments that are intended for temporary use. These units can also be known as “Elder Cottage Housing Opportunities” (ECHO), or “Granny Flats.” It is actually a traditional concept, stemming from the Amish custom of the “grossmutter haus,” a small house next to the main house for the elders of the family. In its modern incarnation, elder cottages are factory-built, self-contained cottages that are installed on the site of a primary home. The units are generally very small, in the range of 550 to 950 square feet, or comparable to the size of a senior apartment. Targeted for seniors, they are designed to accommodate mobility constraints, with wider doorways, elevated toilets, etc.

The concept for ECHO cottages, as noted above, is that they are temporary, and can be removed from the site when no longer needed. They are designed to be relocated and are often placed on a wood foundation, rather than on a more permanent concrete base, to facilitate recycling of the units. However, the secondary market for the units can be problematic, and a dedicated housing entity to manage this aspect is recommended. In some areas, ownership of the units remains with the housing entity, not the property owner, in order to facilitate future relocations. In New York State, Better Housing for Tompkins County offers an ECHO program.



Elder Cottage in Pennsylvania

A report by HUD³ noted that one of the main constraints associated with ECHO housing is zoning issues. Often, zoning bans temporary structures. In communities where only enumerated uses are allowed, the units may be prohibited by default, due to the code's silence on the concept. Many communities allow only one unit per parcel in most of their residential zoning districts.

Studies of zoning ordinances addressing ECHO housing show these codes address a number of issues. In many cases, these issues also apply to Accessory Apartments.

- Size of the unit: jurisdictions often set maximum and/or minimum unit sizes. These can be based on set square footages, on percentages of the main house, or on square footage per occupant.
- Lot size and lot coverage: often regulations require a minimum lot size and/or a maximum lot coverage, to discourage a unit from being placed on a parcel that is too small to accommodate it.
- Number of units: typically, only one unit is allowed, although Wellfleet, Massachusetts allows up to three Accessory Apartment units if the parcel is large enough to accommodate them.
- Setbacks/placement: setbacks apply to distance from lot lines, and also distance from the main structure. Often, accessory units must be placed on the rear of the lot, where they are not visible from the street. Setbacks can be a challenge. For example, too large a setback from the side yard can force a unit to the middle of the lot, effectively taking away usable back yard space.
- Occupancy: regulations may limit the number of people who may occupy an ECHO unit. They may limit their use for seniors only. They may specify that one unit must be owner-occupied, and/or the other unit occupied by a relative. Montclair, New Jersey allows Accessory Apartments only when the additional dwelling unit is for parents (not children), and requires annual certification.
- Parking: often, regulations require at least one additional parking space, although if the unit is for a disabled or elderly relative, this requirement may be excessive.
- Neighborhood Character: zoning for Accessory Apartments often include design standards to ensure the units are compatible with the surrounding neighborhood. These requirements can be problematic for ECHO units, which are generally manufactured off-site. Some regulations restrict the total number of ECHO units

³ Koebel, C.Theodore; Beamish, Julia; Danielson-Lang, Karen; Steeves, Jeannette. *Evaluation of the HUD Elder Cottage Housing Opportunity (ECHO) Program*. October 2003.

allowed within an area, although the concept is new enough that these limits have rarely been reached.

- Density: Zoning for ECHO units should directly address the issue of density. Advocates argue the units are intended for temporary use only and should not be included in density calculations. In very dense areas, they may not be feasible.
- Permitting: some communities have streamlined the application process for these units. They can be allowed by right, which reduces time required in obtaining a special use permit. East King County, Washington has a policy of providing approvals within 60 days of an application. Some communities have a lower fee structure for these types of units.

- ***Cottage Communities***

Some municipalities have experimented with clustering ECHO units, or site-built cottages to create communities, typically for seniors or disabled residents. Clustering the small units makes it easier for caregivers to provide services to residents.

These cottage communities can be allowed as a special zoning district, in a specific location, or they can be allowed through a zoning overlay. Zoning for this type of development needs to adjust allowed density and required lot sizes. If it is a special zoning district, provisions could establish maximum unit sizes and/or maximum lot sizes. The Town of Langley, Washington, allowed twice the density for subdivisions that clustered small homes (less than 1000 square feet) around a common area.



Cottage Community

- ***Affordable Housing Floating Zone***

Some communities have created floating zones that can facilitate the development of affordable housing. The language of the zone specifies standards (setbacks, densities, etc.) which pertain to affordable or senior housing, but since the regulations are “floating zones,” they are not attached to a specific geographic area of the town, but are applied to the relevant property when a project is proposed. The municipality can specify areas that are appropriate for the floating zone. For example, the City of New Rochelle, New York has an Affordable Housing Floating Zone in support of housing for seniors and for low- to moderate-income families. The zone can be applied to properties within the higher density residential zones, non-residential zones or in designated urban renewal areas.

- ***New Urbanism / Form Based Codes***

Standard zoning is organized around uses, and districts are distinguished from each other largely in terms of allowable/ prohibited uses and density. Under Form Based Codes, the focus is not on use or density, but on the form, or design, of the built environment within the district. Form based codes regulate building placement (setbacks, lot coverage, etc.), building form (height, window coverage, etc.), the location of parking, public spaces standards, and public improvements, such as roadways and sidewalks. The logic is that if the appearance of a structure is compatible with the area, it doesn't matter what use is occurring within it. Generally, the form of the building constrains uses. For example, if buildings are limited to a certain size, it precludes big-box or industrial development.

Form based codes were developed as a reaction against the lack of design guidance in standard zoning. In many communities, traditional zoning standards did not allow traditional (pre-zoning) development. This meant downtowns or village centers found it difficult to encourage new development in a style consistent with their existing properties. Form based codes tend to support “new urbanist” style of development, where development styles mimic traditional development patterns, creating a greater sense of community, and promoting walkable neighborhoods.

Form based codes are designed to provide rules to guide new development to occur in a manner that is consistent with the community's preferred development pattern. They provide a much greater level of detail than standard zoning on issues such as what the buildings look like, how they are placed in relation to the street, streetscapes, public spaces, and roadway characteristics. They may specify width of sidewalks, spacing of street trees, window patterns on buildings (no blank walls), and other physical characteristics that make up how buildings relate to the space

around it. In particular, there is an emphasis on public spaces and how they relate to the character of the community. To properly create a form-based code requires a significant investment in public visioning to develop the form that is appropriate and preferred for each particular area, but once that process is completed, the specificity of the code helps facilitate subsequent project reviews.

Form based codes do not directly relate to affordable housing, and in most cases, they have been applied in areas where property values tend to be high. However, because form base codes offer greater flexibility in use, they can promote developments that offer a wider range of options. Form based codes encourage a mix of uses, including mixed uses within a structure, making it easier to get around without the expense of a car. They also support a greater variety of unit types, since all uses are allowed if properly designed, and creative approaches such as attached housing, live-work units, and accessory units are easier to accomplish.

It has been noted that shifting to a form based approach tends to increase the development value of land, since it provides predictability to the development process and allows greater creativity and flexibility. This increased value is the direct result of the significant public investment required to develop the code, through community input, visioning and designing the regulating plan, the building form standards, the public space standards and other provisions guiding future development. The Florida Housing Coalition has argued that communities should look to recoup this community investment by requiring that a certain proportion of new units in future residential projects be designated as affordable units.



HOPE VI Affordable units in Florida developed with new urbanist design

C. *Subdivision Regulations*

Subdivision regulations regulate how land is divided into smaller parcels. They provide the rules for how lots, streets, infrastructure and other aspects of a development are designed. The purpose of subdivision regulations is to ensure that when land is parceled out, the new parcels have adequate services and do not create health or safety concerns. Issues that the regulations address include adequate infrastructure service (water, sewer or septic); adequate access (streets, sidewalks); community amenities (parks, playgrounds); and environmental features (wetlands, floodplains, drainage, etc.) Subdivision of a parcel must be consistent with the area's zoning, and parcels cannot be smaller than allowed under the zoning.

Subdivision regulations can have a significant impact on the character of a community, and can support or hinder local efforts at furthering fair housing.

- ***Conservation Subdivision/ Cluster Zoning***

Conservation subdivision, also known as cluster zoning, is where the land is allowed to be subdivided in a manner where lot sizes are smaller than prescribed under zoning, in exchange for saving large areas of open space. The overall density must remain the same: in other words, no additional units are permitted than would be allowed under the standard zoning layout. However, this approach promotes the conservation of important environmental features, such as woodlots or attractive open space.

Conservation subdivision concentrates the developed area, which lowers costs of infrastructure (roadways, water/sewer pipes), while preserving important natural features, such as wetlands, woodlots or open space. While conservation subdivisions are typically promoted for their environmental benefits, they can also be a useful means for lowering the



Standard vs. Conservation Subdivisions



costs of a development. By allowing smaller lots, they facilitate smaller, more affordable homes. They also help promote greater housing choice. Often, the design of the subdivision incorporates community amenities such as walking trails or community gardens. To the extent that walkable communities help reduce transportation costs, this pattern of development can benefit lower income residents.

- ***Public Improvement Standards***

Subdivision regulations include specific guidelines governing the design of public improvements. These features, such as roadways, curbing, gutters, waterlines, sewer lines, sidewalks, etc. are typically built by the developer and then dedicated to the municipality. Therefore, municipalities have a vested interest in ensuring that these improvements, which will become publicly-owned assets, are built to appropriate standards. However, sometimes the standards can be overly generous, increasing costs without necessarily adding benefit. For example, roadway widths are often wider than is necessary. Wider roads not only directly increase development costs (cost of paving), they also decrease the amount of land available for parcels, and tend to increase auto-dependence. While initially, the motivation for road widths may have been safety and congestion, new thinking is that narrower roads can be preferable. They can actually be safer, because motorists tend to drive faster when lanes are wider, and they can reduce congestion as people feel safer walking or taking bikes.

Communities should carefully evaluate whether their public improvement standards are appropriate, or whether alternative standards may be sufficient in some cases. A flexible approach may accomplish community goals more efficiently.

D. Procedures

Time is money – expediting process helps keep development costs down. Communities should look carefully at procedures for subdivision and zoning. Often, new regulations or processes are layered on top of existing ones, where new standards and procedures are added without ever repealing the existing ones. This leads to confusing, duplicative procedures, where the complexity is unintended and does not have a useful purpose. A more aggressive approach is to streamline processes, particularly for development types the community desires, such as fair housing.

Applicants incur additional costs if they must go through the special use permit process. There may be areas in the community where doubles, triples, and/or multi-family homes may be allowed by right. These may be developed areas where the municipality wants to encourage redevelopment or infill development.

E. Additional Techniques

There are additional techniques a community can take to encourage fair housing for all residents.

These include:

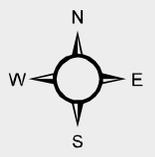
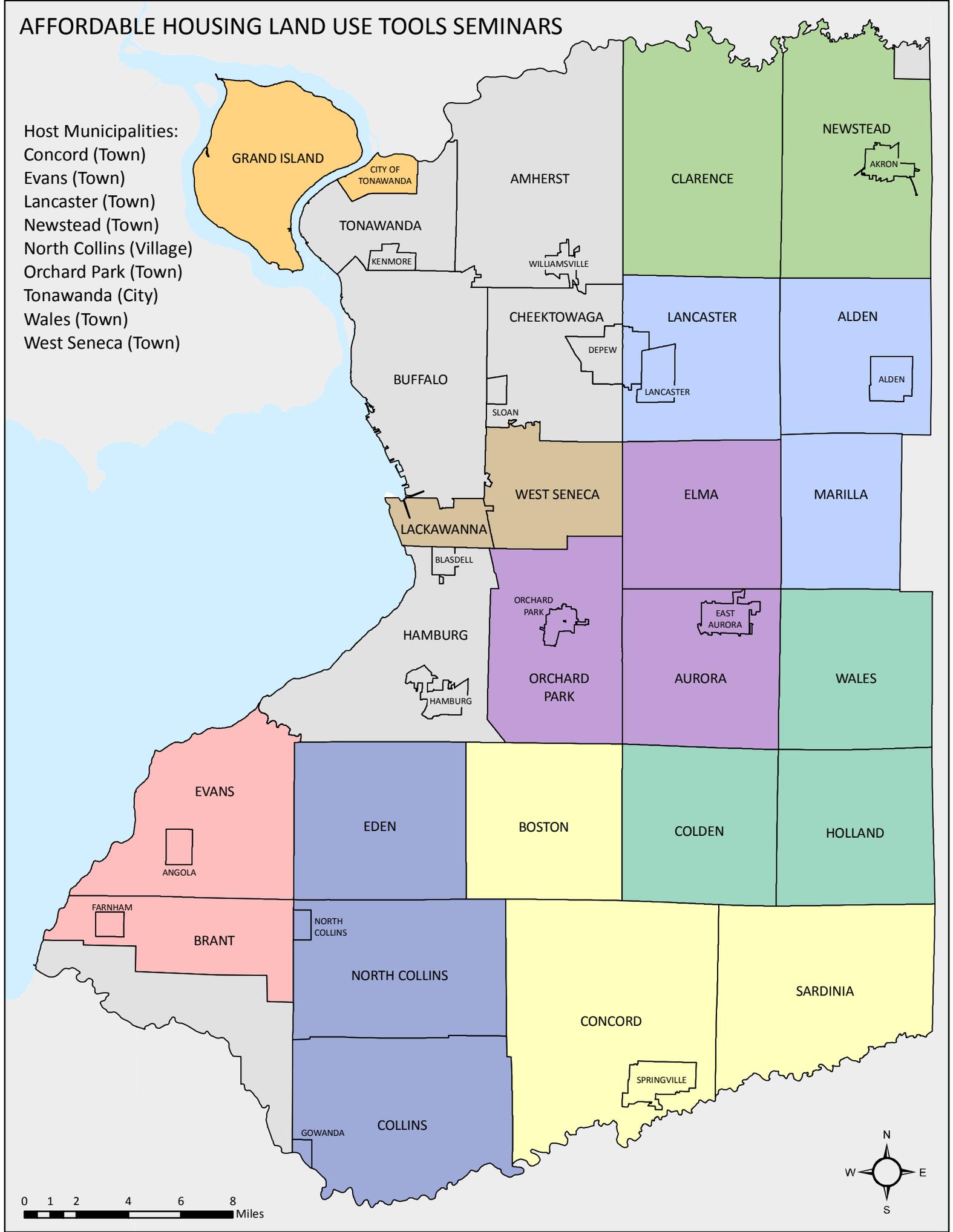
- Education: to overcome community opposition, encourage greater diversity.
- Capital Improvement Projects/ Grants: to underwrite public infrastructure, clean up brownfields for redevelopment, implement energy efficiency improvements, develop affordable housing.
- Financing/Taxing Incentives: to help make affordable projects financially feasible.
- Energy efficiency: to help reduce total housing costs.
- Public Demolitions: to clear properties.
- Land banking: to assemble properties.
- Donate Public Surplus land: for use for affordable projects.
- “Universal Design”: encouraging design that accommodates a range of abilities (e.g. wider doorways, door handles instead of knobs, manageable thresholds, etc.) can help seniors stay in their existing homes longer.
- Comprehensive Housing Services: Counseling, rehabs, renovations, down payment assistance, etc.

Also, greater attention is being given to the concept that affordability metrics should take transportation costs into consideration in addition to housing costs. While total housing costs should not exceed 30% of a household’s budget, total housing plus transportation costs should not exceed 45%. Particularly with rising gas prices, compact development has wider benefits. Transportation costs can be a huge cost burden on families, particularly low- to moderate income families. As communities encourage ‘smart growth’ policies that make it easier to walk to the store or take transit to your job, they can help alleviate these high costs. It is possible to spend more on appropriate housing when transportation costs can be lowered.

Fair and affordable housing is an equity issue. Many people, over the course of their lifetime, cycle through periods when they could benefit from a wider choice of housing styles, prices and options. Municipalities who can encourage this wider choice will be serving their residents and stabilizing their future.

AFFORDABLE HOUSING LAND USE TOOLS SEMINARS

- Host Municipalities:
 Concord (Town)
 Evans (Town)
 Lancaster (Town)
 Newstead (Town)
 North Collins (Village)
 Orchard Park (Town)
 Tonawanda (City)
 Wales (Town)
 West Seneca (Town)



AFFORDABLE HOUSING AND ZONING

Erie County Community Development Block
Grant (CDBG) Consortium



Why Fair Housing?

- Fair Housing Act (1968):
Prohibits discrimination in sale or rental of housing on the basis of
 - Race
 - Sex
 - Color
 - National Origin
 - Religion
- 1988 Amendment:
Adds protection for persons with disabilities, families with children



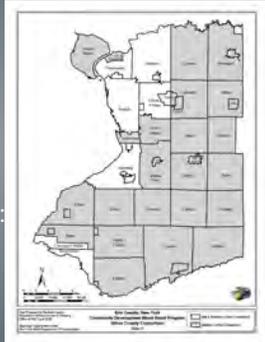
Who must comply?

- Any municipality that receives HUD funding must certify their compliance with the Fair Housing Act.



HUD Recipients: Erie County

- City of Buffalo
- Amherst-Cheektowaga-Town of Tonawanda Consortium (A-C-T)
- Hamburg
- Erie County Consortium: all other cities, towns and villages



“Fair” vs. “Affordable”

- “Fair” = no discrimination
- “Affordable” = Housing costs total no more than 30% of the household's income



What is “low-income”?

Category	% of Area MFI	Income: Family of Four
30%	30%	\$19,600
Very Low Income	50%	\$32,650
Low Income	80%	\$52,250
Median Family Income (MFI)	100%	\$65,300

Source: HUD, FY 2011



Approaches Vary

- New Jersey, Connecticut – “Fair Share”
- Massachusetts – “Anti-Snob Zoning Act” (40B)
- California, Florida –

Require housing element in Comp Plans



Approaches Vary

- New York State- **no specific policy or law**
- ✓ Responsibility left to the local level
- ✓ Berenson v. New Castle: Zoning must not be exclusionary



Federal Policy is Changing

Westchester County Settlement
Agree to “Affirmatively Further Fair Housing” (AFFH) as a condition to CDBG Funds

\$62.5 million settlement, including pay back of HUD funds

County agreed to invest \$51.6 million in affordable housing projects



Westchester Update

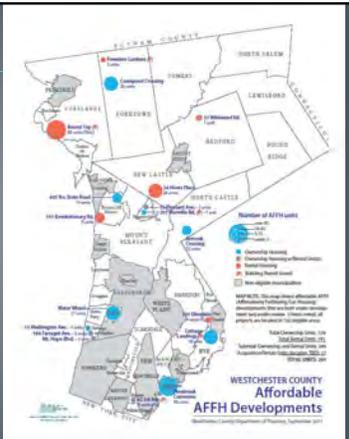
- 164 units approved: exceeds agreement
- HUD still battling County over Analysis of Impediments, measures to overcome barriers
- Key Sticking Point: Zoning



Westchester Update



Affordable Housing: Westchester County, NY



Strategies: The Comprehensive Plan



Strategies: Comprehensive Plan

Comprehensive Plan Intent

- f. The town comprehensive plan is a means to promote the health, safety and general welfare of the people of the town and to give due consideration to the needs of the people of the region of which the town, village and city is a part.



Strategies: Comprehensive Plan

Tools:

- Inventory
- Visioning/ Public Outreach
- Goals
- Policies/ Strategies:
 - Affordable, diversity, improve existing housing stock, energy efficiency, infill, conversions, mixed use)
- Future Land Uses: where to put it



Comprehensive Plan: Inventory

Existing Conditions:

- Housing cost
- Housing type (doubles, apartments, etc.)
- Tenure (owner/ renter)
- Household income
- Family structure
- Age, etc.

Projections/ estimates



Comprehensive Plan: Vision

- Getting Community Leaders on Board
 - Why this is important
 - How it affects your community
 - "Life-cycle Housing"



Comp Plan: Goals and Objectives

- Getting the public on board
- Where your children and parents can live
- What affordable housing is and is not



Comp Plan: Policies/ Strategies

- Support affordable housing
- Support diverse housing stock
- Improve existing housing stock (renovations/upgrades)
- Energy efficiency
- Infill/ Conversions
- Mixed Use



Zoning Tools



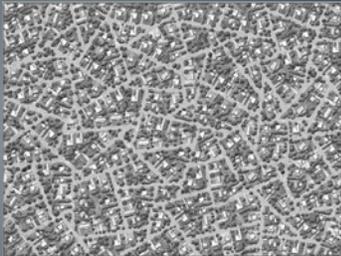
Zoning Tools

- Density
- Housing Type (doubles, apartments)
- Size of Lots/ setbacks
- Size of Homes
- Manufactured Housing
- Mixed Uses
- Incentive Zoning
- Specialty Zoning



“Exclusionary” Zoning (Obstacles)

QUESTION:
Are densities set at the right level, based on your community and the carrying capacity of the land?



Affordable Units on Smaller Lots



wendel

“Exclusionary” Zoning (Obstacles)

QUESTION:

Is multi-family housing allowed by right anywhere in your community?



wendel

Multi-family - doesn't need to look like multi-family



wendel

Single-family and multi-family can coexist



Low-income rental can be attractive



Diversity in Unit Types: Townhouses



Diversity in Unit Types

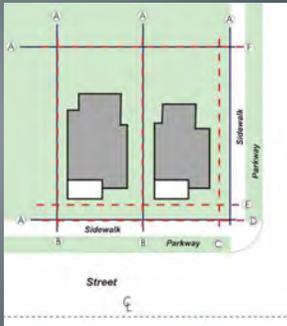


Row Houses



“Exclusionary” Zoning (Obstacles)

QUESTION:
Are your standards for lot size, setbacks, and frontages appropriate?



Small Setbacks



“Exclusionary” Zoning (Obstacles)

Other issues:

- Definition of a “family”
- Minimum unit size
- Minimum parking requirements
- Design standards: where needed



Manufactured Housing ≠ “Mobile Home”

Must be built to HUD standards equivalent to standard construction



“Inclusionary” Zoning (Incentives)

QUESTION:

Do you allow mixed use zones?
(Neo-traditional zoning)



Conversions



*Schoolhouse Commons,
Buffalo, NY
(former school converted to Senior Apts.)*



Affordable Infill next to older homes



Multi-unit Infill

Willows Infill Housing, California



Incentive Zoning

- Mandatory: California, Massachusetts
 - “Set aside” for affordable housing (typically 10-25%)
 - Targeted to “Moderate Income” Households
 - On-site or off-site
 - Cash in lieu?



Mixed Rate: 15% low-income units



Mixed Rate

Othello
Station, Seattle,
WA
Public Housing
Low-income &
Market Rate
Homes



Incentive Zoning

- Voluntary: New York State
 - City Law § 81-d
 - Town Law §261-b
 - Village Law §7-703
- Great deal of local discretion

- Allowed for “specific physical, social or cultural amenities” (not just housing)



Incentive Zoning

- Density bonus
- Reduced setbacks, design standards
- Increased heights
- Flexibility on open space
- Expedited approval process
- Greater flexibility in types of uses allowed
- Reduced parking requirements
- Financial incentives



Incentive Zoning

- Issues to consider:
 - Targeted income levels?
 - Size of project?
 - Rental vs. Ownership
 - How long to require units remain “affordable”
 - Targeted to residents?
 - Local employees?
 - Elderly?
 - Specific area or ‘floating zone’?



Accessory Apartments

- AKA "In-Law Apartments" or "Granny Flats"



Accessory Apartments

- Attached or Detached
- Generally limited in size



Elder Cottages



Elder Cottage Housing Opportunities

“ECHO” – Tompkins County, NY



Elder Cottages

Issues to Consider:

- Size of unit
- Lot size/ Lot coverage
- Number of units / Density
- Setbacks/ Placement
- Occupancy
- Parking
- Neighborhood Character
- Permitting



Cottage Communities



Sheridan Senior Estates
Mt Angel, Oregon



Form- Based Codes



- HOPE IV Affordable Units, Florida



Conservation Subdivisions



Source:
Rural by Design, by
Randall Arendt



Subdivision Regulations

- Public Improvements: Appropriate standards?



Source:
Richard Drdul, Flickr



Procedures

Added time is Added expense

- Improved Review Processes
 - Can a Use be allowed by Right?
 - Assess time lines, procedures to remove duplication, unnecessary delay
- Streamlined Processes?



Other Tools

- Financing/Tax Incentives
- Capital Projects
- Grants
- Education
- Energy Efficiency improvements
- Community Actions
 - Public demolition
 - Land banking
 - Donation of surplus lands



Other Tools

- “Universal Design” – accessibility
- Comprehensive Housing Services:
 - Counseling
 - Rehab assistance
 - Renovation
 - Down payment assistance
- Creative Approaches
 - Shared housing/ co-housing



Good Design
Reinforces
Community Character

Catherine Street Homes,
Albany, NY



Question & Answer



SAMPLE CODES

The following sample codes are provided as examples of the types of legislation local municipalities have adopted to help further fair and affordable housing. Local context is important, and municipalities should work with your municipal attorney to tailor these samples to meet the particular needs and conditions of the community.

Albuquerque, NM	City	Housing Policies, including Affordable Housing
Greece, NY	Town	Senior Citizen Districts: Single Family and Multiple-Family
Briarcliff Manor, NY	Village	Residential Townhouses: Density Bonus for affordable housing
Ellington, CT	Town	Age Restricted Clustered Housing Zone: Market Rate Senior Housing
Ellington, CT	Town	Workforce Cluster Housing Zone: Moderate Income Housing
Port Chester, NY	Village	Set-asides for moderate-income housing
Lewisboro, NY	Town	Multi-family residence district: density bonus
Goshen, NY	Town	Mandatory affordable housing law: prioritizes emergency personnel and Town workers
East Fishkill, NY	Town	Density bonus for affordable housing
Bedford, NY	Town	Affordable Housing Incentives, including expedited reviews
Briarcliff Manor, NY	Village	Eldercare Community (EC) District (congregate residential area for elderly)
Hartland, NY	Town	Echo uses (Elder Cottage Housing Opportunity)
Clarence, NY	Town	Traditional Neighborhood District – allows mixed uses
Kingston, NY	City	Mixed Use overlay to promote affordable housing, encourage adaptive reuse
Kingston, NY	City	Traditional Neighborhood Development Overlay: allows mixed use, promotes affordable housing, encourages “mix of dwelling types”
Hilton Head Island, SC	Town	Redevelopment Floating Zone: encourage redevelopment
Hilton Head Island, SC	Town	Reduced Fees & Permits Ordinance: lowers permit fees for affordable housing targeting low to moderate income households
Huntington, NY	Town	Accessory Apartments law
Lewisboro, NY	Town	Accessory Apartments law
Bainbridge Island, WA	City	Accessory Dwelling Unit law
Hastings-on-Hudson, NY	Village	Inclusionary zoning: affordable set-aside
New York	State	Enabling Legislation: General Town Law for Incentive Zoning (similar provisions are in City and Village Law).
Wilson, NY	Town	Incentive Zoning in a specific Town

POLICIES - City of
Albuquerque, NM

ARTICLE 4: HOUSING

Section

- 3-4-1 Community development block grant housing rehabilitation loan program guidelines
- 3-4-2 Housing policies addressing the needs of low-income and physically disabled and mentally handicapped persons
- 3-4-3 Affordable housing policy
- 3-4-4 Ten-year comprehensive neighborhood development plan for housing and economic development in the pocket of poverty

Cross-reference:

Housing; boards and commissions, see Ch. 2, Art. 6

§ 3-4-1 COMMUNITY DEVELOPMENT BLOCK GRANT HOUSING REHABILITATION LOAN PROGRAM GUIDELINES.

(A) *General Loan Funds.* General Housing and Community Development Loan Funds are derived from Federal and State sources.

(B) *Approval.* That "Exhibit A" to Resolution No. 88-2001, the Community Development Block Grant Housing Rehabilitation Loan Program including the "Pilot" Eligibility Category to leverage City funds and which will be tested for one year to determine if it should become permanent, is adopted for use by the city.

(C) *Housing Advisory and Appeals Committee.* The same Housing Advisory and Appeals Committee ("HAAC") established in the Housing Code shall continue to have, in addition to the authority, functions, and procedures provided therein, the following duties and responsibilities as established by previous Resolutions:

- (1) Advise and provide guidance to the staff of the Department of Family and Community Services in the areas of the Housing Rehabilitation Program and Planning Housing Code Enforcement.
- (2) Make recommendations to the Mayor, Chief Administrative Officer and City Council in said areas.
- (3) Consider waivers for the Community Development Housing Program as set forth in "Exhibit A" attached to Resolution No. 88-2001 and the Regulations promulgated pursuant to this section (the "Regulations") in the following respects:

(a) Waiver of the income limits may be granted in those circumstances after the execution of the note and mortgage where there is evidence that the mortgagor has been unable to make the full amount of the payments over a period of one hundred and twenty (120) days and there has been a substantial change in financial ability to make such payments from the time the loan was granted. Further, the modification to the loan agreement cannot jeopardize or impair the security given. Loan modification agreements that do not reduce the interest rate or extend the term of the loan beyond the maximum period provided for in "Exhibit A" and the Regulations are not required to be reviewed by the Committee.

(b) Increase of the maximum loan limit. This limitation may be increased provided that the additional funds are necessary to eliminate a serious health and/or safety hazard to occupants and/or neighborhood and the total amount loaned shall not exceed the amount allowed to be approved by HAAC pursuant to the Regulations.

(c) Increase of the 90% loan to value ratio underwriting standard, up to a maximum of 97% for low interest loans.

(4) Hear appeals of contractors who have been removed from the Active Contractor's List. Appellants shall provide and pay for the cost of all services required to transcribe the proceedings of such appeals for the benefit of the Committee, and to provide a record of the proceedings to the City.

(5) Hear disputes between the property owner and the contractor concerning the rehabilitation of the property that cannot be resolved by the Rehabilitation Section.

(6) Review all applications for loans to City employees in order to ascertain that they conform to the Rehabilitation Program Regulations.

(7) Review such other functions that may be assigned by the Mayor or Chief Administrative Officer or provided for by City Council action.

(8) Review reports and guidelines of non-governmental sub-recipient agencies and hear and determine appeals brought to the Committee by participants in such programs for which appropriations from Community Development funds are made by the City Council.

(9) The Housing Advisory and Appeals Committee may establish appropriate rules and regulations for carrying out the functions set out herein.

(D) (1) It is the intent of the City Council in appropriating funds to sub-recipient agencies that such funds shall be utilized to benefit low and moderate income persons as the same are defined by the U.S. Department of Housing and Urban Development and to upgrade existing housing stock in the program area in accordance with the Housing and Community Development Act of 1974, as amended, and that such intent shall be strictly construed.

(2) Except as provided herein, non-governmental sub-recipient agencies operating programs for which appropriations from Community Development funds are made by the City Council are not required to comply with the Rehabilitation Program requirements. However, such sub-recipient agencies shall:

(a) Develop loan policies and guidelines, which shall govern the operation of such programs and provide copies to the City's Housing Advisory and Appeals Committee for their review and approval.

(b) Certify to the City that their loan policies, guidelines and their program operations are in compliance with all applicable federal, state and local laws, regulations and ordinances.

(c) Certify that the amount of a loan to a program participant plus the total of all encumbrances against the property securing the loan shall not exceed the appraised market value of the property as determined by a qualified appraiser.

(d) Maintain a fidelity bond in the amount specified by the Mayor or his designee naming the City as a Loss Payee.

(e) Grant the City, U.S. Department of Housing and Urban Development, and the Comptroller General access to all of its records with respect to its program operations.

(3) The Mayor or his designee shall, by contract with such sub-recipient agency, establish procedures, policies

and requirements as necessary to insure compliance with this section and with applicable laws, regulations and ordinances.

(4) The City's Housing Advisory and Appeals Committee shall be provided with all required reports submitted by sub-recipient agencies. The Committee shall hear appeals of program participants when such participants are unable to resolve complaints or disputes with the sub-recipient agency. Such sub-recipient agencies shall develop appeal procedures for appeals to the Committee and shall disseminate same to its program participants. The conduct of such appeals before the committee shall be in accordance with the Committee's standard procedures. The agency whose decision is appealed to the Committee shall furnish to the Committee all information contained in its records pertaining to the appellant. Such agency shall provide a representative to present its side of the appeal to the Committee and shall further have available any other persons necessary to present the facts of the case. The decision of the Committee in all such appeals shall be final.

(E) *Modified bid process.*

(1) The City Rehabilitation Loan Program shall establish a modified bid process for the selection of rehabilitation contractors by homeowners participating in the program. The bid process shall provide that contractors on the active contractors list will receive notice of all rehabilitation projects financed through the program and those who desire to carry out a project must submit a sealed bid on the project that conforms to the specifications prepared by program staff. Any responsive contractor whose bid is within 10% of the city's cost estimate will be eligible for selection by the homeowner. The contract for the project will be between the homeowner and the contractor that has been selected.

(2) This division shall be effective for all rehabilitation loans closed subsequent to enactment of Res. 2-2003.

(3) The Department of Family and Community Services shall promulgate regulations to effectuate the provisions division.

(Res. 53-1992, approved 5-12-92; Am. Res. 23-1994, approved 3-11-94; Am. Res. 29-2000, approved 3-21-00; Am. Res. 88-2001, approved 6-1-01; Am. Res. 2-2003, approved 1-16-03)

Editor's note: Program History: The city's Housing Rehabilitation Loan Program was initiated by the passage of Resolution 139-1975. The program was subsequently completely revised and updated by Resolution 74-1986, and again by Resolution 88-2001, which repealed the prior resolutions defining the Program.

§ 3-4-2 HOUSING POLICIES ADDRESSING THE NEEDS OF LOW-INCOME AND PHYSICALLY DISABLED AND MENTALLY HANDICAPPED PERSONS.

(A) The city shall require all new construction of publicly subsidized housing to be designed and constructed to accommodate the needs of the handicapped as outlined in the applicable provisions of Chapter 41 of the New Mexico Uniform Building Code and as illustrated in *Removing Architectural Barriers*, published by the New Mexico Department of Education, Division of Vocational Rehabilitation, as attached. The provisions of this section are not applicable to publicly subsidized housing which has progressed beyond the schematic stage as of the effective date of this section.

(B) The city shall make at least 3% and up to 10% of its publicly subsidized housing available for congregate or group use, suitably designed to meet the needs of the mentally and/or physically handicapped.

(C) The city shall make housing rehabilitation funds available to low and moderate income handicapped persons or low and moderate income families with a handicapped member who are living within a Community Development Area designated as such under the New Mexico Community Development Law. Housing rehabilitation funds may be used to bring current housing up to the adopted Rehabilitation Standards for Community Development Areas and to

modify the existing dwelling unit to meet the special design needs of the handicapped person or member of the family as illustrated in *Removing Architectural Barriers*, published by the New Mexico Department of Education, Division of Vocational Rehabilitation.

(D) The city shall seek additional housing rehabilitation funds to be made available on a city-wide basis to low and moderate income handicapped persons or families with a handicapped member in order to bring their current home up to code and to modify it to meet the special design needs of the handicapped persons as illustrated in *Removing Architectural Barriers*, published by the New Mexico Department of Education, Division of Vocational Rehabilitation.

(E) The city shall seek the advice of handicapped citizens and service agencies to help evaluate housing and related services and to develop a program to aid the handicapped in our community.

(Res. 77-1976, approved 5-25-76)

§ 3-4-3 AFFORDABLE HOUSING POLICY.

(A) *Resolution repeal.* This Resolution shall repeal R-52, Enactment 74-2000.

(B) *Policy objectives.* The objectives of the City of Albuquerque's affordable housing policy are to:

(1) Implement the policy (D-5-a) established by the Albuquerque/Bernalillo County Comprehensive Plan, that the opportunity to obtain standard housing for a reasonable proportion of income be assured for Albuquerque residents;

(2) Increase the supply of rental and home ownership housing that is affordable to very low-income, low-income and moderate-income households; and

(3) Support and enhance the development of Workforce Housing as spelled out in F/S(3) O-06-8, The Workforce Housing Opportunity Act; and

(4) Ensure equal treatment of all residents, especially very low-income, low-income and moderate-income households, in pursuing affordable housing opportunities; and

(5) Mitigate homelessness by adopting effective housing relocation strategies.

(C) *Defining an affordable housing policy.*

(1) The City shall have a housing policy that identifies all City actions that impact affordable housing including decisions regarding residential development made by any Department or Board, Commission, or Committee convened by the City. This shall include but not be limited to development of Sector Plans, implementation of the Planned Growth Strategy, downtown development, redevelopment, development of the 5-year Consolidated Plan, Albuquerque Housing Services 1-Year and 5-Year Plans, and Planned Communities such as Mesa del Sol; and

(2) The City shall establish percentages and types of affordable housing required in developments that receive an injection of local, state, or federal resources, or material assistance; and

(3) The City shall consider establishing the number of units and types of affordable housing required in each City quadrant, or identify some other type of formula to distribute affordable housing throughout the City to meet the affordable housing need; and

(4) The City shall establish an effective relocation strategy to help mitigate homelessness.

(D) *Definition of affordable rental and for-purchase housing.*

(1) Rental housing shall be considered affordable if: (1) the rent does not exceed the fair market rents established for the Section 8 program of the City of Albuquerque or rent levels established by other federal, state or local affordable housing programs currently in existence or that may come into existence in the future; and (2) households are required to spend no more than 30% of household income on rent and utilities.

(2) Homeownership housing shall be considered affordable if households are required to spend no more than 30% of household income, adjusted for family size, on monthly housing costs, or 35% under special conditions to be defined in the Workforce Housing Plan.

(E) *Investment of City resources in affordable housing.*

(1) Investment of City resources in affordable rental housing is appropriate if the housing is affordable to low- and moderate-income households throughout its useful life.

(2) Investment of City resources in affordable, for-purchase housing is appropriate if the project increases homeownership opportunities for low-income households and for moderate-income households who are first-time homebuyers or households who have not owned a home for three years.

(F) *Revised income definitions.*

(1) Following are income categories for the HOME Program in the Department of Housing and Urban Development (HUD):

(a) "Extremely Low-income" households have incomes that do not exceed 30% of the median family income for the Albuquerque Metropolitan Statistical Area (MSA) adjusted for family size.

(b) "Very Low-Income" households have incomes between 31% and 50% of the median family income for the Albuquerque MSA adjusted for family size.

(c) "Low-income" households have incomes between 51% and 60% of the median family income for the Albuquerque MSA adjusted for family size.

(d) "Moderate-income" households have incomes between 61% and 80% of the median family income for the Albuquerque MSA adjusted for family size.

(2) Households whose incomes do not exceed those as defined by other federal, state, or local programs currently in existence or that may come into existence that provide affordable ownership and rental housing to targeted groups are covered under this Section.

(G) *Defining the roles and responsibilities of the Affordable Housing Committee.*

(1) The primary responsibility of the Affordable Housing Committee (AHC or Committee) shall be to advise the City on policies and activities related to affordable housing. The AHC shall carry out these responsibilities as follows: (1) recommend City policy and strategy initiatives aimed at increasing access to safe, decent and affordable housing for all residents, especially low- and moderate-income households; (2) recommend ways to increase production of affordable housing by all sectors of the economy; (3) serve as the advisory committee to the Albuquerque Citizen's Team (ACT) to develop the Workforce Housing Plan and Needs Assessment and conduct an annual review of Plan progress; (4) work with city staff to develop methods to mitigate and reduce homelessness, and to develop effective housing relocation strategies to mitigate homelessness; (5) assist in efforts to streamline the City's regulatory system.

(2) The City may request and consider recommendations from the Affordable Housing Committee to address the impact on affordable housing production or lack thereof when decisions regarding residential development are

made by any Department or Board, Commission, or Committee convened by the City. This shall include but not be limited to development of Sector Plans, implementation of the Planned Growth Strategy, downtown development, redevelopment, development of the 5-year Consolidated Plan, Albuquerque Housing Services 1-Year and 5-Year Plans, and Planned Communities such as Mesa del Sol; and

(3) The City shall request and consider recommendations from the Affordable Housing Committee to establish percentages and types of affordable housing required in developments that receive an injection of local, state, or federal resources, or material assistance; and

(4) The City shall request and consider recommendations from the Affordable Housing Committee at such time as the City may begin consideration of establishing a means to distribute affordable housing throughout the City to meet the affordable housing need; and

(5) The City shall request and consider recommendations from the Affordable Housing Committee to establish an effective housing relocation strategy to help mitigate homelessness for consideration by the Mayor and Council.

(6) The Mayor shall appoint the members of the Committee with the advice and consent of the Council. The AHC may make recommendations to the Mayor for appointment and reappointment to the Committee at the expiration of member terms or upon their resignation. The AHC shall select a Chairperson who shall be a Committee member from the private for-profit or not-for-profit sector.

(7) The AHC shall consist of 12 members representing the following industries and community sectors: two low- and moderate-income residents or advocates, one of whom may represent the legal and Fair Housing sector; one representative from the housing building industry; two representatives of the housing lending industry; one representative of the not-for-profit housing development sector; one individual who represents housing needs of people with disabilities; one senior citizen advocate; two representatives from the Department of Family and Community Services, one of whom represents Albuquerque Housing Services; one representative from the Department of Planning; and one representative from the Department of Municipal Development. Non-City staff members shall be appointed for staggered three-year terms. The Committee may recommend Subcommittees that may include non-AHC members. Each Subcommittee shall include at least one member of the AHC who shall serve as the Subcommittee Chairperson.

(8) The Department of Family and Community Services or the Planning Department shall provide staff assistance to the AHC and its Subcommittees.

(Res. 134-1992, approved 9-30-92; Am. Res. 71-1998, approved 8-17-98; Am. Res. 74-2000, approved 8-21-00; Am. Res. R-2005-050, approved 4-18-05; Am. Res. R-2007-011, approved 2-27-07)

§ 3-4-4 TEN-YEAR COMPREHENSIVE NEIGHBORHOOD DEVELOPMENT PLAN FOR HOUSING AND ECONOMIC DEVELOPMENT IN THE POCKET OF POVERTY.

(A) The Ten-Year Comprehensive Neighborhood Development Plan for Housing and Economic Development in the Pocket of Poverty attached to Resolution No. 108-1993 is hereby adopted.

(B) The Ten-Year Comprehensive Neighborhood Development Plan for Housing and Economic Development in the Pocket of Poverty shall be used by the Committee as a guide for development of two-year programs for utilization of fund income.

(C) \$50,000 of the uncommitted fund balance is hereby appropriated to the Convention Hotel (Legal Services/Miscellaneous) Project in the Metropolitan Redevelopment Fund (275) and that any expenditures from this project will be reimbursed when paybacks from the Albuquerque Plaza UDAG are received.

Establishes 2 Senior Citizen Districts: Single Family & Multiple Family

Town of Greece, NY
Wednesday, October 10, 2012

§ 211-12. R1-S Single-Family Residential - Senior Citizen District.

- A. Legislative intent and purpose. In recognition of the growing need for a variety of housing and levels of care specifically and exclusively for senior citizens, the intent and purpose of this section are to:
- (1) Encourage and, where appropriate, provide for a variety of housing options for senior citizens throughout the Town of Greece as their housing needs change, as recommended by the Town of Greece Master Plan;
 - (2) Allow flexibility in the provision of housing with a continuum of levels of care specifically designed to satisfy senior citizens' economic, physical, psychological and social needs; and
 - (3) Protect, to the maximum extent practicable, aesthetic considerations; the suburban character of the Town of Greece; the property values of the community; and the health, safety and general welfare of the public by ensuring that the location, nature, duration and intensity of said housing:
 - (a) Will not affect adversely the orderly pattern of development in the area.
 - (b) Will be in harmony with nearby uses.
 - (c) Will not alter the essential character of the nearby neighborhood nor be detrimental to the residents thereof.
 - (d) Will not create a hazard to health, safety or the general welfare.
 - (e) Will not be detrimental to the flow of traffic.
 - (f) Will not place an excessive burden on public improvements, facilities, services or utilities.
- B. Establishment of the district. At the request of an applicant or on its own initiative, the Town Board may establish a Single-Family Residential - Senior Citizen District, following a public hearing in accordance with Article IX.
- C. District requirements.
- (1) Age of residents.
 - (a) Except as hereinafter provided, each dwelling unit shall be occupied by at least one senior citizen.
 - (b) Children or grandchildren may reside with their parents or grandparents, provided that:
 - [1] At least one senior citizen resides in the dwelling unit; and
 - [2] Said children or grandchildren are over the age of 19 years.

(2) Minimum land area. The minimum area required for a Single-Family Residential - Senior Citizen District shall be five contiguous acres. The Town Board may waive the requirement that the district contain at least five acres if, in the Town Board's judgment, the establishment of said district would benefit the Town.

D. Assurances. Each proposal for the placement, erection or construction of housing for senior citizens in the R1-S District shall be accompanied by appropriate undertakings, restrictive covenants, easements and the like, in form and content satisfactory to the Town Board, as may be necessary to provide for and ensure that said housing will comply with the age requirements established in this section for residents of the R1-S District. The Town Board, in its absolute discretion, reserves the right to require any additional covenants and restrictions on the lots in an R1-S District, including but not limited to sale and resale restrictions and advertising content, in order to ensure that the legislative intent and purpose of this section are achieved.

E. Permitted principal uses. One single-family dwelling per lot, provided that:

- (1) Said dwelling is a one-story or Cape Cod style house; and
- (2) Said dwelling contains not more than two bedrooms.

F. Permitted accessory uses and structures.

[Amended 11-22-2011 by L.L. No. 7-2011]

- (1) Minor home occupations in accordance with the regulations established in § 211-23.
- (2) Garages for the private, noncommercial use of the residents of the premises, provided that a total of not more than two motor vehicles are stored in all garages on said premises.
- (3) Garden or tool sheds.
- (4) Swimming pools for the private, noncommercial use of the residents of the premises, in accordance with all applicable swimming pool regulations in the Town of Greece.
- (5) Decks.
- (6) Tennis courts.
- (7) Greenhouses and gardens, subject to the following limitations for gardens which are used or intended to be used principally for the growing of fruits, vegetables, herbs, or grains and other staple crops:
 - (a) In front yards, no part of such gardens shall be located farther than 20 feet from the principal structure, nor shall any part of such gardens be located closer than 10 feet to a lot line.
 - (b) In side yards, no part of such gardens shall be located farther than 10 feet from the principal structure, nor shall any part of such gardens be located closer than five feet to a lot line.
 - (c) In rear yards, no part of such gardens shall be located closer than five feet to a lot line.
 - (d) The limitations contained hereinabove shall not be construed to prohibit fruits, vegetables, herbs, and grains or other staple crops from being located closer than five feet to a side or rear lot line, provided that such plants are physically supported by a fence, trellis or other similar structure.

- (8) Stands for sales of produce, flowers or other plants grown on the premises.
- (9) Indoor community centers for the private, noncommercial use of the residents of the senior citizen residential facility on the premises.
- (10) Indoor or outdoor recreation facilities for the private, noncommercial use of the residents of the senior citizen residential facility on the premises.
- (11) Retail or service uses which are used as part of and in conjunction with senior citizen residential facilities and which are provided as a convenience for the persons in the care of said facilities. Said uses shall be located within the other principal structures located on the premises and shall not exceed 1,000 square feet in total gross floor area. No off-street parking shall be required for the space occupied by said uses. Business or advertising signs for said uses shall not be permitted unless said signs can be seen only from the inside of the building in which said signs are located.
- (12) Other similar accessory uses.

G. Special permit uses.

- (1) The following uses may be permitted upon application to and with the approval of the Town Board pursuant to § 211-60A:
 - (a) One two-family dwelling per lot, provided that the following requirements are met:
 - [1] The minimum lot area shall be 1.75 times the minimum lot area for a one-family dwelling in the R1-S District.
 - [2] The minimum lot width shall be 1.75 times the minimum lot width for a one-family dwelling in the R1-S District.
 - [3] The minimum area for each dwelling unit shall be 0.75 times the minimum dwelling unit area for a one-family dwelling in the R1-S District. In no case, however, shall the total area of the two dwelling units be less than 1.75 times the minimum dwelling unit area for a one-family dwelling in the R1-S District.
 - [4] Each dwelling unit shall contain not more than two bedrooms.
 - [5] The maximum height of said dwelling shall be one story.
 - (b) Adult day-care centers, provided that said facilities do not exceed one story in height.
 - (c) Senior citizen residential facilities, provided that said facilities do not exceed one story in height.
 - (d) Churches or other places of worship.
 - (e) Schools.
 - (f) Institutions of higher education.
 - (g) Golf courses and customary related uses, including but not limited to:
 - [1] Driving ranges.
 - [2] Swimming pools.
 - [3] Tennis or paddleball courts.
 - [4] Locker rooms or shower facilities.

[5] Pro shops.

[6] Clubhouses, including bars, grills or dining rooms and supporting kitchen facilities.

H. Development regulations for the R1-S Single-Family Residential District.

(1) On any lot which fronts the same side of the street as lots which contain buildings, the minimum front setback for principal buildings on said lot shall be the greater of:

(a) The setback established for the district in which said lot is located; or

(b) The neighborhood average.

(2) All other area, setback, height and lot coverage regulations are contained in Tables I and II. *Editor's Note: Tables I and II are included at the end of this chapter.* Parking, fence and sign regulations are contained in Articles V, VI and VII, respectively.

Town of Greece, NY
Wednesday, October 10, 2012

§ 211-14. RMS Multiple-Family Residential - Senior Citizen District.

A. Legislative intent and purpose. In recognition of the growing need for a variety of housing and levels of care specifically and exclusively for senior citizens, the intent and purpose of this section are to:

- (1) Encourage and, where appropriate, provide for a variety of housing options for senior citizens throughout the Town so that senior citizens have the opportunity and ability to remain residents of the Town of Greece as their housing needs change, as recommended by the Town of Greece Master Plan;
- (2) Allow flexibility in the provision of housing with a continuum of levels of care specifically designed to satisfy senior citizens' economic, physical, psychological and social needs; and
- (3) Protect, to the maximum extent practicable, aesthetic considerations; the suburban character of the Town of Greece; the property values of the community; and the health, safety and general welfare of the public by ensuring that the location, nature, duration and intensity of said housing:
 - (a) Will not affect adversely the orderly pattern of development in the area.
 - (b) Will be in harmony with nearby uses.
 - (c) Will not alter the essential character of the nearby neighborhood nor be detrimental to the residents thereof.
 - (d) Will not create a hazard to health, safety or the general welfare.
 - (e) Will not be detrimental to the flow of traffic.
 - (f) Will not place an excessive burden on public improvements, facilities, services or utilities.

B. Establishment of the district. At the request of an applicant or on its own initiative, the Town Board may establish a Multiple-Family Residential - Senior Citizen District, following a public hearing in accordance with Article IX.

C. District requirements.

- (1) Age of residents.
 - (a) Except as hereinafter provided, each dwelling unit shall be occupied by at least one senior citizen.
 - (b) Children or grandchildren may reside with their parents or grandparents, provided that:
 - [1] At least one senior citizen resides in the dwelling unit; and
 - [2] Said children or grandchildren are over the age of 19 years.

- (2) Minimum land area. The minimum area required for a Multiple-Family Residential - Senior Citizen District shall be five contiguous acres. The Town Board may waive the requirement that the district contain at least five acres if, in the Town Board's judgment, the establishment of said district would benefit the Town.
- D. Assurances. Each proposal for the placement, erection or construction of housing for senior citizens in the RMS District shall be accompanied by appropriate undertakings, restrictive covenants, easements and the like, in form and content satisfactory to the Town Board, in order to ensure that the legislative intent and purpose of this section are achieved. The Town Board in its absolute discretion reserves the right to require any additional covenants and restrictions on the lots in the RMS District, including but not limited to, sale and resale restrictions and advertising content, in order to ensure that the legislative intent and purpose of the section is achieved.
- E. Permitted principal uses.
- (1) One single-family dwelling per lot, provided that:
- (a) Said dwelling is a one-story or Cape Code style house; and
 - (b) Said dwelling contains not more than two bedrooms.
- (2) One two-family dwelling per lot, provided that the following requirements are met:
- (a) The minimum lot area shall be 1.75 times the minimum lot area for a one-family dwelling in the R1-S District.
 - (b) The minimum lot width shall be 1.75 times the minimum lot width for a one-family dwelling in the R1-S District.
 - (c) The minimum area for each dwelling unit shall be 0.75 times the minimum dwelling unit area for a one-family dwelling in the R-1S District. In no case, however, shall the total area of the two dwelling units be less than 1.75 times the minimum dwelling unit area for a one-family dwelling in the R1-S District.
- [Amended 5-14-2007 by L.L. No. 4-2007]
- (d) Each dwelling unit shall not contain not more than two bedrooms.
 - (e) The maximum height of said dwelling shall be two stories.
- (3) Multiple-family dwellings in accordance with the development regulations established in Subsection H below.
- (4) Adult day-care centers.
- (5) Senior citizen residential facilities in accordance with the development regulations established in Subsection H below.

F. Permitted accessory uses and structures.

[Amended 11-22-2011 by L.L. No. 7-2011]

- (1) Minor home occupations in accordance with the regulations established in § 211-23.
- (2) Garages for the private, noncommercial use of the residents of the premises.
- (3) Garden or tool sheds.

- (4) Swimming pools for the private, noncommercial use of the residents of the premises, in accordance with all applicable swimming pool regulations in the Town of Greece.
 - (5) Decks.
 - (6) Tennis courts.
 - (7) Greenhouses and gardens, subject to the following limitations for gardens which are used or intended to be used principally for the growing of fruits, vegetables, herbs, or grains and other staple crops:
 - (a) In front yards, no part of such gardens shall be located farther than 20 feet from the principal structure, nor shall any part of such gardens be located closer than 10 feet to a lot line.
 - (b) In side yards, no part of such gardens shall be located farther than 10 feet from the principal structure, nor shall any part of such gardens be located closer than five feet to a lot line.
 - (c) In rear yards, no part of such gardens shall be located closer than five feet to a lot line.
 - (d) The limitations contained hereinabove shall not be construed to prohibit fruits, vegetables, herbs, and grains or other staple crops from being located closer than five feet to a side or rear lot line, provided that such plants are physically supported by a fence, trellis or other similar structure.
 - (8) Stands for sales of produce, flowers or other plants grown on the premises.
 - (9) Indoor community centers for the private, noncommercial use of the residents of the senior citizen residential facility on the premises.
 - (10) Indoor or outdoor recreation facilities for the private, noncommercial use of the residents of the senior citizen residential facility on the premises.
 - (11) Retail or service uses which are used as part of and in conjunction with senior citizen residential facilities and which are provided as a convenience for the persons in the care of said facilities. Said uses shall be located within the other principal structures located on the premises and shall not exceed 1,000 square feet in total gross floor area. No off-street parking shall be required for the space occupied by said uses. Business or advertising signs for said uses shall not be permitted unless said signs can be seen only from the inside of the building in which said signs are located.
 - (12) Laundry facilities.
 - (13) Rental offices.
 - (14) Maintenance buildings.
 - (15) Other similar accessory uses.
- G. Special permit uses.
- (1) Churches or other places of worship.
 - (2) Schools.
 - (3) Institutions of higher education.
 - (4) Golf courses and customary related uses, including but not limited to:

- (a) Driving ranges.
 - (b) Swimming pools.
 - (c) Tennis or paddle ball courts.
 - (d) Locker rooms or shower facilities.
 - (e) Pro shops.
 - (f) Clubhouses, including bars, grills or dining rooms and supporting kitchen facilities.
- H. Development regulations. Permitted densities and area, setback, height and lot coverage regulations are contained in Table II. *Editor's Note: Table II is included at the end of this chapter.* Parking, fence and sign regulations are contained in Articles V, VI and VII, respectively
- I. Increased building height or density in the RMS District.
- (1) Upon application to and with the approval of the Town Board pursuant to § 211-60A, the following development limitations established for the RMS District may be exceeded:
 - (a) Maximum height of principal buildings.
 - (b) Maximum density, provided that all principal buildings are not fewer than four stories in height. At the request of an applicant or on its own initiative, the Town Board may modify or waive the minimum height requirement for principal buildings if, in the opinion of the Town Board, it is warranted by the particular circumstances of the request. In no case, however, shall the maximum density for multiple-family dwellings exceed 20 dwelling units per gross acre, and in no case shall the maximum density for senior citizen residential facilities exceed 20 residential units per gross acre.
 - (2) The Town Board may approve said increases if two or more development features are provided. Said features may include:
 - (a) Enclosed parking garages.
 - (b) Outdoor facilities for active recreation.
 - (c) Indoor community centers and/or indoor recreation facilities.
 - (d) Other criteria which may be established by the Town Board.

Density Bonus for affordable housing

Village of Briarcliff Manor, NY
Wednesday, October 24, 2012

§ 220-10. Residential Townhouses RT4B District.

A. Statement of purpose.

- (1) This chapter recognizes that it is necessary to enable and encourage flexibility of design and development of residences in the Village of Briarcliff Manor so as to provide opportunities for individuals, couples, and small families of all ages to find housing of relatively moderate cost in appropriate locations within the Village.
- (2) This chapter also recognizes the Village Master Plan's objectives to reduce the amount of commercially zoned land, thereby reducing the potential for traffic growth and general pressure for further rapid growth and congestion.

B. General provisions. The following standards, conditions and provisions shall be administered by the Planning Board during the course of site plan review. All site development plan applications for development in a RT4B zone shall, in addition to complying with all other standards and requirements of these regulations, also satisfy the following standards and conditions. The terms "family" and "persons" may be used interchangeably.

- (1) Development density. The basic density per acre allowed by these regulations shall not exceed four dwelling units per gross acre, except as permitted and regulated below. The maximum permitted density may be increased by 50% of the total basic density as a bonus if the applicant constructs at least 50% of the permitted increase as moderate cost dwelling units, which dwelling units shall hereinafter be known as "moderate income dwelling units." During the process of detailed site plan review, the Planning Board shall have the authority to limit the basic density and the bonus density where the Board determines that such may be necessary or appropriate because of the specific characteristics of the individual site.
- (2) Development quality. In order to help achieve the objectives of this section, to achieve a high quality of development, to protect and preserve valuable natural resources and to ensure that all moderate cost dwelling units are of equal quality, appearance, amenities and construction as comparable to the market rate dwelling units and development on the site, Planning Board review shall include but not be limited to floor plans and elevations of all dwelling unit types and site amenities. In a manner similar to that provided for subdivision review and approval under § 220-7, in the course of site plan review the Planning Board may modify the standards listed in Columns 6 through 24 of the schedule *Editor's Note: The schedule is included at the end of this chapter.* as long as the total number of units permitted on the overall site does not exceed that permitted in Subsection B(1), development density, above.
- (3) Selection priorities of moderate income families. Moderate income families applying for moderate income dwelling units to be used as primary residences shall be selected on the basis of the following order or priority:
 - (a) Village of Briarcliff Manor municipal employees.
 - (b) Briarcliff Manor and Ossining School District employees.
 - (c) Residents of the Village of Briarcliff Manor.
 - (d) An active member of the Briarcliff Manor Fire Department as defined by Article VI of the Fire Council Bylaws where such member has at least two years of such active service.
 - (e) Former residents of the Village of Briarcliff Manor who owned or still own residential property in

the Village.

(f) Other persons employed in the Village of Briarcliff Manor.

(g) Relatives of residents of the Village of Briarcliff Manor.

(h) Other residents of Westchester County.

(i) All others.

(4) Selection categories.

(a) Within each of the above categories, priority shall be given to:

[1] Active members of the Briarcliff Manor Fire Department as defined by Article VI of the Fire Council Bylaws where such members have at least two years of such active service [refers to priorities (a), (b) and (c) only in Subsection B(3) above].

[2] Families or persons displaced by governmental action.

[3] Families or persons of which the head or spouse is 62 years or older.

[4] Families or persons of which the head or spouse is handicapped (certified by a physician).

[5] The year of initial application.

(b) In the event that the number of applicants exceeds the available units, a lottery shall be held to select applicants. Such lotteries would be conducted based on the selection priorities and categories.

(5) Occupancy standards. The following occupancy limitations shall apply to moderate income dwelling units:

Number of Bedrooms	Number of Persons	
	Minimum	Maximum
1	1	2
2	2	4
3	3	6
4	4	8

(6) Eligibility.

(a) The Board of Trustees may serve as, or establish a Moderate Income and Affordable Housing Review Board (hereinafter called the "Review Board"). The Review Board shall maintain a list of eligible moderate income families, as defined in Subsection B(3), and in accordance with the Selection Priorities and Categories listed in Subsection B(3) and (4) above. Where the number of eligible moderate income families in the same priority classification exceeds the number of available units, applicants shall be selected by lottery.

(b) The Review Board shall annually examine or cause to be examined the financial eligibility of all applicants.

(c) The Review Board may require additional assurances from the owners of moderate income dwelling units, including deed restrictions, to ensure the continuing guarantee of use to eligible moderate income families.

(7) Sales price.

(a) The maximum sales price will be determined by the size of the moderate income dwelling unit and the median income of full-time employees of the Village of Briarcliff Manor for the preceding year, as follows:

[Amended 10-18-2001 by L.L. No. 2-2001; 6-19-2003 by L.L. No. 4-2003]

Unit Size* (square feet)	Related Village Employee Median Salary Multiple
800	2.60
900	2.70
1,000	2.90
1,100	3.10
1,200	3.325
1,300	3.575
1,400	3.85
1,500	4.16

*Average livable floor area, see Column 23 of the schedule. *Editor's Note: The schedule is included at the end of this chapter.*

Sales prices for units of intervening size shall be established by the Review Board by such means as interpolation or projection.

(b) Resale price. The title to each moderate income dwelling unit shall be restricted so that in the event of any resale by the home buyer or any successor the resale price shall not exceed the then maximum sale price for said unit, as determined in accordance with Subsection B(7)(a) of this section, or (the sum of) the following, whichever is greater: The original purchase price, plus the value of any fixed improvements legally made by the home buyer, and not included within the above categories. The seller additionally is entitled to add to the resale price any reasonable and necessary expenses incidental to the resale.

C. Approvals.

(1) The Planning Board shall review each residential townhouse project, its detailed site plan and its subdivision in accordance with the provisions set forth herein and the other pertinent provisions of the Village Zoning Chapter and Chapter 190, Subdivision of Land. Site plan fees, subdivision fees, environmental and other fees directly related to the moderate cost dwelling units may be waived at the discretion of the Planning Board in an effort to assist the applicant/developer in reducing development cost.

- (2) When a recreation fee is calculated in lieu of an approved reservation of recreation lands, such fee shall be based on the total number of dwelling units exclusive of those which are affordable units.

D. Administration.

- (1) The Review Board shall be responsible for the administration of the moderate income housing requirements of this section and shall have the authority to promulgate such rules and regulations as may be necessary to implement such requirements. Until the establishment of such Review Board, the Board of Trustees shall exercise all the functions of such Review Board.
- (2) At the time of the issuance of a building permit, the Building Inspector shall send a copy of such certificate to the Review Board who shall then inform the prospective owner-seller (applicant) of the maximum sales charge which may be established for the moderate income dwelling units in such development, and the maximum annual gross family income for eligibility for occupancy of said units.
- (3) The Review Board shall certify annually as eligible all applicants for sale of moderate income dwelling units. Moderate income dwelling units shall only be used as the eligible occupant's primary residence.
- (4) Prior to the initial sale of each moderate cost dwelling unit, the Review Board shall notify the owner or manager of each development containing moderate cost units as to the sales and income eligibility requirements for each unit.

E. Criteria for establishing moderate cost dwelling units and moderate income family eligibility shall be as follows:

- (1) A dwelling unit the sale price of which does not exceed the maximum allowable level established by Subsection B(7) shall constitute a moderate cost dwelling unit.
- (2) Moderate income family eligibility shall be as follows:
 - (a) Families whose aggregate income, including the total of all current annual income of all family members from any source whatsoever at the time of application, but excluding the earnings of working minors (under 21 years of age) attending school full time, shall not exceed the following multiples of the median annual Village-paid wages of all full-time employees of the Village of Briarcliff Manor during the preceding calendar year:

[Amended 2-20-1996 by L.L. No. 2-1996; 6-19-2003 by L.L. No. 4-2003]

Unit Size* (square feet)	Village Employee Median Salary Multiple
800	1.65
900	1.70
1,000	1.75
1,100	1.80
1,200	1.85
1,300	1.90
1,400	1.95

1,500

2.00

*Average livable floor area; see Column 23 of the schedule. *Editor's Note: The schedule is included at the end of this chapter.*

(b) Families whose intent is to utilize the residential townhouse moderate income units as their principal place of residence. Rental or subleasing of moderate income units shall not be permitted except under extenuating circumstances as determined and approved by the Review Board.

(c) Families must declare under oath to the best of their knowledge that their income will not exceed 1.5 times the limits defined in Subsection E(2)(a) above, for three years from the date of application.

F. Tax assessment. The limited sales value of moderate income dwelling units shall be taken into consideration by the Village Assessor in determining the basis for assessment on such units.

Floating Zone in support of Senior Housing / Ellington, CT (Market-Rate) in Rural area

ARTICLE 3 RESIDENTIAL ZONES

Section 3.4 Age-Restricted Cluster Housing Zone *(Added 10-12-2004)*

3.4.1 Application of Provisions

The Age-Restricted Cluster Housing Zone (ARCHZ) is a floating zone for uses permitted in Subsection 3.4.3 of this section, to be designated on the Zoning Map after approval by the Commission of a conceptual site plan and a concurrent petition for a zone change to ARCHZ. After approval of a conceptual site plan and zone change, a special permit and final site plan must be approved prior to development of the site. Potential applicants for ARCHZ project approval are strongly encouraged to meet with Town staff for guidance prior to making a formal application.

3.4.2 Purpose

1. To increase the types of available housing, with emphasis on market rate, privately developed, common interest communities for empty nesters and seniors.
2. To provide landowners with a land use option on suitably located land with necessary utilities, access, and other important attributes.
3. To create high-quality developments capable of sustaining long-term value.
4. To promote project designs that enhance and protect open spaces, natural resources, natural features and other elements of the Town's rural character.
5. To achieve the goals and objectives of the Town's Plan of Conservation and Development.

3.4.3 Permitted Uses

- A. Property zoned ARCHZ shall only be used for single-family, attached or detached residential housing units and may include related accessory uses for the exclusive use of project residents and their guests. Permitted accessory uses shall be those customarily associated with common interest residential communities and shall clearly be subordinate and incidental to the principal residential uses; however, this limitation is not intended to expressly disallow other accessory uses if said uses are deemed appropriate, in the Commission's sole judgment, such that said uses will add to the long-term value of the community, provide special health, lifestyle or therapeutic benefits to the resident population, or otherwise help achieve the core objectives of the ARCHZ.
- B. Each housing unit may be occupied by:
 1. At least one individual who is age 55 years or older.
 2. A spouse or other occupant who must be age 18 or older.
 3. An occupant pursuant to Subsection B.2 above who has survived the individual in Subsection B.1 above and who has an ownership interest in the dwelling.
 4. Any occupant pursuant to Subsection B.2 above who has an ownership interest in the dwelling and where the individual in Subsection B.1 above has entered into a long-term continuing care facility.
- C. One child 18 years or older may reside with his or her parent(s).
- D. The purchase of a dwelling unit for investment purposes by an entity or an individual not intending to occupy the dwelling is prohibited, except that a nonresident family member may purchase up to one unit for a family member who will reside in the dwelling unit and otherwise comply with the requirements of this section.

ARTICLE 3 RESIDENTIAL ZONES

- E. The management shall verify annually to the Zoning Enforcement Officer that the active adult community development is in compliance with the occupancy requirements of this section.
- F. Dwelling units designated as active adult housing units shall have deed restrictions which shall be filed in the land records of the Town of Ellington limiting occupancy as required above.
- G. In accordance with Connecticut General Statutes § 8-12, the Town of Ellington, acting through its duly appointed officials, may enter onto the premises for the purpose of verifying compliance with federal, state and local laws, rules and regulations, including the approvals issued in connection with the development. As a condition of approval, each applicant, owner or residents' association shall provide legal documents which shall hold harmless and indemnify the Town of Ellington and its duly appointed officials from any claims or liability arising from the correction of violations cited. The form of such documents shall be acceptable to the Commission's counsel and the Commission. The provisions of this subsection shall survive the issuance of certificate of occupancy or certificate of zoning compliance.
- H. In the event such verification inspections determine that corrective action is necessary to bring the development into compliance with any laws, rules and regulations, the official of the Town of Ellington performing the inspection shall, in writing, cite the violations and require corrective action within a reasonable period of time. Failure to perform the required corrective action shall be considered a violation of the Zoning Regulations and be subject to such fines and penalties as prescribed by statute or regulation.

3.4.4 Site Requirements

Land meeting the following minimum criteria may be permitted at the Commission's sole discretion to be zoned ARCHZ. Such designation may be made at the request of an applicant or upon the Commission's own initiative. Land may not be zoned ARCHZ unless the zoning request includes all of the submittal requirements listed in Subsection D herein and the submittals have been determined by the Commission to be acceptable.

1. Minimum 10 acres of contiguous land.
2. A minimum of 75 feet along and direct access to a public collector or arterial street.
3. Public sewer service, including at least conceptual approval for such service by the Ellington PAC.
4. Public potable water supply.

3.4.5 Density, Height, Yard & Living Area Requirements

Density, Height, Yard and Living Area Requirements shall be as follows:

Table 3.4.5 - Density, Height, Yard & Living Area Requirements	
Minimum Project Area	10 acres
Maximum Units per Acre ⁽¹⁾	4 ⁽²⁾
Maximum Units per Building	
Maximum Building Height	32 feet ⁽³⁾
Maximum Building Coverage	20%
Maximum Impervious Coverage	50%
Minimum Frontage	200 feet
Minimum Front Yard Setback ⁽⁴⁾	35 feet
Minimum Side and Rear Yard ⁽⁴⁾	35 feet
Minimum Setback from Interior Drive	25 feet
Minimum Setback from Surface Parking Area	10 feet
Minimum Building Separation	20 feet
<p>⁽¹⁾ For purposes of calculating net density, areas defined as inland wetlands, water bodies, watercourses, one-hundred-year floodplain, and areas over thirty-percent slope shall not be included.</p> <p>⁽²⁾ May be increased to five units per acre in exchange for a cash open space payment.</p> <p>⁽³⁾ Allowable building heights may vary by unit type, unit placement, the location and nature of abutting uses, site topography and land cover, views into and of the site from adjacent areas, and other unique attributes of a given site and project. For purposes of measurement, height shall be calculated from average grade 15 feet from the foundation wall to the highest portion of the roof, excepting miscellaneous architectural features such as chimneys, cupolas, and like elements not exceeding 5% of the roof area.</p> <p>⁽⁴⁾ The Commission may require this minimum to be increased in specific locations based upon the unique attributes of the project parcel, current and anticipated trip volume on the adjacent street, type and scale of proposed buildings and uses, desire to protect existing site features, or for other similar reasons.</p>	

- A. **Multiple Parcels.** The project may consist of multiple legal parcels of record as long as the sufficient binding covenants are placed on the land records to ensure the continued single operation, management and ownership of the project in accordance with all approval requirements.
- B. **Net Density.** Permitted maximum allowable net density (maximum total allowable residential units within the project) shall not exceed four units per developable acre of project area. For purposes of calculating net density, areas defined as inland wetlands, water bodies, watercourses, one-hundred-year floodplain, and areas over thirty-percent slope shall not be included.

C. Increased Project Density

1. In order to promote additional preservation of open space and active farmlands within the Town of Ellington, the allowable net project density may be increased to five units per developable acre of project area in exchange for a cash open space payment equal to \$5,000 per additional permitted housing unit. Said payment shall be paid in full prior to the issuance of the first zoning permit for a residential unit within the project. Any such funds provided to the Town of Ellington shall be deposited in the Town's open space fund account for the exclusive purpose of purchasing open space, development rights, or conservation easements or other means of funding the preservation of land within Town.
2. The decision to increase allowable project density in accordance with this provision shall be at the applicant's option; however, the increase shall not be permitted, in the Commission's judgment, to violate or create conflicts with the intent, standards and objectives of the ARCHZ.

D. Lot and Impervious Coverage. In order to promote the preservation of open areas around and throughout the project, no more than 20% of the net developable project acreage shall be covered by building footprints and no more than 50% of the net developable project acreage shall be covered by all impervious surfaces.

E. Building separation. All buildings shall be at least 20 feet apart, measured at the exterior wall or the closest projection. Unless otherwise required, the areas between residential units shall be landscaped, graded and otherwise designed to provide privacy for homeowners without sacrificing the ability to maintain the units or provide security, safety or for other purposes. Where appropriate, walls, fences, hedges or other elements may be provided or required to assure that each living unit has some exterior limited common area for the exclusive use and benefit of the unit owners.

F. Building and Use Setbacks

1. **To abutting parcels and streets.** All accessory and principal buildings and uses shall be located at least 35 feet from any abutting property or public street. The Commission may require this minimum to be increased in specific locations based upon the unique attributes of the project parcel, current and anticipated trip volume on the adjacent street, type and scale of proposed buildings and uses, desire to protect existing site features, or for other similar reasons.
2. **To interior drives and parking.** All accessory and principal buildings shall be located at least 25 feet from the pavement of any interior drive and at least 10 feet from any surface parking area. The Commission may allow porches, building entryways and other minor elements to extend no more than eight feet into the required street setback. The concept shall be to use building scale and placement to create and maintain a pedestrian-scale street environment. The area between drives, parking areas and buildings shall be graded, landscaped and otherwise improved in accordance with the landscape and streetscape requirements noted herein. Concrete sidewalks of at least four feet in width shall be provided along one side of all streets.

3.4.6 Design Requirements

A. Architecture and Hardscape. The term "architecture" shall refer to the design of all buildings. The term "hardscape" shall include, but not necessarily be limited to, project signage, walkways, benches, fences, retaining and other walls, decorative elements and similar project features.

1. **General Requirements.** The applicant shall provide sufficient detail to demonstrate to the Commission's satisfaction that all project architecture and hardscape elements will meet the highest standards in terms of materials, finishes, durability and overall quality. The intent of these requirements is not to limit creativity by defining detailed prescriptive standards but to assure that the development will sustain its value over time, incorporate consistent design themes, take advantage of unique site attributes, and respect site constraints, all in an effort to accomplish the overall goals and objectives of the ARCHZ.
2. **Living Unit Types.** Subject to compliance with other standards and objectives of the ARCHZ, there shall be no limitation on the type of residential units permitted. However, applicants shall be guided by the following general provisions. With the Commission's approval, a project may consist of one or more unit types, although in order to accomplish ARCHZ objectives, the Commission may limit the amount or number of any particular type of unit. Unit types may include any of the following:
 - a. Single-family detached units (single and multiple stories);
 - b. Duplex attached single-family units (single and multiple stories);
 - c. Triplex and "quad" attached single-family units (single and multiple stories); and
 - d. Structures containing over four living units (single and multiple stories).

Applicants are also encouraged to design units to be readily adaptable to meet ADA requirements, especially as to door widths, thresholds and other features necessary to accommodate wheelchair access.

B. Building Arrangement. Optimal building arrangement will vary by unit type, project size, abutting uses and lands, and the unique opportunities and constraints presented by a given project parcel and setting.

1. While there is no specific limit on the project size, larger project designs shall take into consideration the need to break up unit clusters and phases into components that support the basic pedestrian-scale orientation of the ARCHZ concept.
2. Units will also be designed and arranged in proper relationship to interior streets. Units shall not dominate the interior streetscape in light of the fact the interior streetscape shall function as an integral pedestrian amenity within the development. Therefore, care should be taken to design buildings in scale and proportion to the interior streets.

C. Building Footprints

1. Building footprints, especially for larger, multiple-unit formats, shall be varied by avoiding long expanses of single-plane walls. Applicants are encouraged to use architectural features as integral design elements to satisfy the intent of this objective.
2. In issuing zoning permits for units, the Zoning Enforcement Officer shall be permitted to approve minor deviations in building footprint locations in order to allow flexibility in unit types, address unique and unanticipated site conditions, and for like purposes. In general, units shall not deviate more than 20 feet from the location approved on the detailed site plan and shall comply with all applicable bulk requirements of the ARCHZ regulation.

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- D. **Building Walls.** Building elevations and related elements shall be well proportioned, with doors, windows and other features placed and scaled in appropriate rhythm. Applicants are encouraged to use natural materials, including masonry stone, wood clapboard, natural brick or other like materials. Main colors should avoid bright palettes, although selective use of bold accent colors may be encouraged for trim or other decorative elements. Period colors appropriate to a particular historic period are also encouraged, where appropriate. All units within a project should not be the same color, but proposed colors should be well distributed through the project and be compatible overall.
- E. **Roof Design**
1. Roof design shall be an important element of all proposed architecture. Roofs shall be pitched, and applicants are encouraged to include dormers, cupolas, multiple gables and varied gable orientation, and other treatments or decorative elements in order to create interest, break up extended rooflines, and avoid monotonous, single-plane roofs.
 2. Views of and to roofs from within the project and from adjacent lands shall be considered. HVAC, antennas and other like miscellaneous structures shall not be located on roofs. Roof surfacing shall be high-quality architectural shingles or similar equivalent materials.
- F. **Community Facilities.** If to be provided, all community facilities shall reflect the same level of quality and consistency in design as other approved project elements.

3.4.7 Site Development/Design Requirements

The intent of the ARCHZ is to provide sufficient flexibility in design standards in order to achieve important public objectives. Therefore, in the event a provision of the ARCHZ requirements conflicts with other provisions of the Zoning Regulations, the ARCHZ requirements shall prevail. In the event a requirement of the Zoning Regulations is not addressed in the ARCHZ regulations, that requirement shall be in addition to the ARCHZ requirements. The Commission shall have the sole authority to evaluate and render a determination on any such matters.

- A. **Green Space.** Green space shall be an integral and fundamental component of the project purpose and design. One of the main objectives of the ARCHZ is to achieve community character goals by maintaining rural character, preserving green space, and protecting natural resources. Therefore, the location, intent, design, quality, extent, and long-term treatment of green spaces within the project are essential considerations in evaluating the project's acceptability.
1. A minimum of 20% of the project shall be dedicated to green space and protected as such in perpetuity through conservation easements, fee simple or any combination of interests deeded to the Town of Ellington or other approved party. The specific terms and conditions of the required conservation easement or deeds shall be determined on a case-by-case basis for each project, including consideration of any advisory recommendations received from the Conservation Commission.
 2. No more than 50% of the required green space may consist of inland wetlands, watercourses, water bodies and one-hundred-year floodplain

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3. The intent and acceptability of the green space design will necessarily vary project to project, depending upon the unique constraints and opportunities presented by a given project location. However, in general, the final approved green space design will need to satisfy one or more of the following design criteria, in the Commission's sole judgment:
 - a. Protects unique natural features, habitat or natural resources;
 - b. Complements other adjacent or proximal natural areas;
 - c. Provides immediate or future opportunities for passive recreation;
 - d. Provides public access to natural areas on and/or adjacent to the project;
 - e. Protects unique historic and/or archaeological features;
 - f. Provides natural screening/buffers from adjacent streets;
 - g. Provides integral project features to enhance project design/value;
 - h. Protects important views and vistas to and/or from the property; or
 - i. Protects landscape elements important to community character, such as stone walls, mature trees, rock outcrops, and other like features.
 4. In order to assure the project green space will accomplish the goals and objectives stated herein, the Commission may apply conditions to approval of an ARCHZ project, including but not necessarily limited to:
 - a. Conservation easements in favor of the Town of Ellington;
 - b. Land to be deeded in fee simple to the Town of Ellington;
 - c. Easements or deeded land in favor of a land trust;
 - d. Deed restrictions or other covenants;
 - e. Reclamation, planting or improvement to proposed green space areas;
 - f. Management of approved green space;
 - g. Installation of trail systems for public access.; and
 - h. Timing, phasing or schedule for green space disposition and/or improvements.
- B. Landscape and Buffers.** Project landscaping shall be an integral component of the overall design. The proposed landscape plan shall be designed by a licensed landscape architect. Projects shall be extensively landscaped with a variety of shade trees, evergreens, flowering trees, shrubs, perennials and lawn areas. Where appropriate, landscape plans shall include planted berms, stone retaining walls, or other elements intended to achieve certain functional or aesthetic objectives.
1. **Existing Landscape.** Where the existing landscape provides opportunities to selectively preserve individual specimen trees or stands of trees, applicants are encouraged to do so. This concept not only includes land cover but topography as well. Where possible the project should be designed to take advantage of existing land topography or to mitigate for the lack of natural contours.
 2. **Project Entry.** Each project shall include a well-designed entry feature, including but not limited to a project identification sign (monument sign), landscape materials and flowerbeds, decorative stone walls, low-intensity lighting, and other elements. The project entry shall be consistent with the overall project design theme. Project entry features shall be provided at all main access drives to public streets.

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3. **Foundation Plantings.** Foundations plantings consisting generally of decorative flowering shrubs, perennials, ornamental grasses and like materials, located within landscaped beds surfaced with natural wood chips, shredded bark or other approved natural material, shall be provided for all residential units and community buildings.
4. **Streetscape (Exterior).** The approved design of the project's exterior streetscape will vary according to the unique attributes of the project parcel, the setting, current and anticipated abutting uses, nature and extent of existing suitable plant material, site topography, and other factors. In general, the exterior streetscape treatment shall be an integral and important element of the overall project design. Design themes shall respect and, where appropriate, attempt to enhance the existing character of the streetscape, ranging from the preservation or enhancement of existing wooded areas to selective removal of existing wooded areas, planting of new trees and shrubs within cleared areas, and adding public sidewalks, lighting, benches, decorative fences, stone walls or other amenities.
5. **Streetscape (Interior)**
 - a. In order to promote a healthy and active living environment, enhance opportunities for social interaction and sustain project value, the interior streetscape shall be an important design element throughout the project. All interior streets shall be privately owned and maintained as a condition of ARCHZ approval. In exchange, maximum design flexibility will be allowed, subject only to reasonable engineering standards for horizontal and vertical geometry, stormwater treatment, public safety and other typical considerations. Interior private project drives are not required to comply with the applicable subdivision regulation standards for public streets.
 - b. All interior streets shall be provided with deciduous street trees, located no more than 50 feet on center and a minimum of eight feet high and 2 1/2 inches in caliper at planting. Where possible, existing trees shall also be retained and incorporated into the project design. Interior streets shall also be provided with a graded and grassed snow shelf along the edge of pavement or curb line a minimum of six feet wide.
6. **Abutting Properties.** Depending upon the existing and/or anticipated abutting uses, the Commission may require planted buffers to abutting property, including, where appropriate, the retention of existing mature natural vegetation or any combination of retention and new planting. If appropriate, in the Commission's sole discretion, decorative fences, screen walls or other methods may be selectively allowed, if they help achieve ARCHZ objectives.
7. **Screening.** Where appropriate, landscape shall also be used to screen refuse collection areas, utility cabinets, recreational trails and other miscellaneous items. Use of generic screening shall be avoided, and screening designs shall reflect the same quality and variety provided in other areas of the project.

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C. Lighting

1. **Ownership/Maintenance.** Unless otherwise approved by the Commission for good cause and in its sole discretion, all project lighting shall be owned and maintained by the common interest community.
2. **Low Intensity.** Project lighting for streets, parking areas, community facilities and other uses shall be the minimum necessary to provide safe and sufficient all-season lighting. In general, footcandle levels shall not exceed those for rural areas, as prescribed by standards adopted by the International Dark Sky Association (IDSA). The Commission may require details of proposed lighting sufficient to assure compliance with these requirements.
3. **Decorative.** In that all lighting will be private, applicants are encouraged to provide decorative lighting designs, as opposed to standard street and other lighting typically used in public street and commercial applications.
4. **Full Cutoff or Shoe Box Fixture.** Full cutoff or shoe box fixtures are encouraged in order to reduce glare and to direct lighting to the subject area.
5. **Height.** The maximum height of freestanding pole-mounted lights shall be 12 feet, unless greater heights are approved by the Commission upon a demonstration of good cause, and subject to a three-fourths modification per Subsection 3.4.11 of this section.
6. **Building Mounted.** Building-mounted lighting shall be limited to the minimum necessary and shall meet all applicable standards noted herein. No exposed floodlights shall be permitted. Decorative uplighting for aesthetic purposes may be permitted but should be limited to important focal points or features, such as project entry signage, project landscaping and similar accents.

D. **Parking and Access Drives.** Detailed plans will be provided in plan view, cross section and profile for all interior streets and in plan view and cross-sectional views for all proposed surface parking areas. Depending upon the scale and complexity of the project, a hierarchy of interior street designs may be required; however, in general the concept for interior streets shall be to limit the extent of paved width, provide features that slow ("calm") traffic, provide a strong emphasis on pedestrian activity and amenities, use landscaped medians and curvilinear horizontal geometry and otherwise avoid conventional approaches that emphasize the efficient movement of large volumes of vehicles over all other design considerations.

1. Unless otherwise specifically approved by the Commission, the paved width of interior access drives shall not exceed 24 feet. In order to permit these widths, sufficient surface parking shall be provided off street for all uses, in separate parking areas, unit garages, or in some combination of both. The Commission may limit on-street parking, based upon the recommendation of the Fire Marshal or other public safety personnel.
2. Projects shall be accessed via a main interior project drive or drives, and unit access shall not be taken directly to an existing public street. In cases where more than 30 units have direct access to a single collector within the project, the paved width of that collector may be increased to a maximum of 28 feet. In addition, the Fire Marshal may require additional secured access points from abutting public streets into the project for the exclusive purposes of providing vehicular access for emergency vehicles.

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- E. **Community Facilities.** Each project may provide some form of community facility for the purposes of community association meetings, recreation, or for similar purposes. If proposed, the facility shall be designed and located as an amenity within the project and shall be constructed and issued a certificate of occupancy before issuance of a certificate of occupancy for the units equaling 1/2 of the total approved project units.
- F. **Signage.** *(Amended 15 November 2007)* Each project shall be allowed entry signs where each access drive connects to a public street. Access drives to public streets shall be limited and shall be located in compliance with applicable sight line, grading and other standards of the Subdivision Regulations. Project entry signs and related features shall not interfere with necessary sight lines, in order to accommodate safe stopping distances, given posted speed limits.
1. A project will be allowed two (2) entry signs only.
 2. If the project has a center island at an entrance with a public street, it will be allowed only one (1) double sided sign to be placed in that island.
 3. No monopole-mounted signs shall be permitted. Entry signs shall not exceed four (4) feet high by ten (10) feet wide, exclusive of the approved sign base. The sign base shall be made of natural stone, masonry, or like approved materials. Entry signs shall not exceed six (6) feet in height from the adjacent grade inclusive of the base. At a minimum, a ten (10) foot area around the entire base shall be landscaped with ornamental plantings. Entry signs shall not be illuminated internally but instead by means of exterior "wash" lighting via ground-mounted lights concealed from view.
 4. Where appropriate, applicants may be permitted to incorporate project entry signage into decorative natural stone or masonry walls to be located at main entry drives.
 5. Maintenance of such signs and associated landscaping shall be the responsibility of the developer, unless and until, the responsibility is reassigned to a homeowner's association or similar management entity.
- G. **Stormwater.** Stormwater treatment and management shall reflect the current best management practices promulgated by the State Department of Environmental Protection. Each project shall be required to meet the draft Phase II NPDES stormwater requirements. In general and where approved by the Town Engineer, the use of curbless roads, swales, infiltration, and other like methods shall be preferred. Stormwater detention ponds shall not be designed solely to collect and hold water but shall be an integral design component of the project, graded, landscaped and located so as to provide an amenity wherever possible, or to meet other objectives of the ARCHZ regulation.
1. Applicants shall provide sufficient details of all stormwater-related systems, plans, data and mapping with each application. Without limitation, the Commission, at the request of the Town Engineer, may require all details and information deemed necessary to determine the sufficiency of the proposed system.
 2. All such systems shall be privately owned and maintained, and such requirement shall be included in the project declaration.
- H. **Refuse.** Refuse collection shall be under private contract between the association and a licensed hauler. Refuse collection areas shall be located on the site plan, including any common areas for that purpose. All refuse containers shall be completely screened and located so as to provide sufficient access, as well as not to have negative effects on project units or uses located on adjacent lands.

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I. Utilities

1. All utilities shall be located underground and sufficient easements or other rights shall be provided to applicable public utility companies as a condition of project approval. Where deemed necessary by the WPCA, interior sewer lines may be required to be publicly owned and maintained.
2. Interior hydrants shall be provided in locations, amounts and design according to the Fire Marshal, including any conditions relating to the ownership and ongoing maintenance of said hydrants.

- J. **Property Maintenance.** It shall be a condition of approval that all projects shall be maintained in accordance with the approved plans, and such maintenance obligation shall be noted in the approved declaration. This shall include a provision allowing the Zoning and Wetland Officer to access the site at all reasonable hours for the purposes of inspecting and noting any defects or failure to maintain the property as required.

3.4.8 Specific Requirements for Zone Change and Conceptual Site Plan Approval

In addition to the requirements of Section 8.1, an application for a Zone Change and Conceptual Site Plan approval shall include the following materials:

1. Existing conditions plan for the subject property showing any buildings, structures, above- or below-ground utility locations, easements, site topography at two-foot intervals, inland wetlands and watercourses, floodplains, and land cover.
2. Conceptual site plan drawn to a scale of no less than one inch equals 100 feet showing the following:
 - a. Proposed roads;
 - b. Building locations;
 - c. Parking locations;
 - d. Common areas;
 - e. Landscaped areas;
 - f. Community facilities;
 - g. Utilities; and
 - h. Any additional information that the Commission may deem pertinent in order to evaluate the rezoning request.
3. In addition to the above, applicants shall provide general architectural renderings for all unit types. If approved, the conceptual plan, including approved architectural concepts, shall establish the general basis for evaluating the final site plan and special permit, in order to confirm that the proposed detailed site plans and special permit are consistent with the basis for the rezoning approval.
4. Use and compliance statement describing the proposed development and how the proposal complies with all ARCHZ objectives and applicable adopted plan of conservation and development recommendations.
5. Green space and ecological report, describing in general the rationale for the proposed green space concept in terms of ARCHZ goals, objectives, standards and requirements and the proposed design, location, functions, ownership and maintenance of the proposed green space areas.

3.4.9 Specific Requirements for Site Plan and Special Permit Approval

A final site plan application to be filed simultaneously with an application for a special permit to construct active adult housing in the ARCHZ shall be required. In addition to the Site Plan requirements of Section 8.1.2, the plan shall include the following

1. Draft homeowner's declaration and covenants limiting occupancy and addressing ownership, maintenance and other issues regarding project green spaces and common areas and other concerns affecting project compliance with ARCHZ requirements.
2. WPCA approval for sewer service.
3. Inland wetlands approval (if applicable).
4. Report from the Conservation Commission regarding proposed green space.
5. Evidence the applicants have all necessary rights and interests to accomplish the development as proposed (grading rights, easements, access rights, etc.).
6. Written documentation from the Tax Collector that all tax payments are current.
7. Architectural plans drawn to scale and including floor plans for all proposed models depicting the uses of all interior spaces and exterior elevations for all sides of all unit types indicating proposed materials, colors, finish, lighting, signs, and other building features.
8. Phasing plans, including a grading and erosion control plan and narrative sufficient to meet the requirements of Article IX of these regulations.
9. Details for all hardscape features.
10. Traffic report addressing existing conditions, average daily traffic (ADT), weekend and weekday a.m. and p.m. peak hour trips and LOS and V/C ratios for all affected travelways and intersections, the anticipated impact on these conditions from project trips at buildout, and measures proposed to mitigate project impacts. The report and any related plans shall also address available sight lines at any proposed access drive connections to public streets and measures proposed to correct any substandard conditions at the site drive(s), given posted and actual travel speeds at the location(s).

3.4.10 Approvals from Other Boards and Commissions

Applicants for final site plan approval and special permit approval to develop property zoned ARCHZ shall receive approval (or advisory comments where noted) from the following applicable boards and commissions prior to a hearing on an application for a special permit and site plan approval before the Planning and Zoning Commission:

- A. **Conservation Commission.** Applicants for ARCHZ approval shall, prior to making formal application to the Planning and Zoning Commission, submit the existing conditions plan, proposed detailed site plan and required green space and ecological report to the Conservation Commission for review. Prospective applicants shall attend a meeting of the Conservation Commission to present these materials and seek guidance and general acceptance of the green space concept from the Conservation Commission. Following its review, the Commission will forward an advisory report to the Planning and Zoning Commission for the application file and hearing record.
 - 1. While the Conservation Commission's report shall be strictly advisory, the applicant shall make all reasonable attempts to comply with its suggestions or, where unable to comply, shall provide the Planning and Zoning Commission with statements in writing as to why such compliance was not possible.
 - 2. The provisions of this section shall not restrict prospective applicants from meeting with the Conservation Commission earlier in the process in order to receive guidance on green space concepts; however, that shall not obviate the need for compliance with the formal advisory review of the information and plans required herein.
- B. **Inland Wetland Agency.** If the proposed project includes activities subject to regulation by the Inland Wetland Agency, the applicant shall make application to the Inland Wetland Agency prior to making formal application to the Planning and Zoning Commission. Applicants are encouraged to withhold formal application to the Planning and Zoning Commission until they have received a final decision from the Inland Wetland Agency.
- C. **WPCA.** Prior to making formal application to the Planning and Zoning Commission, prospective applicants shall submit a request to the Water Pollution Control Authority for conceptual approval of public sewer service. Said conceptual approval shall be submitted with the ARCHZ application to the Planning and Zoning Commission.

3.4.11 Review Criteria and Required Findings for Approval

In acting to approve an ARCHZ, the Commission shall consider whether the application adheres to the above design standards. Failure to make explicit findings with regard to each of these criteria shall not be construed as a defect in the approval. In order to achieve the objectives of the ARCHZ, subject to the standards, procedures and requirements noted herein, the Commission may, in its sole discretion and subject to an affirmative vote of 3/4 of the voting members, approve, with or without conditions, modifications to the design standards listed above. This provision shall not apply to uses but only to design standards. Applicants shall request such modifications in writing at the time of the initial application, in the required use and compliance statement. Any such request shall include a detailed description of the modification, the justification for the proposed modification, and how the modification, if approved, will help achieve the objectives of the ARCHZ. In addition to the design standards the Commission will consider the following criteria:

- 1. **Project Location.** That the project location is appropriate in terms of access, existing and anticipated (by current zoning) abutting uses, neighborhood compatibility, and the ability to utilize the concept to achieve public objectives.
- 2. **Principal and Accessory Uses.** That all proposed principal and accessory uses are permitted and that accessory uses as proposed will complement and support the overall project and are sufficient in terms of location, amount, type and design.

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3. **Green Space.** That green space locations and designs have considered the recommendations of the Conservation Commission, are an integral component of the project, and are consistent with the Plan of Conservation and Development and the goals and objectives of the ARCHZ.
4. **Natural Resources.** That the project design, as well as its ongoing operations and maintenance, will provide sufficient protection for natural resources, and including any necessary mitigation, and that the project complies with any permit issued by the Inland Wetland Agency.
5. **Pedestrian Facilities.** That the design incorporates features that promote a pedestrian-scale community so as to assure that the living environment created will enhance the quality of life for unit owners, as well as long-term maintenance, safety and social well-being.
6. **Historical/Archaeological/Cultural Resources.** That the project protects and respects important affected resources by incorporating those resources into the project design or, where not feasible, by taking appropriate measures to document and memorialize such features for the benefit of future generations.
7. **Architecture and Hardscape.** That project architecture and hardscape are the highest quality, meet all applicable ARCHZ requirements, and will sustain the project's value over time, such that the project adds to the long-term welfare of the overall community.
8. **Exterior Streetscape.** That appropriate, context-sensitive measures have been incorporated into the project's external streetscape in order to minimize the project's impacts, where appropriate, to enhance the existing built environment, blend into or otherwise be consistent with the existing landscape and generally add value to the community's "public space."
9. **Interior Streetscape.** That the interior streetscape provides a distinctly pedestrian-scale environment, conducive to active and passive recreation, walking, biking, chance social encounters, sitting, and other typical activities; that the interior streetscape promotes and encourages use of the public realm for these purposes; and that the design does not inhibit such activities through creation of a sterile, barren streetscape, devoid of interest, with excessively deep front setbacks and lack of porches, benches, or other amenities.
10. **Landscape and Lighting.** That lighting and landscape are an important project component and not an afterthought. That project lighting and landscape have been designed in an intelligent and strategic manner, in order to add long-term value to the community, and consistent with the overall objectives of the ARCHZ concept.
11. **Traffic/Access.** That safe and efficient access will be provided, including sufficient parking, however not in a manner that contradicts the basic design goals of the ARCHZ, and that "standard" approaches to street and parking area design have been abandoned wherever possible in order to achieve the overall pedestrian scale of the project, especially with regard to interior spaces.
12. **Utilities.** That adequate long-term provisions have been made to assure safe and sufficient utility services in accordance with the requirements of applicable authorities.
13. **Support for the ARCHZ Concept.** That the project will encourage greater use and acceptance of the ARCHZ concept in appropriate areas of Town.

3.4.12 Post Approval *(3.4.12 (A) Repealed and replaced with following; Effective 2/15/12)*

- A. Following Planning and Zoning Commission approval of an ARCHZ site plan and special permit and as condition of said approval, applicants shall be required to satisfy the requirements of Section 9.6 - Post Approval.
- B. Amendments to Approved Projects**
 - 1. The Zoning Officer shall have the authority to approve minor changes to an approved site plan for an ARCHZ project through issuance of an administrative zoning permit approval. Said authority shall be strictly limited to minor changes in site grading necessary to adjust for field conditions, minor adjustments in building footprint locations or orientations, or minor changes in the location of incidental accessory features such as unit decks, stairs, or utility cabinets. However, if deemed necessary, the Commission may limit the extent to which the Zoning and Wetland Officer may approve such changes as a condition of the original approval. In all cases, and at his sole discretion, the Zoning and Wetland Officer may choose to forward requests for such changes to the Commission for review and/or possible approval as an amendment to the approved site plan.
 - 2. Other changes beyond the scope of these minor amendments shall only be approved by the Commission acting on a formal application for site plan and special permit approval. Applications seeking major amendments, such as an increase in the number of approved units, changes to the approved unit types and designs, changes to the approved utility systems, changes to the approved interior circulation layout, changes to the approved landscape concept and plan, changes to the approved stormwater plan, or other similar changes that affect major elements of the project's original plan, shall only be approved after a complete revised resubmission to the Commission, as in the original application.
- C. Time Limits.** Site plan approvals shall be valid for five years, with extensions available upon written request and for good cause, up to 10 years. In the event all approved improvements are not constructed in accordance with the approved site plan within a maximum of 10 years from the original date of approval, no further work shall be permitted unless a complete application is submitted and approved. Administrative approval of minor changes as permitted herein shall not be construed to extend the maximum five- or ten-year approval periods.
- D. Failure to Perform.** If at any time, and in accordance with the terms of required and approved project sureties, the project developer or owner fails to meet his obligations under the terms of the surety, the Town may take all necessary and available steps to attach the surety or sureties and seek to remedy the failure to perform. This right shall be clearly stated in the approved declaration, and the Town's rights shall in no way be constrained by any terms or conditions of the common interest community declaration or any other means.
- E. Obligation of project developer and association.**
 - 1. Until such time as the project ownership and maintenance converts to the association, the project developer shall have total responsibility for compliance. Written notification of the sale by the project owner to another party shall be provided to the Town Planner within 30 calendar days of such closing. The Planner shall have the right to meet with any subsequent owners and review project requirements. The association shall not be considered under any obligation for performance while the project remains under development, and such limitation shall be disclosed in the approved declaration.
 - 2. The declarant's rights shall in no way limit or encumber the Town from requiring specific performance under the terms of the approval or any related conditions, and the developer shall be obligated pursuant to the approvals to fully complete the project in accordance with said approvals.

Section 3.5 Workforce Cluster Housing Zone *(Added 6-14-10, Effective 7-1-10)*

3.5.1 Application of Provisions

The Workforce Cluster Housing Zone (WCHZ) is a floating zone for uses permitted in Subsection 3.5.4 of this section, to be designated on the Zoning Map after approval by the Commission of a conceptual site plan and a concurrent petition for a zone change to WCHZ. After approval of a conceptual site plan and zone change, a special permit and final site plan must be approved prior to development of the site. Potential applicants for WCHZ project approval are strongly encouraged to meet with Town staff for guidance prior to making a formal application.

3.5.2 Purpose

1. To increase the types of available housing, with emphasis on market rate and moderately priced privately developed, common interest communities for first time home buyers, empty nesters and seniors.
2. To provide landowners with a land use option on suitably located land with necessary utilities, access, and other important attributes.
3. To create high-quality developments capable of sustaining long-term value.
4. To promote project designs that enhance and protect open spaces, natural resources, natural features and other elements of the Town's rural character.
5. To achieve the goals and objectives of the Town's Plan of Conservation and Development.

3.5.3 Applicable Definitions:

Eligible Household – A household whose annual income is at or below eighty percent (80%) of the area median income for Ellington, as determined and reported by the United States Department of Housing and Urban Development (HUD).

Incentive Housing Restriction – A deed restriction, covenant, or site plan approval condition constituting a binding obligation with respect to the restrictions on household income, sale price, and housing costs required by the Connecticut General Statutes, as amended, and Article 3 of the Ellington Zoning Regulations, as amended.

Median Income – means, after adjustments for family size, the lesser of the state median income or the area median income for the area in which the Town of Ellington is located as determined by the United States Department of Housing and Urban Development (HUD).

Workforce Housing Development – A residential development that is located within the Ellington Workforce Cluster Housing Zone (WCHZ) that contains not less than twenty percent (20%) of the dwelling units that will be conveyed subject to an Incentive Housing Restriction requiring that at the initial point of sale and occupancy, such dwelling units shall be sold at, or below, prices which will preserve the units as housing for which persons pay thirty percent (30%) or less of their annual income, where such income is less than or equal to eighty percent (80%) or less of the median income in accordance with the Connecticut General Statutes, as amended, and Article 3 of the Ellington Zoning Regulations, as amended.

Workforce Housing Unit - A dwelling unit that is within a workforce housing development that is subject to an Incentive Housing Restriction.

3.5.4 Permitted Uses

- A. Property zoned WCHZ shall only be used for single-family, detached residential housing units and may include related accessory uses for the exclusive use of project residents and their guests. Permitted accessory uses shall be those customarily associated with common interest residential communities and shall clearly be subordinate and incidental to the principal residential uses; however, this limitation is not intended to expressly disallow other accessory uses if said uses are deemed appropriate, in the Commission's sole judgment, such that said uses will add to the long-term value of the community, provide special health, lifestyle or therapeutic benefits to the resident population, or otherwise help achieve the core objectives of the WCHZ.

- B. The following shall govern the inclusion of workforce housing units:
 - 1. Not less than 20% of all the dwelling units constructed in a WCHZ shall be a workforce housing unit. When a calculation performed under this subsection results in a number that includes a fraction, the fraction shall be rounded up to the next whole number.
 - 2. Workforce housing units shall be sold to only Eligible Households.
 - 3. Each workforce housing unit shall be subject to an Incentive Housing Restriction. All Incentive Housing Restrictions must include, at a minimum, the following:
 - a. A description of the workforce housing development.
 - b. An identification of the workforce housing units.
 - c. A requirement that only an Eligible Household may reside in a workforce housing unit.
 - d. The formula pursuant to which the maximum sale of a homeownership unit will be calculated.

- C. The purchase of a dwelling unit for investment purposes by an entity or an individual not intending to occupy the dwelling is prohibited, except that a nonresident family member may purchase up to one unit for a family member who will reside in the dwelling unit and otherwise comply with the requirements of this section.

3.5.5 Site Requirements

Land meeting the following minimum criteria may be permitted at the Commission's sole discretion to be zoned WCHZ. Such designation may be made at the request of an applicant or upon the Commission's own initiative. Land may not be zoned WCHZ unless the zoning request includes all of the submittal requirements listed in Subsection D herein and the submittals have been determined by the Commission to be acceptable.

- 1. Minimum 10 acres of contiguous land.
- 2. Public sewer service, including at least conceptual approval for such service by the Ellington PAC.
- 3. Public potable water supply.

3.5.6 Density, Height, Yard & Living Area Requirements

Density, Height, Yard and Living Area Requirements shall be as follows:

Table 3.5.6 - Density, Height, Yard & Living Area Requirements	
Minimum Project Area	10 acres
Maximum Units per Acre (1)	4 (2)
Maximum Units per Building	
Maximum Building Height	32 feet (3)
Maximum Building Coverage	20%
Maximum Impervious Coverage	50%
Minimum Frontage	200 feet
Minimum Front Yard Setback (4)	35 feet
Minimum Side and Rear Yard (4)	35 feet
Minimum Setback from Interior Drive	25 feet
Minimum Setback from Surface Parking Area	10 feet
Minimum Building Separation	20 feet
<p>(1) For purposes of calculating net density, areas defined as inland wetlands, water bodies, watercourses, one-hundred-year floodplain, and areas over thirty-percent slope shall not be included.</p> <p>(2) May be increased to five dwelling units per acre in exchange for a 10% increase in "workforce" units over the base percentage.</p> <p>(3) Allowable building heights may vary by unit placement, the location and nature of abutting uses, site topography and land cover, views into and of the site from adjacent areas, and other unique attributes of a given site and project. For purposes of measurement, height shall be calculated from average grade 15 feet from the foundation wall to the highest portion of the roof, excepting miscellaneous architectural features such as chimneys, cupolas, and like elements not exceeding 5% of the roof area.</p> <p>(4) The Commission may require this minimum to be increased in specific locations based upon the unique attributes of the project parcel current and anticipated trip volume on the adjacent street, type and scale of proposed buildings and uses, desire to protect existing site features, or for other similar reasons.</p>	

- A. **Multiple Parcels.** The project may consist of multiple legal parcels of record as long as the sufficient binding covenants are placed on the land records to ensure the continued single operation, management and ownership of the project in accordance with all approval requirements.
- B. **Lot and Impervious Coverage.** In order to promote the preservation of open areas around and throughout the project, no more than 20% of the net developable project acreage shall be covered by building footprints and no more than 50% of the net developable project acreage shall be covered by all impervious surfaces.
- C. **Building separation.** All buildings shall be at least 20 feet apart, measured at the exterior wall or the closest projection. Unless otherwise required, the areas between residential units shall be landscaped, graded and otherwise designed to provide privacy for homeowners without sacrificing the ability to maintain the units or provide security, safety or for other purposes. Where appropriate, walls, fences,

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hedges or other elements may be provided or required to assure that each living unit has some exterior limited common area for the exclusive use and benefit of the unit owners.

D. Building and Use Setbacks

1. To abutting parcels and streets. All accessory and principal buildings and uses shall be located at least 35 feet from any abutting property or public street. The Commission may require this minimum to be increased in specific locations based upon the unique attributes of the project parcel, current and anticipated trip volume on the adjacent street, type and scale of proposed buildings and uses, desire to protect existing site features, or for other similar reasons.
2. To interior drives and parking. All accessory and principal buildings shall be located at least 25 feet from the pavement of any interior drive and at least 10 feet from any surface parking area. The Commission may allow porches, building entryways and other minor elements to extend no more than eight feet into the required street setback. The concept shall be to use building scale and placement to create and maintain a pedestrian-scale street environment. The area between drives, parking areas and buildings shall be graded, landscaped and otherwise improved in accordance with the landscape and streetscape requirements noted herein. Concrete sidewalks of at least four feet in width shall be provided along one side of all streets.

3.5.7 Design Requirements

- A. **Architecture and Hardscape.** The term "architecture" shall refer to the design of all buildings. The term "hardscape" shall include, but not necessarily be limited to, project signage, walkways, benches, fences, retaining and other walls, decorative elements and similar project features.
 1. General Requirements. The applicant shall provide sufficient detail to demonstrate to the Commission's satisfaction that all project architecture and hardscape elements will meet the highest standards in terms of materials, finishes, durability and overall quality. The intent of these requirements is not to limit creativity by defining detailed prescriptive standards but to assure that the development will sustain its value over time, incorporate consistent design themes, take advantage of unique site attributes, and respect site constraints, all in an effort to accomplish the overall goals and objectives of the WCHZ.
 2. Living units shall be single-family detached (single and multiple stories).

Applicants are also encouraged to design units to be readily adaptable to meet ADA requirements, especially as to door widths, thresholds and other features necessary to accommodate wheelchair access.
- B. **Building Arrangement.** Optimal building arrangement will vary by unit type, project size, abutting uses and lands, and the unique opportunities and constraints presented by a given project parcel and setting.
 1. While there is no specific limit on the project size, larger project designs shall take into consideration the need to break up unit clusters and phases into components that support the basic pedestrian-scale orientation of the WCHZ concept.
 2. Units will also be designed and arranged in proper relationship to interior streets. Units shall not dominate the interior streetscape in light of the fact the interior streetscape shall function as an integral pedestrian amenity within the development. Therefore, care should be taken to design buildings in scale and proportion to the interior streets.

C. Building Footprints

1. Building footprints shall be varied by avoiding long expanses of single-plane walls. Applicants are encouraged to use architectural features as integral design elements to satisfy the intent of this objective.
2. In issuing zoning permits for units, the Zoning Enforcement Officer shall be permitted to approve minor deviations in building footprint locations in order to allow flexibility in unit types, address unique and unanticipated site conditions, and for like purposes. In general, units shall not deviate more than 20 feet from the location approved on the detailed site plan and shall comply with all applicable bulk requirements of the WCHZ regulation.

D. Building Walls. Building elevations and related elements shall be well proportioned, with doors, windows and other features placed and scaled in appropriate rhythm. Applicants are encouraged to use natural materials, including masonry stone, wood clapboard, natural brick or other like materials. Main colors should avoid bright palettes, although selective use of bold accent colors may be encouraged for trim or other decorative elements. Period colors appropriate to a particular historic period are also encouraged, where appropriate. All units within a project should not be the same color, but proposed colors should be well distributed through the project and be compatible overall.

E. Roof Design

1. Roof design shall be an important element of all proposed architecture. Roofs shall be pitched, and applicants are encouraged to include dormers, cupolas, multiple gables and varied gable orientation, and other treatments or decorative elements in order to create interest, break up extended rooflines, and avoid monotonous, single-plane roofs.
2. Views of and to roofs from within the project and from adjacent lands shall be considered. HVAC, antennas and other like miscellaneous structures shall not be located on roofs. Roof surfacing shall be high-quality architectural shingles or similar equivalent materials.

F. Community Facilities. If to be provided, all community facilities shall reflect the same level of quality and consistency in design as other approved project elements.

3.5.8 Site Development/Design Requirements

The intent of the WCHZ is to provide sufficient flexibility in design standards in order to achieve important public objectives. Therefore, in the event a provision of the WCHZ requirements conflicts with other provisions of the Zoning Regulations, the WCHZ requirements shall prevail. In the event a requirement of the Zoning Regulations is not addressed in the WCHZ regulations, that requirement shall be in addition to the WCHZ requirements. The Commission shall have the sole authority to evaluate and render a determination on any such matters.

A. Green Space. Green space shall be an integral and fundamental component of the project purpose and design. One of the main objectives of the WCHZ is to achieve community character goals by maintaining rural character, preserving green space, and protecting natural resources. Therefore, the location, intent, design, quality, extent, and long-term treatment of green spaces within the project are essential considerations in evaluating the project's acceptability.

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1. A minimum of 20% of the project shall be dedicated to green space and protected as such in perpetuity through conservation easements, fee simple or any combination of interests deeded to the Town of Ellington or other approved party. The specific terms and conditions of the required conservation easement or deeds shall be determined on a case by-case basis for each project, including consideration of any advisory recommendations received from the Conservation Commission.
2. No more than 50% of the required green space may consist of inland wetlands, watercourses, water bodies and one-hundred-year floodplain
3. The intent and acceptability of the green space design will necessarily vary project to project, depending upon the unique constraints and opportunities presented by a given project location. However, in general, the final approved green space design will need to satisfy one or more of the following design criteria, in the Commission's sole judgment:
 - a. Protects unique natural features, habitat or natural resources;
 - b. Complements other adjacent or proximal natural areas;
 - c. Provides immediate or future opportunities for passive recreation;
 - d. Provides public access to natural areas on and/or adjacent to the project;
 - e. Protects unique historic and/or archaeological features;
 - f. Provides natural screening/buffers from adjacent streets;
 - g. Provides integral project features to enhance project design/value;
 - h. Protects important views and vistas to and/or from the property; or
 - i. Protects landscape elements important to community character, such as stone walls, mature trees, rock outcrops, and other like features.
4. In order to assure the project green space will accomplish the goals and objectives stated herein, the Commission may apply conditions to approval of an WCHZ project, including but not necessarily limited to:
 - a. Conservation easements in favor of the Town of Ellington;
 - b. Land to be deeded in fee simple to the Town of Ellington;
 - c. Easements or deeded land in favor of a land trust;
 - d. Deed restrictions or other covenants;
 - e. Reclamation, planting or improvement to proposed green space areas;
 - f. Management of approved green space;
 - g. Installation of trail systems for public access.; and
 - h. Timing, phasing or schedule for green space disposition and/or improvements.

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- B. **Landscape and Buffers.** Project landscaping shall be an integral component of the overall design. The proposed landscape plan shall be designed by a licensed landscape architect. Projects shall be extensively landscaped with a variety of shade trees, evergreens, flowering trees, shrubs, perennials and lawn areas. Where appropriate, landscape plans shall include planted berms, stone retaining walls, or other elements intended to achieve certain functional or aesthetic objectives.
1. **Existing Landscape.** Where the existing landscape provides opportunities to selectively preserve individual specimen trees or stands of trees, applicants are encouraged to do so. This concept not only includes land cover but topography as well. Where possible the project should be designed to take advantage of existing land topography or to mitigate for the lack of natural contours.
 2. **Project Entry.** Each project shall include a well-designed entry feature, including but not limited to a project identification sign (monument sign), landscape materials and flowerbeds, decorative stone walls, low-intensity lighting, and other elements. The project entry shall be consistent with the overall project design theme. Project entry features shall be provided at all main access drives to public streets.
 3. **Foundation Plantings.** Foundations plantings consisting generally of decorative flowering shrubs, perennials, ornamental grasses and like materials, located within landscaped beds surfaced with natural wood chips, shredded bark or other approved natural material, shall be provided for all residential units and community buildings.
 4. **Streetscape (Exterior).** The approved design of the project's exterior streetscape will vary according to the unique attributes of the project parcel, the setting, current and anticipated abutting uses, nature and extent of existing suitable plant material, site topography, and other factors. In general, the exterior streets cape treatment shall be an integral and important element of the overall project design. Design themes shall respect and, where appropriate, attempt to enhance the existing character of the streetscape, ranging from the preservation or enhancement of existing wooded areas to selective removal of existing wooded areas, planting of new trees and shrubs within cleared areas, and adding public sidewalks, lighting, benches, decorative fences, stone walls or other amenities.
 5. **Streetscape (Interior)**
 - a. In order to promote a healthy and active living environment, enhance opportunities for social interaction and sustain project value, the interior streets cape shall be an important design element throughout the project. All interior streets shall be privately owned and maintained as a condition of WCHZ approval. In exchange, maximum design flexibility will be allowed, subject only to reasonable engineering standards for horizontal and vertical geometry, stormwater treatment, public safety and other typical considerations. Interior private project drives are not required to comply with the applicable subdivision regulation standards for public streets.

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- b. All interior streets shall be provided with deciduous street trees, located no more than 50 feet on center and a minimum of eight feet high and 2 1/2 inches in caliper at planting. Where possible, existing trees shall also be retained and incorporated into the project design. Interior streets shall also be provided with a graded and grassed snow shelf along the edge of pavement or curb line a minimum of six feet wide.
6. **Abutting Properties.** Depending upon the existing and/or anticipated abutting uses, the Commission may require planted buffers to abutting property, including, where appropriate, the retention of existing mature natural vegetation or any combination of retention and new planting. If appropriate, in the Commission's sole discretion, decorative fences, screen walls or other methods may be selectively allowed, if they help achieve WCHZ objectives.
7. **Screening.** Where appropriate, landscape shall also be used to screen refuse collection areas, utility cabinets, recreational trails and other miscellaneous items. Use of generic screening shall be avoided, and screening designs shall reflect the same quality and variety provided in other areas of the project.

C. Lighting

1. **Ownership/Maintenance.** Unless otherwise approved by the Commission for good cause and in its sole discretion, all project lighting shall be owned and maintained by the common interest community.
2. **Low Intensity.** Project lighting for streets, parking areas, community facilities and other uses shall be the minimum necessary to provide safe and sufficient all-season lighting. In general, footcandle levels shall not exceed those for rural areas, as prescribed by standards adopted by the International Dark Sky Association (IDSA). The Commission may require details of proposed lighting sufficient to assure compliance with these requirements.
3. **Decorative.** In that all lighting will be private, applicants are encouraged to provide decorative lighting designs, as opposed to standard street and other lighting typically used in public street and commercial applications.
4. **Full Cutoff or Shoe Box Fixture.** Full cutoff or shoe box fixtures are encouraged in order to reduce glare and to direct lighting to the subject area.
5. **Height.** The maximum height of freestanding pole-mounted lights shall be 12 feet, unless greater heights are approved by the Commission upon a demonstration of good cause, and subject to a three-fourths modification per Subsection 3.5.11 of this section.
6. **Building Mounted.** Building-mounted lighting shall be limited to the minimum necessary and shall meet all applicable standards noted herein. No exposed floodlights shall be permitted. Decorative uplighting for aesthetic purposes may be permitted but should be limited to important focal points or features, such as project entry signage, project landscaping and similar accents.

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- D. **Parking and Access Drives.** Detailed plans will be provided in plan view, cross section and profile for all interior streets and in plan view and cross-sectional views for all proposed surface parking areas. Depending upon the scale and complexity of the project, a hierarchy of interior street designs may be required; however, in general the concept for interior streets shall be to limit the extent of paved width, provide features that slow ("calm") traffic, provide a strong emphasis on pedestrian activity and amenities, use landscaped medians and curvilinear horizontal geometry and otherwise avoid conventional approaches that emphasize the efficient movement of large volumes of vehicles over all other design considerations.
1. Unless otherwise specifically approved by the Commission, the paved width of interior access drives shall not exceed 24 feet. In order to permit these widths, sufficient surface parking shall be provided off street for all uses, in separate parking areas, unit garages, or in some combination of both. The Commission may limit on-street parking, based upon the recommendation of the Fire Marshal or other public safety personnel.
 2. Projects shall be accessed via a main interior project drive or drives, and unit access shall not be taken directly to an existing public street. In cases where more than 30 units have direct access to a single collector within the project, the paved width of that collector may be increased to a maximum of 28 feet. In addition, the Fire Marshal may require additional secured access points from abutting public streets into the project for the exclusive purposes of providing vehicular access for emergency vehicles.
- E. **Community Facilities.** Each project may provide some form of community facility for the purposes of community association meetings, recreation, or for similar purposes. If proposed, the facility shall be designed and located as an amenity within the project and shall be constructed and issued a certificate of occupancy before issuance of a certificate of occupancy for the units equaling 1/2 of the total approved project units.
- F. **Signage.** Each project shall be allowed entry signs where each access drive connects to a public street. Access drives to public streets shall be limited and shall be located in compliance with applicable sight line, grading and other standards of the Subdivision Regulations. Project entry signs and related features shall not interfere with necessary sight lines, in order to accommodate safe stopping distances, given posted speed limits.
1. A project will be allowed two (2) entry signs only.
 2. If the project has a center island at an entrance with a public street, it will be allowed only one (1) double sided sign to be placed in that island.
 3. No monopole-mounted signs shall be permitted. Entry signs shall not exceed four (4) feet high by ten (10) feet wide, exclusive of the approved sign base. The sign base shall be made of natural stone, masonry, or like approved materials. Entry signs shall not exceed six (6) feet in height from the adjacent grade inclusive of the base. At a minimum, a ten (10) foot area around the entire base shall be landscaped with ornamental plantings. Entry signs shall not be illuminated internally but instead by means of exterior "wash" lighting via ground-mounted lights concealed from view.
 4. Where appropriate, applicants may be permitted to incorporate project entry signage into decorative natural stone or masonry walls to be located at main entry drives.
 5. Maintenance of such signs and associated landscaping shall be the responsibility of the developer, unless and until, the responsibility is reassigned to a homeowner's association or similar management entity.

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- G. **Stormwater.** Stormwater treatment and management shall reflect the current best management practices promulgated by the State Department of Environmental Protection. Each project shall be required to meet the draft Phase II NPDES stormwater requirements. In general and where approved by the Town Engineer, the use of curb less roads, swales, infiltration, and other like methods shall be preferred. Stormwater detention ponds shall not be designed solely to collect and hold water but shall be an integral design component of the project, graded, landscaped and located so as to provide an amenity wherever possible, or to meet other objectives of the WCHZ regulation.
1. Applicants shall provide sufficient details of all stormwater-related systems, plans, data and mapping with each application. Without limitation, the Commission, at the request of the Town Engineer, may require all details and information deemed necessary to determine the sufficiency of the proposed system.
 2. All such systems shall be privately owned and maintained, and such requirement shall be included in the project declaration.
- H. **Refuse.** Refuse collection shall be under private contract between the association and a licensed hauler. Refuse collection areas shall be located on the site plan, including any common areas for that purpose. All refuse containers shall be completely screened and located so as to provide sufficient access, as well as not to have negative effects on project units or uses located on adjacent lands.
- I. **Utilities**
1. All utilities shall be located underground and sufficient easements or other rights shall be provided to applicable public utility companies as a condition of project approval. Where deemed necessary by the WPCA, interior sewer lines may be required to be publicly owned and maintained.
 2. Interior hydrants shall be provided in locations, amounts and design according to the Fire Marshal, including any conditions relating to the ownership and ongoing maintenance of said hydrants.
- J. **Property Maintenance.** It shall be a condition of approval that all projects shall be maintained in accordance with the approved plans, and such maintenance obligation shall be noted in the approved declaration. This shall include a provision allowing the Zoning and Wetland Officer to access the site at all reasonable hours for the purposes of inspecting and noting any defects or failure to maintain the property as required.

3.5.9 Specific Requirements for Zone Change and Conceptual Site Plan Approval

In addition to the requirements of Section 8.1, an application for a Zone Change and Conceptual Site Plan approval shall include the following materials:

1. Existing conditions plan for the subject property showing any buildings, structures, above- or below-ground utility locations, easements, site topography at two-foot intervals, inland wetlands and watercourses, floodplains, and land cover.
2. Conceptual site plan drawn to a scale of no less than one inch equals 100 feet showing the following:
 - a. Proposed roads;
 - b. Building locations;
 - c. Parking locations;
 - d. Common areas;
 - e. Landscaped areas;
 - f. Community facilities;

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- g. Utilities; and
 - h. Any additional information that the Commission may deem pertinent in order to evaluate the rezoning request.
3. In addition to the above, applicants shall provide general architectural renderings for all unit types. If approved, the conceptual plan, including approved architectural concepts, shall establish the general basis for evaluating the final site plan and special permit, in order to confirm that the proposed detailed site plans and special permit are consistent with the basis for the rezoning approval.
 4. Use and compliance statement describing the proposed development and how the proposal complies with all WCHZ objectives and applicable adopted plan of conservation and development recommendations.
 5. Green space and ecological report, describing in general the rationale for the proposed green space concept in terms of WCHZ goals, objectives, standards and requirements and the proposed design, location, functions, ownership and maintenance of the proposed green space areas.

3.5.10 Specific Requirements for Site Plan and Special Permit Approval

A final site plan application to be filed simultaneously with an application for a special permit to construct housing in the WCHZ shall be required. In addition to the Site Plan requirements of Section 8.1.2, the plan shall include the following

1. Draft homeowner's declaration and covenants limiting building footprint expansion in those units set aside as workforce restricted units and addressing ownership, maintenance and other issues regarding project green spaces and common areas and other concerns affecting project compliance with WCHZ requirements.
2. WPCA approval for sewer service.
3. Inland wetlands approval (if applicable).
4. Report from the Conservation Commission regarding proposed green space.
5. Evidence the applicants have all necessary rights and interests to accomplish the development as proposed (grading rights, easements, access rights, etc.).
6. Written documentation from the Tax Collector that all tax payments are current.
7. Architectural plans drawn to scale and including floor plans for all proposed models depicting the uses of all interior spaces and exterior elevations for all sides of all unit types indicating proposed materials, colors, finish, lighting, signs, and other building features.
8. Phasing plans, including a grading and erosion control plan and narrative sufficient to meet the requirements of Article IX of these regulations.
9. Details for all hardscape features.
10. Traffic report addressing existing conditions, average daily traffic (ADT), weekend and weekday a.m. and p.m. peak hour trips and LOS and V/C ratios for all affected travelways and intersections, the anticipated impact on these conditions from project trips at buildout, and measures proposed to mitigate project impacts. The report and any related plans shall also address available sight lines at any proposed access drive connections to public streets and measures proposed to correct any substandard conditions at the site drive(s), given posted and actual travel speeds at the location(s).

3.5.11 Approvals from Other Boards and Commissions

Applicants for formal site plan approval and special permit approval to develop property zoned WCHZ shall receive approval (or advisory comments where noted) from the following applicable boards and commissions prior to a hearing on an application for a special permit and site plan approval before the Planning and Zoning Commission:

- A. Conservation Commission. Applicants for WCHZ approval shall, prior to making formal application to the Planning and Zoning Commission, submit the existing conditions plan, proposed detailed site plan and required green space and ecological report to the Conservation Commission for review. Prospective applicants shall attend a meeting of the Conservation Commission to present these materials and seek guidance and general acceptance of the green space concept from the Conservation Commission. Following its review, the Commission will forward an advisory report to the Planning and Zoning Commission for the application file and hearing record.
 - 1. While the Conservation Commission's report shall be strictly advisory, the applicant shall make all reasonable attempts to comply with its suggestions or, where unable to comply, shall provide the Planning and Zoning Commission with statements in writing as to why such compliance was not possible.
 - 2. The provisions of this section shall not restrict prospective applicants from meeting with the Conservation Commission earlier in the process in order to receive guidance on green space concepts; however, that shall not obviate the need for compliance with the formal advisory review of the information and plans required herein.
- B. Inland Wetland Agency. If the proposed project includes activities subject to regulation by the Inland Wetland Agency, the applicant shall make application to the Inland Wetland Agency prior to making formal application to the Planning and Zoning Commission. Applicants are encouraged to withhold formal application to the Planning and Zoning Commission until they have received a final decision from the Inland Wetland Agency.
- C. WPCA. Prior to making formal application to the Planning and Zoning Commission, prospective applicants shall submit a request to the Water Pollution Control Authority for conceptual approval of public sewer service. Said conceptual approval shall be submitted with the WCHZ application to the Planning and Zoning Commission.

3.5.12 Review Criteria and Required Findings for Approval

In acting to approve a WCHZ, the Commission shall consider whether the application adheres to the above design standards. Failure to make explicit findings with regard to each of these criteria shall not be construed as a defect in the approval. In order to achieve the objectives of the WCHZ, subject to the standards, procedures and requirements noted herein, the Commission may, in its sole discretion and subject to an affirmative vote of 3/4 of the voting members, approve, with or without conditions, modifications to the design standards listed above. This provision shall not apply to uses but only to design standards. Applicants shall request such modifications in writing at the time of the initial application, in the required use and compliance statement. Any such request shall include a detailed description of the modification, the justification for the proposed modification, and how the modification, if approved, will help achieve the objectives of the WCHZ. In addition to the design standards the Commission will consider the following criteria:

- 1. **Project Location.** That the project location is appropriate in terms of access, existing and anticipated (by current zoning) abutting uses, neighborhood compatibility, and the ability to utilize the concept to achieve public objectives.
- 2. **Principal and Accessory Uses.** That all proposed principal and accessory uses are permitted and that accessory uses as proposed will complement and support the overall project and are

ARTICLE 3 RESIDENTIAL ZONES

sufficient in terms of location, amount, type and design.

3. **Green Space.** That green space locations and designs have considered the recommendations of the Conservation Commission, are an integral component of the project, and are consistent with the Plan of Conservation and Development and the goals and objectives of the WCHZ.
4. **Natural Resources.** That the project design, as well as its ongoing operations and maintenance, will provide sufficient protection for natural resources, and including any necessary mitigation, and that the project complies with any permit issued by the Inland Wetland Agency.
5. **Pedestrian Facilities.** That the design incorporates features that promote a pedestrianscale community so as to assure that the living environment created will enhance the quality of life for unit owners, as well as long-term maintenance, safety and social wellbeing.
6. **Historical/Archaeological/Cultural Resources.** That the project protects and respects important affected resources by incorporating those resources into the project design or, where not feasible, by taking appropriate measures to document and memorialize such features for the benefit of future generations.
7. **Architecture and Hardscape.** That project architecture and hardscape are the highest quality, meet all applicable WCHZ requirements, and will sustain the project's value over time, such that the project adds to the long-term welfare of the overall community.
8. **Exterior Streetscape.** That appropriate, context-sensitive measures have been incorporated into the project's external streets cape in order to minimize the project's impacts, where appropriate, to enhance the existing built environment, blend into or otherwise be consistent with the existing landscape and generally add value to the community's "public space".
9. **Interior Streetscape.** That the interior streetscape provides a distinctly pedestrian-scale environment, conducive to active and passive recreation, walking, biking, chance social encounters, sitting, and other typical activities; that the interior streetscape promotes and encourages use of the public realm for these purposes; and that the design does not inhibit such activities through creation of a sterile, barren streets cape, devoid of interest, with excessively deep front setbacks and lack of porches, benches, or other amenities.
10. **Landscape and Lighting.** That lighting and landscape are an important project component and not an afterthought. That project lighting and landscape have been designed in an intelligent and strategic manner, in order to add long-term value to the community, and consistent with the overall objectives of the WCHZ concept.
11. **Traffic/Access.** That safe and efficient access will be provided, including sufficient parking, however not in a manner that contradicts the basic design goals of the WCHZ, and that "standard" approaches to street and parking area design have been abandoned wherever possible in order to achieve the overall pedestrian scale of the project, especially with regard to interior spaces.
12. **Utilities.** That adequate long-term provisions have been made to assure safe and sufficient utility services in accordance with the requirements of applicable authorities.
13. **Support for the WCHZ Concept.** That the project will encourage greater use and acceptance of the WCHZ concept in appropriate areas of Town.

3.5.13 Post Approval *(3 4 12 (A) Repealed and replaced with following; Effective 2/15/12)*

- A. Following Planning and Zoning Commission approval of a WCHZ site plan and special permit and as condition of said approval, applicants shall be required to satisfy the requirements of Section 9.6 - Post Approval.

B. Amendments to Approved Projects

1. The Zoning Officer shall have the authority to approve minor changes to an approved site plan for a WCHZ project through issuance of an administrative zoning permit approval. Said authority shall be strictly limited to minor changes in site grading necessary to adjust for field conditions, minor adjustments in building footprint locations or orientations, or minor changes in the location of incidental accessory features such as unit decks, stairs, or utility cabinets. However, if deemed necessary, the Commission may limit the extent to which the Zoning and Wetland Officer may approve such changes as a condition of the original approval. In all cases, and at his sole discretion, the Zoning and Wetland Officer may choose to forward requests for such changes to the Commission for review and/or possible approval as an amendment to the approved site plan.
2. Other changes beyond the scope of these minor amendments shall only be approved by the Commission acting on a formal application for site plan and special permit approval. Applications seeking major amendments, such as an increase in the number of approved units, changes to the approved unit designs, changes to the approved utility systems, changes to the approved interior circulation layout, changes to the approved landscape concept and plan, changes to the approved stormwater plan, or other similar changes that affect major elements of the project's original plan, shall only be approved after a complete revised resubmission to the Commission, as in the original application.

C. Time Limits. Site plan approvals shall be valid for five years, with extensions available upon written request and for good cause, up to 10 years. In the event all approved improvements are not constructed in accordance with the approved site plan within a maximum of 10 years from the original date of approval, no further work shall be permitted unless a complete application is submitted and approved. Administrative approval of minor changes as permitted herein shall not be construed to extend the maximum five- or ten-year approval periods.

D. Failure to Perform. If at any time, and in accordance with the terms of required and approved project sureties, the project developer or owner fails to meet his obligations under the terms of the surety, the Town may take all necessary and available steps to attach the surety or sureties and seek to remedy the failure to perform. This right shall be clearly stated in the approved declaration, and the Town's rights shall in no way be constrained by any terms or conditions of the common interest community declaration or any other means.

E. Obligation of project developer and association

1. Until such time as the project ownership and maintenance converts to the association, the project developer shall have total responsibility for compliance. Written notification of the sale by the project owner to another party shall be provided to the Town Planner within 30 calendar days of such closing. The Planner shall have the right to meet with any subsequent owners and review project requirements. The association shall not be considered under any obligation for performance while the project remains under development, and such limitation shall be disclosed in the approved declaration.
2. The declarant's rights shall in no way limit or encumber the Town from requiring specific performance under the terms of the approval or any related conditions, and the developer shall be obligated pursuant to the approvals to fully complete the project in accordance with said approvals.

therewith while such trailer is stored.

- (2) Any building in the rear of the main building on the same lot and used for residence purposes, except for domestic employees of the owners or tenants of the main building, which employees may lawfully occupy such building, provided that it shall not be over two stories or 30 feet in height, shall conform to all open space requirements and shall not be within 30 feet of any main building on the lot.
- (3) Deposit of waste materials or landfill. Except for waste materials deposited in a Village facility for the disposal of such materials, no garbage, rubbish, refuse or other waste material, or any clean soil, gravel, rock or other natural material shall be dumped or deposited in the Village of Port Chester without first obtaining a permit to do so from the Building Inspector and without conforming with the following regulations:
 - (a) Such disposition shall comply with all applicable regulations of the Village of Port Chester and of the Westchester County Department of Health.
 - (b) It shall be determined that neither the deposited materials nor the manner of their disposition will be objectionable by reason of dust, fumes, smoke or odor, or be otherwise detrimental to the public.
 - (c) No garbage, rubbish, refuse or other waste material other than clean soil, gravel, rock or other natural material deposited for the purposes of landfill or regrading of the land on which it is deposited shall be located within 100 feet of any lot line or of any stream or water body.
 - (d) No deposit of waste materials or landfill shall be so located as to interfere with drainage to the extent of being injurious to adjacent land or buildings or as to encroach on streams or water bodies, except as provided for by the applicable regulatory bodies.

B. Business building use and entrances on residential side streets. Where a residence district is bounded by a portion of a business district, then any side street extending through such residence district into such business district shall be considered a residential side street and shall not be used for any business purposes, except as herein set forth:

- (1) Any business use or any business structure in such business district shall face and open upon the street set aside for business purposes, except that show windows in business structures may be built and exposed on a residential side street within the area set aside as part of said business district.
- (2) A business building entrance may be located at the corner of such business street and residential side streets. All other entrances to such business structure, except to residential parts thereof, must be located on and face the business street, except that any second means of egress required by applicable law and access to the structure from off-street parking facilities shall be permitted. *Editor's Note: Former Subsection C, regarding display windows and glass entry doors on business premises, which immediately followed, as added 11-4-1996 by L.L. No. 3-1996, was repealed 11-17-2003 by L.L. No. 11-2003. See now Ch. 336.*

§ 345-18. Set-asides for moderate-income housing.

[Added 6-14-2004 by L.L. No. 11-2004]

- A. It is the purpose of this section to enhance the public welfare by requiring the inclusion in all new multifamily dwellings containing 10 or more units provision for moderate-income housing comprising at least 10% of the total number of dwelling units for families and individuals meeting the criteria in Subsection C below. Said units shall remain so affordable in perpetuity.
- B. This section shall apply to all new multifamily dwellings in the following Districts: RA-2, RA-3, RA-4, PTD and PRD.
- C. "Moderate-income housing" is defined as dwelling units constructed for families and individuals whose annual

household income does not exceed 80% of the Westchester County median annual income for its household size (based on U.S. Census and as updated by HUD), and the annual rental cost does not exceed 30% of said income, or for homeowners (co-op owners or condo owners), the annual total of the sum of principal, interest, property taxes, home insurance and common charges as applicable does not exceed 30% of said household income. All such units shall be so deed-restricted. The thirty-percent calculation will be based on the HUD Section 8 formula to be certified prior to qualification.

D. Moderate-income housing units shall be generally distributed evenly throughout the multifamily dwelling(s).

E. The exterior appearance of moderate-income units shall not be distinguishable as a class from other units.

F. Moderate-income housing units shall be distributed among one-, two- and three-bedroom units in the same proportion as all other units.

G. Prior to occupancy or before title is transferred, there shall be an annual certification to the Village that the requisite number of units are so affordable and that the residents of said units meet the income guidelines in Subsection C above.

H. For-sale moderate-income housing units shall be resold only to purchasers meeting the requirements of Subsection C above for not more than the amount paid plus the cost of living increase (New York City Metropolitan Area Consumer Price Index (C.P.I.) during the time period owned. The Village shall be notified prior to any sale.

I. The Board of Trustees shall be responsible for administering these regulations and may designate a board or commission to monitor compliance. The Building Inspector shall serve as staff to the Board of Trustees or board or commission so designated.

J. Preference for moderate-income housing units shall be given to Port Chester residents and employees of the Village of Port Chester, including volunteer firefighters, and the Port Chester School District.

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Mobile View

Density Bonus for Moderate-Income Housing

Town of Lewisboro, NY
Wednesday, October 24, 2012

§ 220-26. R-MF Multifamily Residence District.

In an R-MF District, all such uses shall be subject to site plan approval in accordance with Article VI of this chapter. Multifamily dwellings are subject to the following requirements:

- A. Minimum site area. The lot upon which such dwelling units shall be constructed shall have an area of not less than 15 acres, except when located within and served by a public water and sewer district of the Town of Lewisboro, in which case the minimum lot area shall be 15,000 square feet.
- B. Development density.
 - (1) The average gross density shall not exceed two density units per acre of net lot area. The area of any wetlands, water bodies, watercourses or steeply sloped land, as defined by § 220-21 of this chapter, shall first be identified and multiplied by a factor of 0.75. The resulting number shall then be deducted from the gross total lot area to yield the net total lot area to be used in calculating the maximum allowable development density.
 - (2) The Planning Board may authorize an increase in permitted density by not more than 40% if the applicant constructs at least 1/3 of the additional density units as middle-income dwelling units. The Planning Board shall base its determination of the appropriate number of additional density units upon consideration of the locational and environmental suitability of the specific site and the proposed development design to accommodate such an increased density.
 - (3) All actual construction shall be located on each lot in such a way as to avoid or minimize adverse environmental impacts in accordance with the Town of Lewisboro Environmental Quality Review Law. *Editor's Note: See Ch. 110, Environmental Quality Review.*
 - (4) The Planning Board shall be responsible for determining the number of bedrooms in each dwelling unit in connection with its review of site development plans.
 - (5) The site plan for multifamily dwellings proposed to be constructed on property immediately adjacent to land located in a single-family residence district shall incorporate a density transition area. The "density transition area" shall be defined as land in an R-MF District located within a prescribed distance of the boundary line between the R-MF District and a single family residence district not located along a street right-of-way. The distance shall be equal to the minimum lot width applicable in the adjacent single-family residence district. Within such an area, the average gross development density shall not exceed two density units per acre of land area. The Planning Board may modify this requirement if existing features or land use reduce the need or substitute for the density transition area.
- C. Water and sewage facilities.
 - (1) Where, in the opinion of the Planning Board, connections to existing facilities are possible and warranted, sanitary sewers and/or water mains shall be connected to such existing facilities in the manner prescribed by regulation of the appropriate sewer, water or fire district or other agency having jurisdiction.
 - (2) Where connection to existing off-site water or sewerage facilities is not possible or not warranted, a central water supply and sewage treatment system shall be designed and constructed to serve all dwelling units in accordance with the standards and subject to the approval of the Westchester County Department of Health and the New York State Department of Environmental Conservation.
 - (3) Where future service by off-site water and/or sewerage systems is planned, all on-site water and sewer

facilities shall be designed and located in such a way as to readily permit their connection and/or conversion to the off-site systems at such time as they are constructed.

- D. Open space and recreation area. At least 50% of the gross area of the site shall be preserved as permanent open space, free of buildings and parking areas, and shall be landscaped or left in its natural state in accordance with plans approved by the Planning Board.
- (1) Character. Such areas shall encompass land having meaningful ecological, aesthetic and recreational characteristics, with access, shape, drainage, location, topography and extent of improvements suitable, in the opinion of the Planning Board, for the intended purposes.
 - (2) Preservation. Permanent preservation of such areas shall be legally assured, to the satisfaction of the Planning Board and the Town Attorney, by the filing of appropriate covenants, deed restrictions, easements or other agreements or the creation of a park district. Except for developments comprised solely of rental units and except where all or parts of such open space areas are deeded to and accepted by the Town of Lewisboro or a recognized conservation organization, ownership of such open space areas shall be divided equally among all property owners within the development, and a property owners association, membership in which shall be mandatory for all owners in the development, shall be incorporated, which association shall be responsible for maintenance, liability insurance and local taxes. Such association shall be empowered to levy assessments against property owners to defray the cost of maintenance, and to acquire liens, where necessary, against property owners for unpaid charges or assessments. In the event that the property owners' association fails to perform the necessary maintenance operations, the Town of Lewisboro shall be authorized to enter on such premises for the purpose of performing such operations and to assess the cost of so doing equally among all affected property owners.
 - (3) Improvements. Except as provided below, within such common open space areas, a total of not less than 300 square feet per density unit shall be improved with common recreational facilities, such as swimming pools; tennis, basketball, volleyball and shuffleboard courts; playground equipment, etc., for the use of the residents of the premises and their guests, which facilities shall not be operated for profit. Where the Planning Board determines that a suitable recreation area of adequate size cannot be properly located within a multifamily development, or is otherwise not practical, the Board may require as a condition of approval of any site development plan a payment to the Town of a sum which shall constitute a trust fund to be used by the Town exclusively for neighborhood park, playground or recreation purposes, including the acquisition of property. Such sum shall be determined in accordance with a fee schedule established by resolution of the Town Board. *Editor's Note: The fee schedule is on file in the Town offices.*

E. Required parking.

- (1) Parking spaces shall be provided in number and design according to the provisions of Article VII of this chapter.
- (2) At least 1/3 of the minimum required parking spaces shall be enclosed within garages or carports, except where the Planning Board determines, in connection with its review of the site development plan, that a lesser number is appropriate. In no case shall more than 2/3 of the minimum required parking spaces be so enclosed.
- (3) The Planning Board may require, if deemed appropriate, the provision of a suitable screened parking area solely for the storage of boats, motor homes and similar recreational vehicles belonging to inhabitants of the development.

F. Middle-income dwelling units.

- (1) Distribution. Such units shall be available for sale, resale or continuing rental only to middle-income

families, as defined in § 220-2 of this chapter. Such units shall be physically integrated into the design of the development in a manner satisfactory to the Planning Board and shall be distributed among efficiency, one-, two-, three- or four-bedroom units in the same proportion as all other units in the development unless a different proportion is approved by the Planning Board as being better related to the housing needs, current or projected, of the Town of Lewisboro.

(2) Minimum floor area.

(a) The minimum gross floor area per dwelling unit shall not be less than the following;

Dwelling Unit	Minimum Gross Floor Area (square feet)
Efficiency	450
1-bedroom	700
2-bedroom	900
3-bedroom	1,100, including at least 1 1/2 baths
4-bedroom	1,300, including at least 1 1/2 baths

(b) For purposes of this section, the Planning Board may allow paved terraces or balconies to be counted toward the minimum gross floor area requirement in an amount not to exceed 1/3 of the square footage of such terraces or balconies.

(3) Occupancy standards. In renting or selling, the following priority schedule shall apply to middle-income dwelling units:

[Amended 5-19-1989]

Number of Bedrooms	Number of Persons	
	Minimum	Maximum
Efficiency	1	1
1	1*	2
2	2	4
3	3	6
4	5	8

NOTE: * Only if efficiency is not available. Tenants should be transferred to efficiency when one becomes available, and the lease should so provide.

(4) Maximum rent and sales price. The maximum monthly rent for a middle-income dwelling unit shall not exceed 1.75%, excluding utilities (gas, oil, electricity, water and sewage), and the maximum gross sales price for a middle-income dwelling unit shall not exceed two times the maximum aggregate family income for a middle-income family as defined in § 220-2 of this chapter for the maximum size of

family eligible for such unit as set forth in Subsection F(3) above, except for the efficiency unit where the maximum family size is one.

[Amended 5-19-1989]

(5) Eligibility priorities. Middle-income families applying for middle-income dwelling units shall be selected on the basis of the following categories of priority:

[Amended 9-19-2006 by L.L. No. 1-2006]

- (a) Town of Lewisboro municipal employees.
 - (b) Town of Lewisboro School District employees.
 - (c) Town of Lewisboro volunteer fire fighters and/or Lewisboro Volunteer Ambulance Corps (LVAC) members.
 - (d) Residents of the Town of Lewisboro.
 - (e) Other persons employed in the Town of Lewisboro.
 - (f) Relatives of residents of the Town of Lewisboro.
 - (g) Other residents of Westchester County.
 - (h) Other persons employed in Westchester County.
 - (i) All others.
- (6) Selection priorities. Within each of these categories, the applicant shall be selected according to these priorities:
- (a) Families displaced by governmental action.
 - (b) Families of which the head or spouse is 62 years or older.
 - (c) Families of which the head or spouse is handicapped (certified by a physician).
- (7) Continued eligibility.
- (a) Applicants for middle-income rental units referred to in this section shall, if eligible and if selected for occupancy by the owner or manager of the development, sign leases for a term of no more than two years.
 - (b) As long as a resident remains eligible and has complied with the terms of the lease, said resident shall be offered a two-year renewal of the lease. If a resident's annual gross income should subsequently exceed by more than 20% the maximum then allowable, as defined in § 220-2 of this chapter and if there is at that time an otherwise eligible applicant within one of the categories in Subsection F(5) above, said resident may complete his current lease term and shall be offered a non-middle-income rental unit available in the development at the termination of such lease term, if available. If no such dwelling unit shall be available at said time, the resident may be allowed to sign one additional one-year lease for the middle-income dwelling unit he occupies but shall not be offered a renewal of the lease beyond the expiration of said term.
 - (c) In the case of owner-occupied middle-income dwelling units, the title to said property shall be restricted so that in the event of any resale by the home buyer or any successor, the resale price

shall not exceed the then-maximum sales price for said unit, as determined in accordance with Subsection F(4) of this section, or the sum of the following, whichever is greater:

- [1] The actual purchase price of the unit by the home buyer.
- [2] The value not to exceed original cost of any fixed improvements made by the home buyer, and not included within Subsection F(7)(c)[1] above.
- [3] Reasonable and necessary expenses incidental to the resale.

(8) Administration.

- (a) The Town Board shall establish a Town Housing Agency, which shall be responsible for the administration of the middle-income housing requirements of this section as well as for the promulgation of such rules and regulations as may be necessary to implement such requirements. Until the establishment of such agency, the Housing Committee appointed by the Town Board shall be considered empowered to exercise all the functions of such agency.
- (b) At the time of the issuance of a certificate of occupancy, the Building Inspector shall send a copy of such certificate to the Town Housing Agency, which shall then inform the applicant of the maximum rental or sales charge which may be established for the middle-income dwelling units in such development and the maximum annual gross family income for eligibility for occupancy of said units.
- (c) The Town Housing Agency shall certify as eligible all applicants for rental or sales of middle-income dwelling units and shall annually reexamine or cause to be reexamined each occupant family's income.
- (d) On or before March 30 of each year thereafter, the Town Housing Agency shall notify the owner or manager of each multifamily development containing middle-income units as to the rent, sales and income eligibility requirements for such units based upon figures derived from the preceding calendar year.
- (e) The owner or manager of such multifamily development shall certify to the Town Housing Agency on or before May 31 of each year that the current rental or sales prices of all middle-income dwelling units comply with the terms of this chapter.

(9) Tax Assessment. The limited rental income and/or sales value of middle-income units shall be taken into consideration by the Town Assessor in determining the full value basis for assessments on such units.

G. Antenna system. A central television antenna system shall be provided for each group of attached dwelling units.

H. Subleasing. Middle-income dwelling units may be occupied only by the owner(s), his immediate family and occasional houseguests, except by express permission of the Housing Agency. Any unit not owner-occupied may be rented only if approved by the Housing Agency to applicants who qualify according to Subsection F(5), (6) and (7).

I. Creation of condominium lots.

[Added 4-25-2011 by L.L. No. 3-2011]

(1) Where the Planning Board has approved a site development plan for the development, construction and use of multifamily dwellings in the R-MF Multifamily Residence District, the Planning Board may,

contemporaneously with approving such site development plan, or within one year thereafter, so long as such site development plan remains in full force and effect, approve the subdivision (or, if such approved site development plan consists of two or more existing lots, the resubdivision) of the entire property constituting such approved site development plan (the "condominium property") in order to facilitate the formation of two or more residential condominiums formed pursuant to § 339 et seq. of the New York Real Property Law, each of which may contain a portion of the total number of dwelling units approved in such site development plan. Such subdivision (a "condominium subdivision") may, subject to making the findings and imposing the conditions provided in this Subsection I, be approved by the Planning Board without regard to any lot shape, minimum lot size, maximum site coverage, maximum floor area ratio, frontage, yard and setback, other dimensional limitation, access or parking requirement, or lot or subdivision improvement requirement or standard provided in this chapter or in Chapter 195, Subdivision of Land. Nothing herein shall be construed to relax any site development plan requirements or standards provided in this § 220-26, it being the purpose of this subsection to permit subdivision of a condominium property once site development plan approval has been obtained.

- (2) Before creating a condominium subdivision, the Planning Board shall make a determination that the creation of such subdivision will facilitate the financing, the phasing, or the sale of condominium units within such condominium, and such subdivision shall be granted solely for such purposes. The Planning Board shall make a further determination that the site development plan approval includes a construction sequencing plan that sets forth the sequence in which infrastructure improvements and mitigation associated with the site development plan (including, without limitation, utilities, stormwater management control facilities, wetland and wetland buffer mitigation, and tree removal mitigation) will be installed and a schedule for the construction and completion of middle-income units, if any, in relation to the construction and completion of market-rate units.
- (3) The procedure for review and approval of the condominium subdivision plat shall be in accordance with the subdivision plat review procedure provided in Chapter 195. The approved site development plan shall be deemed the "construction plans" (as that term is defined in Chapter 195) for purposes of such review and shall be deemed to satisfy any standards or requirements applicable to construction plans in Chapter 195.
- (4) The Planning Board shall require, as a condition of endorsement by the Planning Board Chair of any condominium subdivision plat, that the owner of the condominium property acknowledge, and that the plat include, a note to the effect that such subdivision is created, and such plat filed, solely for the purpose of facilitating the purposes set forth in the foregoing Subsection I(2), and that no lot shown thereon may be built upon or developed other than in accordance with the underlying approved site development plan (or any extension, modification, amendment, reapproval or regrant thereof), the full title, date, last revision date, and filing date of which shall be endorsed on such subdivision plat. The conditions of approval of the underlying site development plan, whether set forth in the approving resolution or on the final site development plan, or both, shall be deemed incorporated in any condominium subdivision approval granted under this subsection, but, except as otherwise expressly required under this subsection, to the maximum extent feasible, no additional conditions that are inconsistent or conflict with the conditions of the site development plan approval may be imposed on such subdivision by the Planning Board, it being the intent of this subsection that all conditions related to the development be identified during the site development plan review process and be included by the Planning Board in the site development plan approval.
- (5) A lot shown on a condominium subdivision plat is not, merely by virtue of having been created pursuant to this § 220-26I, precluded from being further subdivided or developed in a manner inconsistent with the underlying approved site development plan (or any extension, modification, amendment, reapproval or regrant thereof) if the development of such lot, standing alone, conforms to all applicable use and dimensional limitations in the R-MF Multifamily Residence District.
- (6) Before a condominium subdivision plat pursuant to this § 220-26I may be filed, the owner shall submit

for review, and upon approval thereof record, such easements, covenants, and restrictions as the Planning Board shall find necessary or appropriate for the continued operation of the entire condominium property as an integrated site, notwithstanding that any individual condominium lot may, in the future, be conveyed separately from any other condominium lot.

(7) For purposes of this § 220-261, a condominium unit shall not be considered a condominium lot.

Priority for emergency personnel, municipal employees

Town of Goshen, NY
 Wednesday, October 24, 2012

§ 97-24. Mandatory affordable housing.

In any residential development in which affordable housing is mandated by other provisions of this Code, or in which the applicant otherwise agrees to be bound by this section, it shall comply with the following requirements.

- A. Purpose. The Town Board of Goshen hereby recognizes that there is a lack of opportunity for individuals, couples and small families with moderate incomes to find housing that is affordable in the Town of Goshen. The Town Board further recognizes that there is a need to encourage the construction of housing units for rental or sale that will be affordable to households earning between 60% and 150% of the Orange County (Town of Goshen) median income and to ensure that these units remain affordable in perpetuity for the benefit of current and future residents of Goshen.
- B. Definition of affordable housing units. As used throughout this section, the term "affordable housing unit" refers to a single- or multifamily housing unit that is owned or rented by an eligible household and priced so as to be affordable to the people who live and work in the Town and Village of Goshen who cannot otherwise afford market-rate housing.
- C. Development standards.
 - (1) Physical integration. All affordable housing units must be physically integrated into the design of the development and constructed with the same quality building materials as the market-rate units. The exterior finishes for affordable housing units shall be indistinguishable from all other units. The developer may, however, substitute different appliances and interior hardware or other interior finishes where such substitutions would not adversely impact the livability of the unit. The affordable housing units shall be integrated with the market-rate units in such a manner that no more than two affordable housing units abut one another.
 - (2) Minimum floor area. The gross floor area per affordable housing unit shall be no less than 80% of comparable market-rate units in the development or meet the following minimum gross floor area standards, at the discretion of the Planning Board:

Unit Type	Minimum Floor Area (square feet)
1-bedroom	700
2-bedroom	900
3-bedroom	1,100
4-bedroom or more	1,500

- (3) Dwelling unit size and distribution. Affordable housing units shall be located throughout the development and be distributed among one-, two-, three- or four-bedroom units, in multifamily, single-family attached and single-family detached dwellings, in the same proportion as all other units in the development. However, if the total number of single-family detached dwelling units in the entire development equals or exceeds 50% of the total number of proposed dwelling units in the development, then the Planning Board may, upon request, reduce the required percentage of single-family detached affordable housing units to 20% of the total number of affordable dwelling units. The remaining affordable units shall be built as multifamily and/or single-family attached units, and the number of bedrooms shall be in proportion to all other units in the development.

(4) Phasing.

(a) For any project that will be built in phases (or stages), the following schedule shall apply for all affordable housing units:

Percentage of Market-Rate Units Receiving Certificates of Occupancy	Percentage of Affordable Units Receiving Certificates of Occupancy
Up to 25%	0 (none required)
25% + 1 unit	At least 10%
50%	At least 50%
75%	At least 75%
100%	100%

(b) Certificates of occupancy shall be issued for market-rate units when the required percentage of affordable housing units for the respective phase (stage) has been completed.

(5) Waiver of permit and other fees. The Planning Board, at its discretion, may waive any site plan, subdivision and other fees directly related to the affordable housing units in an effort to assist the applicant/developer in reducing development costs. Similarly, when a recreation fee is calculated in lieu of an approved reservation of recreation lands, the Planning Board may calculate such fee based on the total number of dwelling units exclusive of those which are affordable units.

D. Determining applicant eligibility.

(1) Income limits. To be eligible to purchase or rent an affordable housing unit, the household's aggregate annual income shall not exceed an established percentage of the Orange County median family income for a family of a particular size as determined by the US Department of HUD and/or the Town Board.

(2) Other assets:

(a) Any family with net assets exceeding 50% of the cost of a two-bedroom affordable housing unit is deemed ineligible to own or rent an affordable housing unit.

(b) Any non-income-producing assets may be assigned an income-producing value and included as income by the reviewing agency when determining eligibility.

(c) The net worth of an applicant (individual or family) may not exceed 25% of the purchase price of an appropriate affordable unit.

(3) Certification of income. Families must declare to the best of their knowledge that their income will not exceed 1.5 times the limits as set by the Town Board for three years from the date of application.

E. Selection priorities. Once an applicant is determined to be eligible to participate in the affordable housing program based on income limits as set forth above or as amended by resolution of the Town Board from time to time, priority preference will be given to applicants on the basis of the following factors. An "applicant" shall be defined to include any and all family members who have reached the age of majority and who will occupy the affordable housing unit as their primary residence. Applicants seeking priority preference based on voluntary service or employment must provide a certification letter from an authorized person within such organization attesting to the applicant's length of volunteer service or employment.

- (1) Volunteer Fire Department or Ambulance Corps members with a minimum of 24 months' consecutive active service: (three points) maximum six points per family.
- (2) Paid emergency service personnel, including police, fire and emergency medical services, with a minimum of 24 months' employment: (two points) maximum four points per family.
- (3) Village and Town of Goshen full-time municipal employees, minimum of 12 months' employment: (two points) maximum four points per family.
- (4) School district employees for any schools that provide educational services to students who live in Goshen, minimum of 12 months' employment: (two points) maximum four points per family.
- (5) Veteran of US Armed Services, honorably discharged: (two points) maximum four points per family.
- (6) Health care workers, including skilled professions such as nurses and medical technicians, as well as orderlies working at a facility that regularly serves patients from Goshen, with a minimum of 12 months' employment: (one point) maximum two points per family.
- (7) Elderly (65 years of age or older) or disabled residents of the Town: (one point).
- (8) Persons employed in the Town or Village of Goshen: (one point) maximum two points per family.
- (9) Town residents who reside in the Town or their immediate relatives (children or parents): (one point) maximum two points per family.
- (10) Former residents who resided in the Town: one point per family; two points per family.
- (11) Other residents of Orange County: (one point) maximum one point per family.

F. Occupancy requirements.

- (1) Standards. To prevent underutilization of affordable housing units, at the time of purchase or rent, the following schedule of minimum occupancy shall apply:

Number of Bedrooms	Minimum Number of Persons
1	1
2	2
3	3
4	4

- (2) Residency. All affordable housing units shall be the primary residence of the owners or renters. Owners may not rent their unit to others, and renters may not sublet their unit. These restrictions shall not apply to the developer of the affordable units. Partial rentals, such as renting out a bedroom, and seasonal rentals are also prohibited.

G. Initial sale and resale of affordable housing units.

- (1) Financial counseling. The Town Board will periodically provide financial counseling workshops which shall be open to all eligible applicants interested in purchasing an affordable housing unit. Attendance at a counseling workshop shall be a prerequisite to purchasing an affordable housing unit.

- (2) Calculation of initial sales price. Maximum sales price shall be set by resolution of the Town Board and amended from time to time after review of relevant information that may be provided by federal and state affordable housing departments, as well as developers. The initial sales price of a unit shall be calculated such that the annual cost of the sum of principal, interest, taxes and insurance (PITI) and common charges, as applicable, shall not exceed 30% of the maximum family income allowed for such unit.
- (3) Resale of affordable housing units.
 - (a) Affordable housing units shall only be resold to eligible moderate-income households of substantially similar size.
 - (b) The owner of an affordable housing unit shall notify the Town Board, or an appropriate department as may be designated by the Board, of his/her intent to sell prior to contact with any realtor or purchaser.
 - (c) The maximum base resale price shall be set by resolution of the Town Board and amended from time to time. The maximum base purchase price shall be calculated to include the purchase price of the affordable housing unit, adjusted for the increase in the consumer price index during the period of ownership. At no time shall the total resale price exceed the base purchase price, as set forth above, plus the cost of permanent fixed improvements and reasonable and necessary resale expenses.
 - (d) The subdivision map, original deed and any subsequent deeds or instruments used to transfer title to an affordable housing unit shall include a provision indicating that the housing unit is an affordable housing unit subject to restrictions on occupancy and resale. Evidence of the inclusion of such restrictions, at a minimum, on the filed subdivision map shall be made prior to issuing a certificate of occupancy for any unit in the subdivision. The following paragraph or such language and/or additional restrictions as the Town Board may deem appropriate must be included in all deeds and other transfer instruments:

"This dwelling has been constructed for use by moderate-income families pursuant to a special affordable housing program established under the Goshen Town Code and must be the principal dwelling of the homeowner. All future sales, resale or rental of this dwelling must be to a person who is determined to be eligible pursuant to the income limitations set forth by the Goshen Town Board and at a price determined in accordance with the Town's affordable housing program. If any affordable housing unit is sold for an amount in excess of the maximum amount as set by the Town Board or the provisions of the Town's Zoning Code (Chapter 97), the Town retains the right to recapture the excess payment or unit as it deems appropriate."

H. Initial lease and renewals of affordable housing rental units.

- (1) Calculating permissible rent. Maximum monthly rent, including utilities (heat, hot water and electric), shall be set by resolution of the Town Board and amended from time to time after review of relevant information that may be provided by federal and state affordable housing departments, as well as developers. Rent for an affordable housing unit shall include an estimated cost for utilities and shall not exceed 30% of the maximum family income allowed for such unit.
- (2) Lease terms and renewal. Applicants for affordable housing rental units shall, if eligible and selected for occupancy, sign leases for a term of not more than two years. As long as the resident remains eligible and has complied with the terms of the lease, said resident shall be offered a renewal every two years. If, at any time during the term of the lease, a resident's annual gross income should exceed the maximum income limit as set by the Town Board, said resident must notify the Town Board and owner of the rental unit in writing within 30 days. Such resident may complete his/her current lease term and

shall be offered a market-rate rental unit in the development, if available. In the event such market-rate unit is not available, or in case of hardship, the tenant may apply to the Town Board for such relief as may be available.

(3) Town Board review. All lease terms shall be reviewed and approved periodically by the Town Board, or an appropriate department as designated by the Board.

I. Maintenance, upkeep and repairs.

(1) All affordable housing units shall be maintained in a satisfactory manner as prescribed by the Town Board, or by an appropriate department as may be designated by the Board. Neither owners nor renters of affordable housing units shall make any improvements, which shall require a building permit, without prior written permission from the Town Board or an appropriate department as may be designated by the Board. Under no circumstances shall the Town Board or any agency or department approve any addition in size to the structure. The original square footage of the unit shall be maintained throughout the unit's existence.

(2) All affordable housing units shall be maintained at the original builder's specification level. At the time of resale, the Town Board may determine that the unit has not been properly maintained and shall be authorized to impose such assessments as necessary to reasonably return the unit to its original condition. Said assessment shall be deducted from that portion of the selling price reverting to the seller of the unit.

J. Tax assessment. The Town Assessor shall consider the limited resale value of affordable housing units when determining the appropriate assessment on such units.

K. Administration. A Housing Review Board is hereby established, which is responsible for the administration of the affordable housing program. The following list identifies the responsibilities and duties of a Housing Review Board:

- (1) Accept and review applications;
- (2) Maintain eligibility priority list, annually certify and recertify applicants;
- (3) Establish lottery procedures for selecting applicants that have equal priority;
- (4) Assist the Town Board/Planning Board in determining and reviewing applications to build affordable units;
- (5) Recommend annual maximum income limits; rental prices; resale values;
- (6) Review certification from owners and lessors of rental units certifying that units are occupied by eligible families;
- (7) Maintain a list of all affordable units in the Town;
- (8) Review all deed restrictions for affordable units;
- (9) Review all lease terms for affordable units; and
- (10) Promulgate rules and regulations as necessary.

L. Appeals. Any person aggrieved by a decision of the Housing Review Board may appeal such decision to the Town Board.

Provides for either conventional or cluster affordable housing. Density bonuses

Town of East Fishkill, NY
Wednesday, October 24, 2012

§ 194-164. Affordable Housing.

- A. Intent and purpose. It is the intent and purpose of the Town of East Fishkill to increase the number of affordable housing units available to low/moderate-income families as defined in § 194-3.
- B. Requirements and incentives for participation. In order to provide affordable housing in the Town of East Fishkill, the Town hereby provides a system of zoning incentives, pursuant to Town Law § 261-b, in the form of additional permitted housing units and permitted reduced lot sizes, as follows:
- (1) CRD Districts. No less than 10% of the base number of permitted units in a CRD project shall meet the requirements of this section. Upon request of the developer, the Planning Board may consider approving the inclusion of an additional 5% of affordable units. The number of additional incentive market-rate units to be allowed shall be calculated, pursuant to Subsection B(4) below, based upon the number of affordable units being provided.
 - (2) R-3, R-2, R-1.5, and R-1 Zoning Districts. The Planning Board may approve an application by a developer to include affordable housing units in a conventional cluster or cluster subdivision in these zoning districts, constituting up to 15% of the base number of permitted units. The number of additional incentive market-rate units to be allowed shall be calculated pursuant to Subsection B(4) below, based upon the number of affordable housing units being provided.
 - (a) Conventional subdivisions. The base number of permitted units in a conventional subdivision shall be based upon a conventional subdivision layout that conforms with Zoning Law and subdivision regulation *Editor's Note: See Ch. 163, Subdivision of Land.* requirements, including provisions on environmentally sensitive lands. For purposes of incorporating the affordable housing incentive units into the subdivision, and pursuant to the authority of Town Law § 261-b, the Town Board hereby authorizes the Planning Board to permit a reduction in the minimum lot size of the underlying zone for any of the lots in the subdivision, not less than 3/4 of the minimum lot size required in the bulk regulations for the underlying zone, provided that all lots must also:
 - [1] Comply with all other bulk requirements, including FAR, of the underlying zone; and
 - [2] Comply with the provisions on minimum buildable area in § 194-14.1B(2).
 - (b) Cluster subdivisions. The base number of permitted units in a cluster subdivision shall be the number based upon a conventional subdivision layout that conforms with Zoning Law and subdivision regulation *Editor's Note: See Ch. 163, Subdivision of Land.* requirements, including provisions on environmentally sensitive lands (278 Plan). See also § 163-33 of the subdivision regulations. The permitted lot sizes in a cluster subdivision providing affordable housing units shall be those set forth in § 164-33K and L, and the lot sizes shall not be further reduced for affordable housing. After the determination of the base number of permitted units based upon the 278 Plan, the Planning Board need not require the preparation of an additional conventional layout plan to demonstrate the viability of the inclusion of the additional incentive market-rate lots, if the additional incentive market-rate lots do not constitute more than a ten-percent increase over the base number of permitted units, and the additional incentive market-rate lots can, in the Planning Board's judgment, be readily accommodated within the proposed cluster layout. If the Planning Board does require an additional conventional layout plan to demonstrate the viability of the inclusion of the additional incentive market-rate lots, such plan shall be prepared using the reduced lot size standards set forth in § 194-164B(2)(a).
 - (3) Notwithstanding the foregoing, the Town Board shall have the authority to approve an affordable housing project which participates in a state or federal program and set the appropriate percentage of

affordable units, up to 40%, and a percentage of median Dutchess County family income, not higher than 90%, different than that set forth for the local program.

- (4) Additional incentive market-rate units. For every affordable housing unit that a developer agrees to construct, the developer shall be allowed to build one additional market-rate unit, above the maximum number otherwise permitted under the applicable provisions of this Code. For example: If a developer is allowed to construct 100 units under the Code, and of these 100, 10 units will be "affordable housing units" then the total number of units that the developer could construct would be 110 (90 market rate plus 10 affordable housing units plus 10 bonus units (i.e., 1 x 10 affordable units = 10). If the number of affordable units being provided is reduced during the SEQR review process, then the number of additional incentive market-rate units shall be reduced accordingly.

C. Development standards. Affordable units must meet the following standards:

- (1) All affordable housing units shall be physically integrated into the design of the development. Affordable housing units shall be constructed to the same quality standards as market-rate units. The exterior finishes for affordable units shall be indistinguishable from all other units. The developer may, however, substitute different appliances and interior hardware where such substitutions would not adversely impact the livability of the unit.
- (2) Affordable housing units shall have no less than 80% of the square footage of market rate units for the same number of bedrooms.
- (3) The landowner and developer must agree to file a declaration at the time of subdivision identifying the units which are affordable housing units, and restricting their future sales price and rental price under the provisions of this section. The declaration shall include a provision requiring that every deed for an affordable housing unit shall include the following paragraph to inform all future sellers and buyers that this unit is an affordable housing unit subject to the provisions of this section:

"This dwelling has been constructed for use by low/moderate-income families pursuant to a special program under the East Fishkill Code. Its future sale (including resale) or rent must be to persons who qualify with the income requirements and at a price in accordance with the program."

- (4) All Affordable housing units shall generally be physically distributed throughout the development in the same proportion as other housing units, though the Planning Board may use discretion in reviewing and approving distribution.

D. Eligibility and preference to purchase or rent an affordable housing unit.

- (1) To be eligible to purchase or rent an affordable housing unit, the household's aggregate annual income must be 80% or lower of the Dutchess County median family income for a family of a particular size as determined annually by the United States Department of Housing and Urban Development (HUD).
- (2) Preference to purchase or rent.
- (a) Among income-eligible households, preference to purchase or rent affordable housing units shall be given to the following types of households, in order:
- [1] Employees of the Town of East Fishkill.
- [2] A member of East Fishkill's Volunteer Fire Department.
- [3] Elderly (65 or older) or disabled residents of the Town.

- [4] Honorably discharged US veterans who are residents of the Town.
 - [5] All other Town residents.
 - [6] People who work at businesses within the Town.
 - [7] Others.
- (b) In the event that the number of applicants exceeds the number of available units, the Department shall allot the units:
- [1] By category; and
 - [2] Within a category, by chronological order of filing.
- E. Calculation of initial sales price of affordable housing units. Maximum sale price shall be set by resolution of the Town Board, as amended from time to time, after review of relevant information that may be provided by federal and state affordable housing departments as well as developers. The initial sale price of a unit shall be calculated such that the annual cost of the sum of principal, interest, taxes and insurance (PITI) and common charges, as applicable, shall not exceed 30% of the income for a low/moderate-income household.
- F. Calculation of permissible rent. Maximum monthly rent (including estimated utilities) shall be set by resolution of the Town Board, as amended from time to time, after review of relevant information that may be provided by federal and state affordable housing departments as well as developers. The rent (including the estimated cost of utilities [heat, hot water, and electric]) shall not exceed 30% of the income for a low/moderate-income household.
- G. Administration and establishment of Affordable Housing Review Department. The Town Board may designate such additional person(s), authorities and procedures as necessary to administer and monitor compliance with the provisions of this article. The Town Board may serve as, establish or designate an administrative department or board to serve as an Affordable Housing Review Department. The Town Board, or, if established, the Affordable Housing Review Department ("Department") shall have the following responsibilities:
- (1) The Department shall be responsible for the administration of affordable housing units pursuant to the provisions of this article.
 - (2) Prior to the initial offering of each affordable housing unit, the Department shall notify the owner or manager of each development containing affordable housing units as to the price and income eligibility requirements for each unit.
 - (3) The owner and/or manager, as appropriate, shall annually certify to the satisfaction of the Department that the requisite percentage of affordable housing units have been assigned to low/moderate-income households and that any new tenants of affordable housing units meet the income guidelines in effect when the new tenants take occupancy. Annual certification shall include the address of the affordable housing units, the name of the occupant, and the occupant(s)' tax returns and signature(s).
 - (4) The Department shall promulgate and maintain information and documentation relative to all affordable housing units; the number thereof available for sale or lease at all times; the sale price and monthly rent; and the names and addresses of eligible low/moderate-income households to purchase or lease same, together with a priority list of such households. The Department shall maintain such other records and documents as shall be required to properly administer the provisions of this article.
 - (5) Whenever the Building Inspector shall receive an application for and/or issue a building permit, a

certificate of occupancy or any other permit or authorization affecting an affordable housing unit, a copy thereof shall be filed with the Department.

- (6) The sale or lease of affordable units must meet the guidelines established by the Town Board. These guidelines shall be reviewed on an annual basis, and address the sales price and/or lease amounts for affordable housing units. The Department shall administer the guidelines, shall review the qualification of potential buyers or lessees, and shall approve each proposed sale or lease of an affordable housing unit.
- (7) Any covenant, restriction or other encumbrance to be placed on an affordable housing unit must be approved by the Department first.
- (8) No lease term for an affordable housing unit shall exceed two years. Notwithstanding this restriction, a lessee still eligible to rent an affordable housing unit may renew a lease term. If a household's aggregate annual income increases beyond the maximum to allow eligibility for the affordable housing unit, the household may continue to occupy that rental unit, provided that the monthly rental payment (including estimated utilities) shall be increased so as to constitute 30% of the household's income. If the household chooses not to execute a lease at the adjusted rent within a reasonable time allotted therefor, the household may continue to occupy the unit for up to one year after the expiration of its current lease.
- (9) Any applicant for an affordable housing unit aggrieved by a determination by the Department shall have the right to appeal such determination to the Town Board.

H. Resale: calculation of permissible resale price.

- (1) Affordable housing units for low/moderate-income households may be resold only to eligible low/moderate-income households of substantially similar size for the purposes of calculating aggregate annual income and subject to Town Board approval.
- (2) The owner of an affordable housing unit shall notify the Department of the intent to sell prior to contact with any purchaser.
- (3) The maximum resale price may not exceed the purchase price plus the cost of permanent fixed improvements, adjusted for the increase in the consumer price index during the period of ownership of the affordable housing unit and such improvements plus reasonable and necessary resale expenses. Notwithstanding the foregoing, in no case shall the resale price exceed the income restrictions for low/moderate-income households.

I. Tax assessment. The Town Assessor shall consider the limited sale value of affordable housing units in determining the appropriate assessment on such units.

J. Applicability of other Code provisions. All of the provisions of the Code of the Town of East Fishkill not inconsistent or in conflict with the provisions of this section shall be applicable to affordable housing. Without limiting the foregoing, the provisions of the Environmentally Sensitive Lands Law (§ 194-14.1) shall apply to affordable housing.

K. Pursuant to Town Law § 261-b, the Zoning Map of the Town of East Fishkill shall be amended to contain a note in substantially the following form: "Affordable Housing Incentives, under Town Law § 261-b, are in effect for the CRD, R-3, R-2, R-1.5, and R-1 Zoning Districts. See § 194-164 of the Zoning Law."

L. Pursuant to Town Law § 261-b(3)(d), the Town may assess to any applicant for incentives a proportionate share of the cost of so much of the generic environmental impact statement prepared by the Town in 2002 for the laws and master plan as was attributable to the affordable housing incentives, and such charge shall be added to any site-specific charge made pursuant to the provisions of § 8-0109 of the Environmental

Conservation Law. No such assessment shall be made for applicants within the CRD Zoning District providing the 10% mandated affordable housing.

M. Pursuant to Town Law § 261-b, project sponsors for developments including affordable housing, for which the Town has prepared a generic environmental impact statement, shall comply with all other requirements of Article 8 of the Environmental Conservation Law, including preparation of an environmental assessment form, and a supplemental environmental impact statement, if necessary.

*Provides Incentives for Affordable Housing Projects
Such as expedited review*

Town of Bedford, NY
Wednesday, October 24, 2012

§ 125-29.6. Affordable housing.

[Added 2-1-2005 by L.L. No. 1-2005; amended 8-17-2010 by L.L. No. 3-2010; 2-21-2012 by L.L. No. 1-2012]

A. Findings; policy. The Town of Bedford finds that:

- (1) The Town faces a shortage of affordable housing due to the high cost of housing in the Town, which impacts the general welfare of the municipality.
- (2) The Town has an obligation to assist Westchester County and New York State in the preservation, rehabilitation, and construction of affordable housing.
- (3) The social and economic diversity of the Town is dependent upon a reasonable supply of affordable housing.
- (4) The Town's Comprehensive Plan encourages the creation of affordable housing within the Town.
- (5) The Town Housing Agency utilizes substantial resources in providing and assisting in the provision of affordable housing.
- (6) It is the policy of the Town to require applicants to share in the creation of affordable housing.

B. Purpose. The purpose of this section is to ensure that new residential development in the Town includes a reasonable supply of fair and affordable housing. This section sets forth standards for affordable housing to be provided in conjunction with residential development of land.

C. Applicability.

- (1) This section shall apply to all proposed residential development of land.
- (2) This section shall not apply to any residential development which has received preliminary subdivision or site plan approval by the Town of Bedford Planning Board as of the effective date of this section.

D. Creation of AAFH units.

- (1) AAFH units in single-family zoning districts.
 - (a) Within all residential developments of five or more units, no less than 10% of the total number of units must be created as AAFH units. For this purpose, 0.5 unit shall be rounded to the next highest whole number. For example, a development of 17 units will require two AAFH units. These units must be provided on the site of the proposed development.
 - (b) Within all residential developments of less than five units, in addition to the methods specified in § 125-29.6D(1)(a) and (b) above, the Planning Board may require a fee-in-lieu payment in accordance with the requirements of § 125-291.
 - (c) When a proposed residential subdivision contains 20% or more affordable housing units, the Planning Board may:
 - [1] Waive or reduce certain fees for applicants.
 - [2] Consider such other forms of assistance which may be under the control of the Town.

[3] Actively assist in obtaining assistance of federal, state or other agencies in support of affordable housing development.

[4] Allow the reduction of dimensional requirements by not more than 25% and an allowance for shared parking so as to reduce infrastructure costs.

(2) AAFHH units in multifamily zoning districts.

(a) At least 20% of the units of any multifamily residential development in any multifamily residential zoning district shall be established as AAFHH units.

E. Planning Board Review. The Planning Board shall consider the following provisions in reviewing affordable housing unit applications:

(1) Siting of affordable units. All AAFHH units constructed under this section shall be situated within the proposed development or at an approved off-site location so as not to be in less desirable locations than market-rate units in the development and shall, on average, be no less accessible to public amenities, such as open space, as the market-rate units.

(2) Minimum design and construction standards for affordable units. AAFHH housing units within market-rate developments shall be integrated with the rest of the developments and shall be compatible in design, appearance, construction and quality of materials with other units.

(3) Timing of construction or provision of affordable units or lots. The construction of affordable units shall occur proportionately with the construction of the market-rate units in the subdivision. No certificates of compliance may be issued for the last 10% of market-rate units within a development until the last affordable unit has been issued a certificate of compliance.

(4) Minimum floor area. The minimum gross floor area per AAFHH unit shall be no less than the following:

Dwelling Unit	Minimum Gross Floor Area (square feet)
Efficiency	450
1-bedroom	675
2-bedroom	750
3-bedroom	1,000 (including at least 1.5 baths)
4-bedroom	1,200 (including at least 1.5 baths)

For the purpose of this section, paved terraces or balconies may be counted toward the minimum gross floor area requirement in an amount not to exceed 1/3 of the square footage of such terraces or balconies.

(5) Affordable housing requirements for special populations. At the discretion of the Planning Board and upon a showing of good cause, affordable housing requirements for special populations may be waived or modified. Said population may include the handicapped, the infirm or seniors when such housing is independent-living, congregate-care, nursing-home or such other housing for special populations that the Town Housing Agency recognizes.

(6) Unit appearance and integration.

- (a) Within single-family developments, the AAFHH units may be single-family homes or may be incorporated into one or more two-family homes. Each single-family AAFHH unit may be located on a lot meeting 75% of the minimum lot area for the single-family homes in the development. Each such two-family home shall be located on a lot meeting the minimum lot area for the single-family homes in the development. All such units shall be compatible in appearance, siting and exterior design from the other single-family homes in the development, to the greatest extent possible. Interior finishes and furnishings may be reduced in quality and cost to assist in the lowering of the cost of development of AAFHH units.
- (b) Within multifamily developments, the AAFHH units shall be physically integrated into the design of the development and shall be distributed among various sizes (efficiency, one-, two-, three- and four-bedroom units) in the same proportion as all other units in the development. AAFHH units shall be compatible with other market-rate units from the outside or building exteriors. Interior finishes and furnishings may be reduced in quality and cost to assist in the lowering of the cost of development of the AAFHH units.
- (7) Conservation zoning. The Planning Board shall consider the provisions of conservation subdivisions and conservation development, which may provide for bonus units, of the Town Zoning Law in furtherance of the Town's goals for providing affordable housing.
- (8) Property restriction. All AAFHH units must be restricted using a document such as a declaration of restrictive covenants, in recordable form acceptable to the Town Attorney, which shall ensure that the AAFHH unit shall permanently remain subject to affordable regulations. Among other provisions, the covenants shall require that the unit be the primary residence of the residential household selected to occupy the dwelling unit. Upon approval, such declaration shall be recorded against the property containing the AAFHH unit prior to the issuance of a certificate of occupancy for the dwelling unit.

F. Expedited project review process.

- (1) Pre-application meeting. The applicant for a development including AAFHH units shall be entitled to attend at least one pre-application meeting at which representatives will be in attendance from each Bedford agency and staff expected to play a role in the review and approval of the development application and construction. The purpose of the pre-application meeting will be to expedite the development application review process through:
 - (a) The early identification of issues, concerns, code compliance and coordination matters that may arise during the review and approval process.
 - (b) The establishment of a comprehensive review process outline, proposed meeting schedule and conceptual timeline.
- (2) Meeting schedule and timeline. Bedford agencies and staff shall endeavor to honor the proposed meeting schedule and conceptual timeline established as an outcome of the pre-application to the greatest extent possible during the review and approval process, subject to the demonstrated cooperation of the applicant to adhere to same. Should the approval process extend beyond one year, an applicant for a development including AAFHH units shall be entitled to at least one additional meeting per year with the same departments, agencies, authorities, boards, commissions, councils or committees to review any and all items discussed at previous pre-application meetings.
- (3) Calendar/agenda priority. Bedford agencies with review or approval authority over applications for developments including AAFHH units shall give priority to such applications by placing applications for all developments including AAFHH units first on all meeting and work session calendars and agendas and, when feasible based on the ability to conduct required reviews and public notice, with the intent of shortening minimum advance submission deadlines to the extent practicable.

G. Administration by the Town Housing Agency.

- (1) Responsibility. The Town Housing Agency shall be responsible for administering the affordable housing requirements of this section as well as for the promulgation of such rules and regulations as may be necessary to implement such requirements.
- (2) Maximum cost. At the time of issuance of a building permit, the Building Inspector shall send a copy of such permit to the Town Housing Agency, which shall then inform the applicant of the maximum rental or sales charge which may be established for AAFFH units in such development and the maximum annual gross family income eligibility for occupancy of said units.
- (3) Annual eligibility requirements. With respect to rental units, on or before March 30 of each year thereafter, the Town Housing Agency shall notify the owner or manager of each affordable unit as to the rent and income eligibility requirements for such unit based upon figures derived from the preceding calendar year. With respect to ownership units, the Town Housing Agency shall provide sales criteria for the sale of an affordable housing unit at the time of offering the unit for sale or resale.
- (4) Certification. The owner or manager of each AAFFH rental unit shall annually certify to the satisfaction of the Town Housing Agency that the requisite number of affordable units have been assigned to income-eligible individuals who meet the income guidelines in effect when said individual(s) took occupancy. Annual certification shall include unit designations and occupant names and shall be signed by the developer or his or her designated representative, as appropriate, and the Chairman of the Town Housing Agency.
- (5) Marketing plan. All such AAFFH units, whether for purchase or for rent, shall be marketed in accordance with the Westchester County Fair and Affordable Housing Affirmative Marketing Plan.
- (6) Preferences. No preferences shall be utilized to prioritize the selection of income-eligible tenants or purchasers for affordable AAFFH units created under this subsection.
- (7) Maximum rent and sales price. The maximum monthly rent for an AAFFH unit and the maximum gross sales price for an AAFFH unit shall be established in accordance with U.S. Department of Housing and Urban Development guidelines as published in the current edition of the Westchester County Area Median Income (AMI) Sales and Rent Limits, available from the County of Westchester.
- (8) Time period of affordability. Units designated as AAFFH units must remain permanently affordable for rental properties and ownership units.
- (9) Resale requirements.
 - (a) In the case of owner-occupied AAFFH units, the title to said property shall be restricted so that in the event of any resale by the home buyer or any successor, the resale price shall not exceed the then-maximum sales price for said unit, as determined in this section, or the sum of:
 - [1] The net purchase price (i.e., gross sales prices minus subsidies) paid for the unit by the selling owner, increased by the percentage increase, if any, in the Consumer Price Index for Wage Earners and Clerical Workers in the New York-Northern New Jersey Area, as published by the United States Bureau of Labor Statistics (the "Index") on any date between the month that was two months earlier than the date on which the seller acquired the unit and the month that is two months earlier than the month in which the seller contracts to sell the unit. If the Bureau stops publishing this index, and fails to designate a successor index, the municipality will designate a substitute index; and
 - [2] The cost of the major capital improvements made by the seller of the unit while said seller of the unit owned the unit, as evidenced by paid receipts, depreciated on a straight-line basis over

a fifteen-year period from the date of completion, and such approval shall be requested for said major capital improvement no later than the time the seller of the unit desires to include it in the resale price.

(b) Notwithstanding the foregoing, in no event shall the resale price exceed an amount affordable to a household at 80% of AMI at the time of the resale.

(10) Lease renewal requirements.

(a) Applicants for rental AAFHH units shall, if eligible and if selected for occupancy, sign leases for a term of no more than two years. As long as a resident remains eligible and has complied with the terms of the lease, said resident shall be offered renewal leases for a term of not more than two years each. Renewal of a lease shall be subject to the conditions of federal, state or county provisions that may be imposed by the terms of the original development funding agreements for the development or the provisions of other applicable local law.

(b) If no such provisions are applicable and if a resident's annual gross income should subsequently exceed the maximum then allowable, as defined in this chapter, then:

[1] Option (a): Said resident may complete his or her current lease term and shall be offered a nonrestricted market-rate rental unit in the development at the termination of such lease term, if available. If no such dwelling unit shall be available at said time, the resident may be allowed to sign a one-year lease for the AAFHH unit he or she occupies but shall not be offered a renewal of the lease beyond the expiration of said term; or

[2] Option (b): Said resident shall pay the greater of the following.

[a] The rent amount payable under the provisions of this section should Option (b) be utilized; or

[b] Thirty percent of the resident's monthly adjusted household income, provided that the increased rent may not exceed the market rent in the development for units with the same number of bedrooms, or, should Option (b) be utilized, the next open unit will become an AAFHH unit.

[3] Option (c): Said resident shall pay the greater of:

[a] The rent amount payable under the provisions of this section; or

[b] Thirty percent of the resident's monthly adjusted household income, provided that the increased rent may not exceed the market rent in the development for units with the same number of bedrooms for a term of not more than one year.

(11) Occupancy standards. For the sale or rental of AAFHH units, the following occupancy schedule shall apply:

Number of Bedrooms	Number of Persons
Efficiency	Minimum: 1; maximum: 1
1 bedroom	Minimum: 1; maximum: 3
2 bedrooms	Minimum: 2; maximum: 5
3 bedrooms	Minimum: 3; maximum: 7

4 bedrooms

Minimum: 4; maximum: 9

(12) Affirmative marketing. The AAFH units created under the provisions of this section shall be sold or rented, and resold and re-rented, to only qualifying income-eligible households. Such income-eligible households shall be solicited in accordance with the requirements, policies and protocols established in the Westchester County Fair and Affordable Housing Affirmative Marketing Plan, so as to ensure outreach to racially and ethnically diverse households.

H. Previously approved affordable housing units. Affordable housing units approved prior to the adoption of this section shall continue with the provisions of their original approvals.

I. In-lieu fees. An applicant for a single-family residential subdivision may, as specified by the Planning Board, pay a fee in lieu of the construction of affordable units, on a scaled cost based on the zoning district as set forth below. Said fee shall be deposited into a fund, hereinafter known as the "Town of Bedford Housing Trust Fund," to be used for the purchase and development of affordable housing at other locations within the Town.

Zoning District	In-Lieu Fee Per Newly Created Lot
1/4 acre	\$4,000
1/2 acre	\$4,750
1 acre	\$7,000
2 acres	\$11,000
4 acres	\$14,000

*Town of Bedford, NY
Wednesday, October 24, 2012*

§ 125-29.2. DH Diversified Housing District.

[Added 10-18-1994 by L.L. No. 3-1994]

- A. Purposes. The purpose of the DH District shall be to provide increased housing opportunities in the Town of Bedford for an economically diverse population who, because of reasons of cost, are presently excluded from purchasing residences in the Town of Bedford. It is the intent of the Town to provide the lowest cost housing possible in this district. The Town Board, with the cooperation of the Blue Mountain Housing Corporation and all Town, county, state and federal agencies, will work to use all possible means to provide housing for those with moderate means.

- B. Middle-income housing in the DH District. At least 20% of the dwelling units constructed in the DH District shall be middle-income dwelling units as defined in this code and shall meet the requirements of Article VI, § 125-56 therein, as well as the requirements of the DH District.

*Town of Bedford, NY
Wednesday, October 24, 2012*

§ 125-29.3. EL Housing For Elderly District.

[Added 9-17-1985; amended 10-18-1994 by L.L. No. 3-1994]

- A. Purposes. The purpose of the EL District is to provide increased housing opportunities for the elderly population of the Town of Bedford. Because many of the elderly live on limited incomes, it is the intent of the Town to provide the lowest cost housing possible in this district. The Town Board, with the cooperation of the Blue Mountain Housing Corporation and all Town, county, state and federal agencies, will work to use all possible means to provide housing for those elderly with limited financial means.
- B. Middle-income housing in the EL District. At least 20% of the dwelling units constructed in the EL District shall be middle-income dwelling units as defined in this code and shall meet the requirements of Article VI, § 125-56 therein, as well as all requirements of the EL District.

Allows Congregate Residential Development

Village of Briarcliff Manor, NY
Wednesday, October 24, 2012

§ 220-11. Eldercare Community EC District.

A. Statement of purpose.

- (1) To provide for the establishment, within residential areas, of a specialized, for-profit congregate residential development for the elderly. In such development, accommodation can be made for the range of needs of those elderly who do not want or need placement in a hospital or nursing home. Eldercare communities shall be designed to achieve compatibility with their surroundings and to encourage orderly and well-planned development. Eligible sites shall be limited to those analyzed and found suitable in the comprehensive planning and environmental review processes undertaken at the time of creation of this zoning district. Such development shall be of a scale and location that will make it feasible to construct a comprehensive package of supporting utilities, services and facilities, so as to achieve development which is environmentally, physically, visually and economically sound. Certain accessory uses that are requisite, desirable and convenient for congregate living for the elderly will also be allowed.
- (2) Such persons form a stable part of the community. In contrast to young families which are often compelled to move as their families grow or their jobs change, the elderly set their roots fast in the community, usually for the rest of the span of their lives. They have no need for schools and related services, nor do they require, in the aggregate, as many municipal services and facilities. The taxes paid by them, directly or indirectly, help to stabilize the tax base required to provide schools and other public services in those areas and for those land uses which require them. Usually having a greater than average purchasing power, they bolster the local economy. Moreover, a minimum amount of retail trade and services, professional and otherwise, may be carried on in such a specialized development for the convenience of its inhabitants, some of whom will, by reason of age or reduced physical fitness, be unable to travel easily. Such accessory uses may also diminish the amount of vehicular movement generated by such community, thereby promoting its tranquillity.

[Amended 5-21-1998 by L.L. No. 2-1998]

B. Locational criteria.

- (1) To encourage orderly development of sites that provide safe, efficient, adequate access and traffic circulation, eldercare communities shall have frontage on a state or county highway, and access to a major road.
- (2) The lot area shall not be less than five acres, one contiguous lot or assemblage of lots, held under common ownership as of January 1, 1994.
- (3) The site of such community shall be within 500 feet of existing retail shopping facilities via a walking route considered safe and convenient by the Planning Board as determined as part of site plan review.
- (4) Such site shall be served by public water and sanitary sewer facilities.

C. General provisions. The following standards, conditions and provisions shall be administered by the Planning Board during the course of site plan review. All site development plan applications for development in an EC zone shall, in addition to complying with all other standards and requirements of these regulations, also satisfy the following standards and conditions:

- (1) The total density, including persons dwelling therein and all staff on-duty at any time, shall not exceed 25 persons per acre.

- (2) Uses which are normally accessory to an eldercare community may be provided, including the following: indoor and outdoor recreation for residents and their guests only; continuing education, crafts and hobbies for residents and their guests only; living, dining, laundry, security and housekeeping facilities for common use of residents only; central kitchen for food served in dining areas or distribution to individual dwelling accommodations and units; restaurant for residents and their guests only, with no cash transactions allowed; medical and dental services for residents only with no cash transactions allowed; small retail shops for the sale of goods or rendering of personal services (such as hairdresser, banking, etc.) only to residents, with no cash transactions allowed; off-street parking areas; and signs and outdoor lighting standards.
- (3) Minimum setback from property lines for buildings shall be:
 - (a) Front yard: 100 feet.
 - (b) One side yard: 20 feet.
 - (c) Two side yards combined: 40 feet.
 - (d) Rear yard: 100 feet.
- (4) Appropriate buffer screening shall be designed and installed within setback areas adjoining or facing residential properties, to the extent deemed appropriate by the Planning Board as a part of the site plan approval process.
- (5) There shall be not less than one off-street parking unit for each on-duty staff member plus one unit for each 10 persons dwelling therein to be designated as visitor parking. Notwithstanding anything to the contrary, if the Planning Board, as part of the site plan approval process, determines that less than the required number of parking spaces will satisfy the intent of this chapter, because of variations in the time of maximum use or any other reason, the Planning Board may waive the improvement of not more than 25% of the required number of parking spaces. In such case, it must be demonstrated on the site plan that sufficient usable lot area remains for the eventual provision of the total number of required parking spaces. All unimproved parking spaces shall be used and maintained as landscaped grounds until required for parking, and must be improved for parking in accordance with the site plan within six months after written notice is given by the Village Engineer to the property owner stating that improvement of all or a portion of the parking spaces is necessary.
- (6) Outdoor lighting shall be limited to that necessary for operational reasons and shall be so designed as to not be incompatible with surrounding land uses. It shall be directed away from nearby streets and properties and shall be placed or shielded so that no direct light source (i.e., bulb, lamp, tube) shall be visible at any property line at a height of more than four feet above grade. Outdoor lights shall be mounted not more than 14 feet above adjacent finished grade. *Editor's Note: Former Subsection C(7), regarding announcement signs, was repealed 11-19-1998 by L.L. No. 9-1998. See Ch. 172, Signs.*
- (7) The entrance to all off-street parking and truck unloading spaces shall be from an internal driveway system or local street and not from a secondary street, major or business street, or state or county highway.
- (8) Off-street parking and unloading areas shall be designed to avoid the impression of large scale paved areas. This shall include provisions for landscaping and screening and landscaped islands within the parking areas in the proportion of 10 square feet for each uncovered or unenclosed parking space.
- 1). Shared usage. Notwithstanding anything herein to the contrary, a portion of the site not otherwise required for buildings or parking may be used for public recreation by the owner or operator of the principal use or by any other entity, provided that such portion of the site is in one contiguous piece and does not exceed 60% of the area of the total site.

§ 144-41

HARTLAND CODE

§ 144-41

§ 144-41. Echo uses. [Added 12-8-2005 by L.L. No. 2-2005¹⁷]

A. Findings. The Town Board of the Town of Hartland makes the following findings:

- (1) An aging population, with extended life expectancy, the rural nature of the Town of Hartland and the high cost of custodial or semicustodial care and of adult-care residences, as well as the shortage of appropriate housing for senior citizens with some disabilities or infirmities in the Town of Hartland, and the need for family support and proximity for aging parents, cause a need for alternative forms of living for elderly parents of residents of the Town of Hartland.
- (2) Some, but not all, properties in the Town of Hartland are so located, and contain sufficient area, to allow for the establishment of temporary second residences in the Town on the same lot as the principal residence, without unduly interfering with the nature and character of the neighborhood in which they are located or with the value, use and enjoyment of the neighboring or nearby properties, for parents of the owners of said premises.

B. Definitions. As used in this section, the following terms shall have the meanings indicated:

ECHO RESIDENCE — A second residence located on a lot as an accessory building occupied by a parent or grandparent of the lot owner, where the lot owner or the lot owner's spouse is the occupant of the principal residence on said lot.

17. Editor's Note: This local law also repealed former § 144-41, Cluster residential development, and superseded the ordinance on echo uses adopted 6-22-1985. For current provisions regarding cluster residential development, see § 144-16.

- C. Permits. The Planning Board may permit as a special use an echo residence in an R-1, R-2, R-3 or A District upon such terms and conditions as the Planning Board may deem appropriate, only where the parent or grandparent is over the age of 60 and the Planning Board finds that said parent or grandparent for medical reasons is in need of some assistance in living and should be in close proximity to his or her children. The applicant must submit medical evidence sufficient to establish this criteria in such form as the Planning Board may deem appropriate.
- D. Permit renewal; termination of permit.
- (1) Said residence may continue upon annual renewal for so long as the conditions at the time of the application continue and the other criteria of this section are satisfied.
 - (2) The special permit shall immediately terminate on the happening of the following:
 - (a) The death of the occupant of the echo residence.
 - (b) The absence of the occupant of the echo residence for a period of 60 days for any reason.
 - (c) The child or grandchild ceasing to reside in the principal residence.
 - (d) The admission of the echo resident to an extended-care facility or any other place of residence.
 - (e) The failure to pay the annual fee established for said permit or to renew the permit as set forth in § 144-41H.
 - (f) The failure to meet any condition of the permit.
- E. Removal. The echo residence shall be completely removed from the property within 30 days following the expiration or the permit.

F. General conditions.

- (1) The echo residence may be serviced by water from the principal residence, installed in accordance with the applicable building codes.
 - (2) The echo residence shall be serviced by a sufficient private sewage facility to meet all Town, county and other governmental requirements and shall otherwise meet all building code requirements, except that the echo residence may be a mobile home.
 - (3) The echo residence shall not be closer to the street than the front facade of the principal residence, and the lot shall meet all setback and area requirements of this chapter.
 - (4) The echo residence shall be of sufficient size to comfortably accommodate the occupants. Travel trailers and motor homes shall not be allowed.
 - (5) The occupants of the echo residence shall be limited to the parents or grandparents and their spouses of lot owners and their spouses.
- G. Required findings; issuance of permit. Prior to the granting of such a permit, the Planning Board shall hold a public hearing. The Planning Board shall take into consideration the comments of those attending the public hearing and shall not direct issuance of a permit unless a specific finding is made that the allowed use will not be disruptive to the use and enjoyment of properties in the general neighborhood, their value, or the character of the neighborhood. Upon direction by the Planning Board, the Zoning Enforcement Officer shall issue the permit, provided that all other zoning and building laws and regulations are met.
- H. Fees; annual renewal. Any person applying for a permit shall pay an application fee as determined by the Town

Board by resolution. If the permit is granted, such fee shall also constitute the first year's permit fee. Annually, on or before the anniversary date of the granting of the permit, the permit holder shall submit to the Zoning Enforcement Officer a renewal fee as determined by the Town Board by resolution. Existing permits may be renewed by the Zoning Enforcement Officer upon determining that all conditions of the permit are being met and that an event causing termination of the permit has not taken place.

§ 144-42. Junkyards.

Junkyards may be permitted in only the A District and only with a special use permit. Junkyards are subject to the following additional restrictions:

- A. No junkyard shall be permitted nearer to a public highway or lot line than a distance of 400 feet.
- B. Junkyards, in existence at the time of the adoption of this chapter, less than 400 feet from a public highway or lot line shall be surrounded by a seven-foot painted board or other type fence within a period of two years after the adoption of this chapter.
- C. (Reserved)¹⁸
- D. Before any special use permit can be issued for a junkyard, the Planning Board must specifically find: **[Amended 12-8-2005 by L.L. No. 2-2005]**
 - (1) That the creation and maintenance of a junkyard on the proposed site is in the best interest of the public.
 - (2) That the proposed junkyard will not adversely affect the nature of the neighborhood.

18. Editor's Note: Former § 144-42C, requiring approval of 4/3 of Planning Board members as to junkyard location, was repealed 12-5-2005 by L.L. No. 2-2005.

<i>Article 7</i>	TRADITIONAL NEIGHBORHOOD	TND
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229-57 INTENT

The purpose of this district is to require the usage of traditional neighborhood design criteria within the boundaries of the district in order to implement the principals of the Town's adopted comprehensive plan. This district is intended to achieve the following:

- A. Provide incentives to encourage the adaptive reuse of existing structures.
- B. Allow and encourage a mixture of uses and mixed-use structures.
- C. Accomplish and continue a sense of community.
- D. Provide a walkable, pedestrian friendly environment.
- E. Respect and preserve unique natural features within the district.
- F. Provide design regulations that encourage compatible building arrangements, bulk, form, character, and landscaping to establish a livable, harmonious, and diverse environment.
- G. Discourage the demolition of existing structures that posses significant historic or other essential elements that contribute to the character of the district.
- H. Create a small town, historic style business district that limits large scale, out of character commercial developments.

229-58 PERMITTED USES

The following uses are allowed as vested rights in facilities measuring no more than ten thousand square feet (10,000 sq. ft.) in gross area:

- | | |
|--|-----------------------------|
| Personal service shops | Professional offices |
| Small retail shops | Diners or small restaurants |
| Banks | Churches |
| Mixed-use buildings | Single-family residences |
| Community facilities | Two-family residences |
| Second-floor multi-family dwelling units | Bed & Breakfast Inns |

229-59 USES PERMITTED WITH A SPECIAL EXCEPTION USE PERMIT

The following uses are only allowed if they meet the Town's Special Exception Use Permit requirements and any overlay zoning requirements:

- A. Any permitted use in a new structure measuring between 10,000-30,000 sq. ft in gross area.
- B. Expansions of existing structures requiring site plan approval that will result in a cumulative structure measuring between 10,000-30,000 sq. ft. in gross area.
- C. Drive-thru establishments.
- D. Multi-family dwelling units (Max. 8 units/ac.)
- E. Motor vehicle, equipment and implement sales and services.

<i>Article 7</i>	TRADITIONAL NEIGHBORHOOD	TND
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229-60 LOT AREA PROVISIONS

No lot shall be less than fifteen thousand square feet (15,000 sq. ft.) if used as a dwelling or dwellings, nor less than five thousand square feet (5,000 sq. ft.) area per unit if used for multiple-family residential. Commercial lots must be a minimum of eight thousand four hundred square feet (8,400 sq. ft.) area. For all non-sewered lots in this district, the Erie County Health Department shall set the minimum requirements for on-site septic system installation and maintenance.

229-61 LOT DIMENSIONS

No lot shall be less than seventy feet (70') in width and one hundred twenty feet (120') in depth. Corner lots shall be no less than one hundred twenty feet (120') on each street. Non-sewered lots must meet a minimum lot width of one hundred fifty (150') and two hundred twenty feet (220') in depth.

229-62 BUILDING SIZE

- A. No building or buildings exclusive of accessory buildings, porches, entries, garages, and terraces, shall contain less than eight hundred square feet (800 sq. ft.) gross floor area. No building or buildings exclusive of accessory buildings, porches, entries, garages, and terraces, shall contain more than ten thousand square feet (10,000 sq. ft.) gross floor area, if used as a permitted use nor more than thirty thousand square feet (30,000 sq. ft.) gross floor area, if used as a special exception use.
- B. Buildings used in whole or in part for residential purposes, exclusive of accessory buildings and exclusive of porches, entries, garages and terraces, shall contain no less than nine hundred (900) square feet of usable living space if a one-story building used as a one-family dwelling, nor less than six hundred (600) square feet of usable first floor living space if more than one story, provided that no such building shall contain a total of less than one thousand square feet (1,000 sq. ft.) of usable living space if used as a one-family dwelling, and provided further that no such building shall contain a total of less than six hundred (600) square feet of usable living space for each one-bedroom family unit or apartment, seven-hundred twenty (720) square feet of usable living space for each two-bedroom family unit or apartment and one-thousand (1,000) square feet of usable living space for each three-bedroom family unit or apartment.

229-63 SETBACKS

- A. Setbacks shall be as follows:

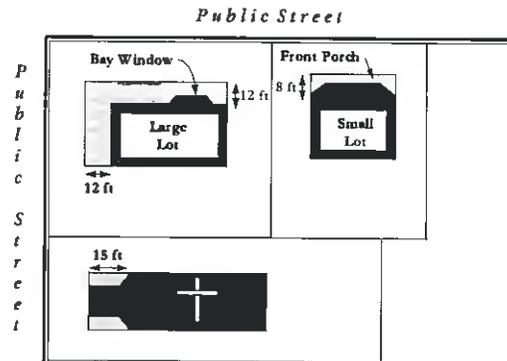
Yard	Distance (in feet)
Front	10
Side	10
Rear	25

<i>Article 7</i>	TRADITIONAL NEIGHBORHOOD	TND
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B. All new buildings shall adhere to these setback lines for required yard areas. The established build-to-line is ten feet (10'). Where there is a pre-existing building setback line established, principal structures may vary up to thirty-five feet (35') from the established build-to-line as measured from structures within three hundred feet (300') of the proposed building. In no case may the front yard setback for a principal structure exceed forty-five feet (45') from the front property line.

229-64 ENCROACHMENTS

A. Balconies, stoops, stairs, chimneys, open porches, bay windows, and raised doorways shall be permitted to extend within the minimum front setback, to a maximum of twelve feet (12'). Open patios and decks in rear yard may extend up to twelve feet (12'). In no case shall the encroachment enter a public highway right-of-way, or property line.

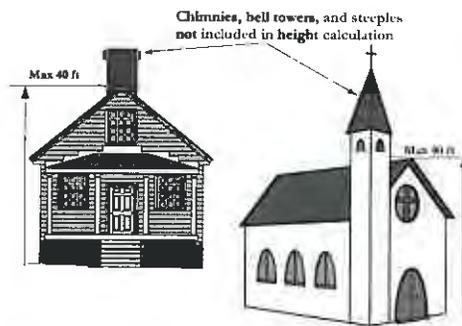


B. Side yards that abut a public street shall be treated as described above. Hedges, garden walls, or fences may be built on property lines or as a continuation of building walls. Buildings should avoid long monotonous, uninterrupted walls or roof planes. Blank, windowless walls are generally not allowed along street frontage.

229-65 BUILDING HEIGHT

A. The vertical distance from the mean elevation of the finished grade relative to the frontage street, to the ridgeline of the structure.
 1) All uses - 40 ft. Maximum

B. Exceptions:
 1) Roof equipment not intended for human occupancy and which is necessary to the structure upon which it is placed.



229-66 ACCESSORY STRUCTURES

Any commercial accessory structure that is placed in this district must be approved by the Town Board. Attached residential accessory structures shall not exceed 40% of the total area of the principal structure or 960 sq. ft., whichever is smaller. Any detached residential accessory structure must not exceed seven hundred twenty square feet (720 sq. ft.) and shall be placed no closer than five feet (5') to any side or rear lot line if wholly within the rear yard. Otherwise, the principal building setbacks shall apply.

<i>Article 7</i>	TRADITIONAL NEIGHBORHOOD	TND
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229-67 DESIGN STANDARDS

- A. General
 - 1. All development and redevelopment requiring site plan approval must meet the requirements of any zoning overlay that exists in the area of development.
 - 2. The scale, proportions, massing and detailing of any proposed buildings or major renovation shall be in proportion to the scale, proportion, massing and detailing in the area.
 - 3. Connections shall be provided from the site to the existing sidewalk system. Pedestrian and bicycles shall be accommodated in the site design.
- B. Parking Lots
 - 1. All parking shall be located at the side or rear of the building. No parking shall be located in the front yard of the building.
 - 2. If the parking is located in the side yard, it must be partially screened from the road by low walls, fences or hedges as approved by the Town's Landscape Committee.
 - 3. Parking lots shall not abut street intersections.
 - 4. Adjacent parking lots shall have internal vehicular connections.
 - 5. On-street parking directly fronting the lot shall count toward fulfilling the parking requirements of that lot.
- C. Architecture
 - 1. The architectural style of all new structures must be reviewed and approved by the Town Board and may be referred to the Planning Board for its review and recommendation.
 - 2. All proposed structures must conform to any overlay zoning requirements.
 - 3. Due to the visibility of the district, architectural compatibility is necessary in order to visually connect development and allow for proximity of varied uses.
 - 4. Materials- Walls shall be clad in stone, brick, marble, cast concrete, vinyl siding, drivit, and hardiboard or other cement paneling. Metal paneling is prohibited.
 - 5. Configurations- Two wall materials may be combined (horizontally) on one facade. The heavier material must be below. Roof lines shall not be flat.
 - 6. Techniques- All rooftop equipment shall be enclosed in the building material that matches the structure or is visually compatible with the structure.

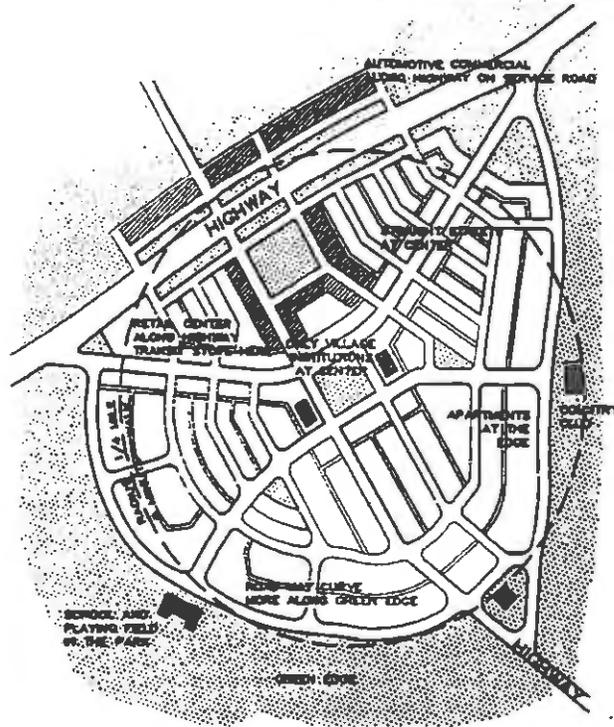
229-68 LOT COVERAGE

- A. All buildings and impervious surfaces including, but not limited to, parking areas and public or private drives may not cover more than sixty percent (60%) of a project site. Where a property owner has shared access and shared parking arrangements with adjoining property owners in perpetuity (for example: via a permanent easement recorded in the deed) the lot coverage requirements may be increased to eighty-five percent of the lot (85%).

B. The Rural Neighborhood

- 1) Scale:
.5 to 1 mile across
- 2) An example of a TND in the countryside is called a hamlet or village.
- 3) Within a hamlet or village the following land uses are arranged to service the needs of the resident population in a convenient walking environment:

Open space, civic buildings, low and high density residential, retail/commercial, business/workplace, and parking.



Encourages adaptive reuse

City of Kingston, NY
Monday, October 29, 2012

§ 405-27.1. Mixed Use Overlay District.

[Added 1-4-2005, approved 1-5-2005]

A. Purposes and principles.

- (1) The Mixed Use Overlay Zoning Districts are intended to implement a City of Kingston Comprehensive Plan Element for the areas known as the "Stockade and Midtown Mixed Use Overlay Zoning Districts." (See attached maps. *Editor's Note: Said maps are included at the end of this chapter.*)
- (2) According to the Comprehensive Plan Element, the creation of the Mixed Use Overlay Zoning District has two underlying purposes.
 - (a) The first purpose is to adaptively reuse existing commercial and industrial buildings to provide rental multifamily housing, including affordable housing, to the present and future residents of the City of Kingston.]
 - (b) The second purpose is to encourage mixed-use, mixed-income, pedestrian-based neighborhoods.

B. Proposals within the Mixed Use Overlay Zoning Districts are intended to be based on the following guidelines:

- (1) Affordable housing.
 - (a) Guidelines to provide affordable housing pertains to individual proposals to adaptively reuse commercial and industrial buildings for five or more residential units.
 - (b) Of the five or more overall housing units created by individual proposals to adaptively reuse commercial and industrial buildings for residential purposes, 20% of those units will be dedicated for affordable housing.
 - (c) The rental of affordable housing units will be calculated as not exceed 30% of a household's income.
 - (d) The maximum income for a household to occupy an affordable housing unit will be 80% of the Ulster County median income, with adjustments for family size and be updated yearly.
 - (e) Affordable housing units should be dispersed throughout the proposed housing project and be indistinguishable from market rate units.
 - (f) Affordable housing units are phased in during the overall construction process.
 - (g) Affordable housing units should remain affordable for the length of time the building in question contains residential units or remains residential.
 - (h) Final choice of the tenants to occupy the affordable housing units lies with the owners of the adaptively reused commercial and industrial buildings or their representatives. Owners of the adaptively reused commercial and industrial buildings or their representatives can choose a potential tenant from a pool of income eligible tenants as kept by the Kingston Office of Community Development and/or the Kingston

Housing Authority. In the case that the owners of the adaptively reused commercial and industrial buildings or their representatives identify a potential tenant to occupy an affordable housing unit, apart from the pool kept by the Kingston Office of Community Development and/or the Kingston Housing Authority, that potential tenant must be judged income eligible by the Kingston Office of Community Development or the Kingston Housing Authority before he or she occupies the affordable housing unit.

- (i) The Kingston Office of Community Development will be responsible for ensuring the long-term affordability of the residential units within the Mixed Use Overlay Zoning Districts. This includes ensuring that 20% of the units within the appropriate adaptively reused commercial and industrial buildings are dedicated to affordable housing.
- (2) Mixed-use, mixed-income, pedestrian--based neighborhoods.
 - (a) The adaptive reuse of buildings should encourage residential uses above retail or commercial uses.
 - (b) The safety, comfort and interest of pedestrians should be integrated into the adaptive reuse site plans.

C. Definitions. As used in this section, the following terms shall have the meanings indicated:

AFFORDABLE HOUSING UNIT

A dwelling unit available at a cost of no more than 30% of the gross household income of households at or below 80% of the Ulster County Medium Income.

QUALIFIED AFFORDABLE HOUSING TENANT

An individual or family with household incomes that do not exceed 80% of the medium income with adjustments for household size.

D. The following uses are subject to the issuance of a special permit by the Planning Board in accordance with the provisions of § 405-32 of this chapter:

- (1) The conversion of existing commercial or industrial buildings, or sections of them, into residential apartments and work/live spaces of which some will be dedicated as affordable housing. Such uses will be subjected to § 405-30, Site development plan approval.
- (2) Site and building enhancements that promote a mixed-use, mixed-income, pedestrian-based neighborhood. Such uses will be subjected to § 405-30, Site development plan approval.

E. Provision of affordable units. The Planning Board shall deny any permit for development under this zoning chapter if the applicant for special permit approval does not comply, at a minimum, with following requirements for affordable units:

- (1) At least 20% of the residential units in the adaptive reuse of commercial or industrial buildings, of five or more units, shall be established as affordable housing units for rental to qualified affordable housing tenants.

F. Provisions applicable to affordable housing.

- (1) Siting of affordable units. Affordable housing units should be dispersed throughout the proposed adaptive reuse project.
- (2) Minimum design and construction standards for affordable units. Affordable housing units within the market rate units shall be integrated with the rest of the development and be indistinguishable from market rate units in design, appearance, construction and quality of materials.

- (3) Timing of construction of affordable units. Affordable housing units shall be provided coincident to the development of market rate units.
- G. Development standards applicable to the adaptive reuse of commercial and industrial buildings that promote a mixed-use, mixed-income, pedestrian-based neighborhood. Intent: The safety, comfort and interest of pedestrians relates to the extent to which buildings face streets and public open spaces with entrances, windows and usable outdoor space.
- (1) Street level building spaces shall be limited to commercial activities with residential spaces allowed at the second or above floors.
 - (2) Primary entrances of buildings shall face a street or small park.
 - (3) Sheltering elements shall be included as part of the adaptive reuse site plans.
 - (4) Shade trees shall be essential features of adaptive reuse site plans.
 - (5) Human-scale lighting shall be essential features of adaptive reuse site plans.
 - (6) Small parks should be encouraged as part of the adaptive reuse site plans.
 - (7) Reinforce pedestrian connections between building and street, between buildings and through parking lots as part of the adaptive reuse site plans.
 - (8) Minimize the dominance of parking, screen parking lots from the street and make parking lots cooler as part of the adaptive reuse site plans.

Traditional Neighborhood Development Overlay:

- encourage redevelopment of specific area
- Affordable housing provisions (moderate income)
- Allows mixed uses, live-work units
- Priority to municipal employees, emergency services workers, elderly, veterans for moderate housing
- Encourages a "mix of dwelling types"

§ 405-27.2. TNDOD Traditional Neighborhood Development Overlay District.

[Added 8-4-2009 by L.L. No. 9-2009, approved 8-13-2009] In the TNDOD Traditional Neighborhood Development Overlay District, the following regulations will apply.

A. District intent and general purpose.

- (1) The Traditional Neighborhood Development Overlay District (TNDOD) is hereby established to encourage and facilitate redevelopment and adaptive reuse of the former "Tilcon Mining" properties. These former industrial sites comprise approximately 345 acres of the site of 508 acres located along and adjacent to the northern portion of the City's waterfront.
- (2) These properties have been analyzed and considered as part of various waterfront planning efforts conducted by the City, including the City's Local Waterfront Revitalization Program (LWRP) (1992) and the City's Waterfront Development Implementation Plan (2000). In response to contemporaneous development proposals, the City has also conducted more focused planning analyses of these properties. This effort has included application of the policies and principles contained in the waterfront planning studies recited above to various specific development scenarios and the conduct of detailed environmental impact assessment of those development scenarios pursuant to the requirements of the New York State Environmental Quality Review (SEQR) Act.
- (3) The result of these collective planning efforts is the City's desire to create the opportunity for traditional neighborhood development at these locations that is consistent with the character and history of the City. Development of traditional neighborhoods along the riverfront will respect its natural resources and provide attractive, diverse, walkable and culturally vibrant communities with strong linkages to the rest of the City of Kingston. The City finds that proceeding in this manner constitutes good planning, is consistent with the City's approved LWRP, New York State coastal zone policies and the Vision Statement in the City's Waterfront Implementation Plan and furthers the public health, safety and welfare of existing and future residents of the City.
- (4) The TNDOD is intended to provide an option to development under provisions of the existing underlying zoning districts. The standards and procedures set forth for the TNDOD in this section are intended to override and replace standards and procedures set forth elsewhere in this chapter unless such standards and procedures are specifically referenced or incorporated herein.

B. Specific purposes. The TNDOD is intended to serve the following specific purposes and further the policies of the City's LWRP:

- (1) Encourage innovative, traditional neighborhood development which consists of compact, mixed-use neighborhoods where residential, commercial and civic buildings are within close proximity to each other and incorporates the principles set forth in Subsection G(6) below.

- (2) Create pedestrian-oriented neighborhoods for a diverse population to live, work, learn and play.
 - (3) Provide for the reclamation, redevelopment and/or adaptive reuse of former industrial sites (Policies 1 and 1A).
 - (4) Strengthen Kingston's economic base.
 - (5) Facilitate and enhance meaningful public access to the City's Hudson River waterfront lands.
 - (6) Promote the preservation of large natural features such as woodlands and wetlands and creation of public open spaces within individual neighborhoods.
 - (7) Preserve and protect significant views to and from development sites.
 - (8) Encourage the incorporation of historic and civic elements into neighborhood design and build upon Kingston's historical and architectural heritage.
 - (9) Encourage the provision and/or upgrade of necessary infrastructure resources relating to sewer, water, drainage and parking to facilitate development and improve the natural environment.
 - (10) Provide housing opportunities for moderate-income families and individuals, including municipal employees, first-time homeowners and senior citizens.
- C. Applicability. This district applies to that portion of the City of Kingston waterfront and adjoining upland areas consisting of approximately 345 acres of the site of 508 acres comprising the former Tilcon Mining properties. The precise district boundaries are designated on the official City of Kingston Zoning Map.

D Permitted uses.

- (1) Uses permitted by right. A building may be erected, reconstructed, altered, arranged, designed or used, and a lot or premises may be used, for any of the following purposes by right, subject to the conditions established.
 - (a) Residential housing, which may be owner-occupied, operated as a rental property, or a combination of owner-occupied and rental, and, if offered for sale, to be owned in fee simple, condominium, cooperative or other forms of ownership, which housing may include any of the following, or any combination thereof:
 - [1] Dwellings: single-family, two-family and multiple-family, including townhouses, studio and residential apartment units.
 - [2] Combination building: a building containing a combination of two or more dwelling unit types, which may include, without limitation, single-family attached, townhouses, two-story apartments, any of which may be arranged beside, above, or under, other types of unit types.
 - [3] Mixed-use building: a building that combines one or more dwelling unit types permitted herein, including, without limitation, single-family attached, townhouses and apartments, in combination with nonresidential uses, which may include any or all non-residential use types permitted herein.
 - (b) Art galleries, workshops or retail shops associated with arts, crafts or fine arts.
 - (c) Live work units.
 - (d) Restaurants and drinking establishments.
 - (e) Health clubs; indoor recreation facilities; outdoor recreation opportunities, both public and/or private.
 - (f) Hotels, conference centers, banquet facilities, bed-and-breakfast establishments (subject to the requirements of

§ 405-45A).

- (g) Offices, business offices, professional offices.
 - (h) Personal service businesses.
 - (i) Theaters, concert halls, cinemas, museums.
 - (j) Cultural and educational institutions and facilities and places of religious worship.
 - (k) Retail and service uses typically providing goods and services to the immediate neighborhood, including, without limitation, groceries, specialty foods, bakeries, banks, delicatessens, laundromat/drycleaner and personal services.
- (2) Special permit uses. The following uses are subject to issuance of a special permit by the Planning Board in accordance with the provisions of **§ 405-32** of this chapter:
- (a) Uses listed in **§ 405-25D** of this chapter as permitted in the RF-R and RF-H Riverfront Districts, subject to the requirements specified for such uses.
- (3) Accessory uses. Accessory uses shall be limited to the following:
- (a) Home occupations, subject to the provisions of **§ 405-9C(2)**.
 - (b) Professional offices or studios, subject to the provisions of **§ 405-9C(3)**.
 - (c) Off-street parking; fences; hedges; garden walls, signage; gardenhouse, toolhouse, playhouse, greenhouse, pools, incidental to residential use of premises, subject to the approved regulating design manual.
- (4) Subdivisions. Portions of the TNDOD site may be subdivided upon approval by the Planning Board, for the purposes set forth below. Any parcels created by such subdivision shall be subject to compliance with all provisions of this section and the approved regulating design manual:
- (a) Subdivision to create individual lots for single-family homes, townhouses, multifamily housing, nonresidential uses, parks and/or open space.
 - (b) Subdivision to create blocks or sections for future development which may be further subdivided in accord with Subsection **D(4)(a)** above.
- I Provisions for moderate-income housing. In any TNDOD, at least 10% of all housing units shall be designated as moderate-income housing in accord with the definitions and standards contained herein.
- (i) Standards.
- (a) All moderate-income housing units shall be physically integrated into the design of the development. Each housing unit shall be constructed to the same quality standards as market-rate units. The exterior finishes shall be indistinguishable from all other units. The developer may, however, substitute different fixtures, appliances and interior finishes where such substitutions would not adversely impact the livability or energy efficiency of the unit.
 - (b) Moderate-income housing units shall generally be distributed throughout the development in the same proportion as other housing units. The Planning Board may use discretion in reviewing and approving distribution of units in consideration of the market objectives of the applicant.
 - (c) To be eligible to purchase or rent a moderate-income housing unit, the household's aggregate annual income must be between 80% and 120% of the Ulster County median family income for a family of a particular size as

determined annually by the United States Department of Housing and Urban Development (HUD).

- (2) Housing plan. Prior to the initial application for approval of a subdivision, site plan or special permit within an approved TNDOD, the applicant shall submit a proposed housing plan to the Planning Board that demonstrates how the following objectives will be achieved:
 - (a) Among income-eligible households, preference to purchase or rent moderate-income housing units shall be given to the following types of households in an order deemed appropriate by the Planning Board:
 - [1] Employees of the City of Kingston, Town of Ulster or Kingston Consolidated School District.
 - [2] Volunteer members of the Kingston or Ulster Fire Department or First Aid and Rescue Squads.
 - [3] Elderly (62 or older) or disabled residents of the City of Kingston and Town of Ulster.
 - [4] Honorably discharged US veterans who are residents of the City of Kingston or Town of Ulster.
 - [5] All other residents of the City of Kingston or Town of Ulster.
 - (b) The housing plan shall include procedures and regulations regarding the following:
 - [1] Methods to determine sale and rental prices for moderate-income units.
 - [2] Procedures to regulate resale prices of moderate-income units.
 - [3] Proposed phasing of moderate-income units in relation to phasing of the total development.
 - [4] Use of any other procedures deemed appropriate to comply with the intent of this section.
- (3) Approval.
 - (a) The housing plan shall be approved by the Planning Board, with recommendation from the City Community Development Agency, prior to approval of any site plan, subdivision or special permit within the TNDOD.
 - (b) The Planning Board shall include mention of such housing plan in the notice of any required public hearing on the application.
 - (c) As part of any approval of the housing plan, the Planning Board may require modifications to such housing plan to further the intent of this section.
- (4) Administration. The City of Kingston Community Development Agency shall be responsible for the administration of the moderate-income housing program. The administrative agency shall perform the following duties:
 - (a) Accept and review applications.
 - (b) Maintain eligibility priority list; annually certify and recertify applicants;
 - (c) Establish lottery procedures for selecting applicants that have equal priority;
 - (d) Recommend annual maximum income limits, rental prices, resale values;
 - (e) Review certification from owner and lessors of rental units certifying that units are occupied by eligible families;
 - (f) Review all deed restrictions for moderate-income units;
 - (g) Review all lease terms for moderate-income units; and

(h) Promulgate rules and regulations as necessary.

F. Application for a traditional neighborhood development plan.

(1) Any property owner within the TNDOD may apply to the Planning Board for approval of a traditional neighborhood development plan as an alternative to the uses and development standards permitted in the underlying districts, in accordance with the standards and procedures set forth herein.

(2) Each traditional neighborhood development plan must be accompanied by a regulating design manual, subject to approval by the Planning Board, which sets forth the requirements for density, bulk, height, parking, architectural, landscaping, and other design standards to be applied in the proposed traditional neighborhood development.

G. Criteria for approval of a traditional neighborhood development design plan. In determining whether or not to approve a traditional neighborhood development plan, in accord with the procedures set forth in Subsection G below, the Planning Board shall consider the extent to which the plan meets the following criteria:

(1) Conforms to the applicable purposes and objectives of the City's Zoning Law.

(2) Conforms to the applicable policies and purposes of the City's Local Waterfront Revitalization Program and Waterfront Implementation Plan.

(3) Conforms to the intent and specific purposes of this section.

(4) Contains a sufficient amount of acreage to allow for the creation of a traditional neighborhood development that incorporates the traditional neighborhood design principles listed below, but in no event less than 25 acres.

(5) Contains residential and nonresidential densities that are sufficient to create traditional neighborhood development and neighborhoods while at the same time respecting the natural features and environmental sensitivity of the site, but in no event more than 10 dwelling units per gross acre allocated for residential use or a floor area ratio (FAR) of more than 2.0 for lands allocated for nonresidential use.

(6) Incorporates accepted traditional neighborhood design principles with respect to the roadway system, proposed land uses, the open space system and the scale and style of the building elements. For purposes of this provision, traditional neighborhood design principles shall include:

(a) Provision of mixed-use neighborhoods that are designed and sized to be walkable.

(b) A discernible center within each mixed-use neighborhood to serve as a community gathering place.

(c) Shops and stores within close proximity to neighborhoods sufficiently varied to satisfy ordinary household needs.

(d) A variety of places to work, including live/work units.

(e) A mix of dwelling types such that younger and older persons, single-person households and families may be housed according to their needs.

(f) Small playgrounds or neighborhood parks within walking distance of all dwellings.

(g) Thoroughfares and roadways designed as a network, with emphasis on connecting adjacent thoroughfares wherever possible to provide drivers with options to disperse traffic.

(h) Traffic calming design to slow traffic, creating an environment appropriate for pedestrians, bicyclists and automobiles.

(i) Building frontages that create interesting, attractive pedestrian-friendly streetscapes and confine parking to

locations behind buildings to the maximum extent practicable.

(j) Preservation of sensitive natural resources and cultural areas as permanent open space.

(k) Provision for community uses or civic buildings.

(7) Incorporates meaningful public access to the City's waterfront. Meaningful public access shall be as defined in § 405-25C(2) of this chapter.

(8) Demonstrates the provision of adequate services and utilities, including access to public transportation.

(9) Architectural style of proposed buildings, including exterior finishes, color and scale, that is consistent with the intent and purposes of this section.

11. Traditional neighborhood development plan review procedures.

(1) Traditional neighborhood development design plan application. An application for approval of a traditional neighborhood development plan shall be made as follows:

(a) Applicant. An application for approval of a traditional neighborhood development plan shall be made in writing to the Planning Board. Application shall be made by the owner(s) of the land(s) to be included in the project or by a person or persons having an option or contract or other commitment to purchase or acquire the lands. In the event an application is made by a person or persons holding an option or contract to purchase the lands or other commitment to purchase or acquire the lands, such application shall be accompanied by written evidence that the applicant has authorization to submit and pursue such application.

(b) Applications. All applications for approval of a traditional neighborhood development plan shall be on forms and in such quantity as may be prescribed by the Planning Board. The application must include a Part 1 Full Environmental Assessment Form.

(c) Contents. An application for traditional neighborhood development plan approval shall include the following:

[1] A master site development plan for consideration by the Planning Board. The development plan may be prepared at a conceptual level but, at a minimum, must specify the number and type of uses proposed for development and depict their location as well as depict the parking areas to service the proposed uses and the means of traffic circulation, both automotive and pedestrian, between and among the uses.

[2] The development plan shall be accompanied by a proposed regulating design manual as required under Subsection F above.

[3] The development plan need not encompass all the details required for a site plan approval but shall set forth in reasonable detail the anticipated locations within the development and sizes of all major improvements such that the Planning Board can evaluate the plan for environmental, traffic and other impacts on the City with a view toward attaching any conditions of approval which must be met at the time a detailed site plan is submitted for approval for the development or any portion thereof.

[4] The TND plan shall include a phasing plan with estimated time periods for each phase and for completion of the entire development.

(2) Processing of application. The Planning Board shall process an application for approval of a traditional neighborhood development plan in accordance with the following procedure:

(a) Submission. An application for approval of a traditional neighborhood development plan shall be submitted to the Planning Board office in accord with the timing and procedures established by the Planning Board.

- (b) Escrow. Upon submission of an application, the Planning Board shall establish an escrow amount to be paid by the applicant to reimburse it for reasonable fees incurred by planning, engineering, legal and other consultants in connection with their review of the application. The escrow shall be periodically replenished as necessary. The applicant shall be provided with an ongoing, detailed accounting of all disbursements from the escrow. Upon termination of the review of the application by the Planning Board, any remaining funds in the escrow account shall be reimbursed to the applicant.
- (c) Concurrent site plan review. Concurrent with its traditional neighborhood development plan submission, an applicant may also submit a detailed site plan application for one or more phases of the traditional neighborhood development plan. Any site plan concurrently submitted must comply with the requirements of this section and of § 405-30 of this chapter.
- (d) Public hearing. The Planning Board shall conduct a public hearing on an application for approval of a traditional neighborhood development plan, which shall be held at the time and place prescribed by the Planning Board. Notice of any public hearing shall be provided in the same manner as provided for special uses set forth in § 405-32B of this chapter.
- (e) General Municipal Law § 239-m referral. If required, the Planning Board shall refer a full statement of the application to the Ulster County Planning Board as provided for by § 239-m of the General Municipal Law.
- (f) Decision.
 - [1] The Planning Board shall approve, approve with conditions or deny an application within 62 days after either:
 - [a] A SEQRA determination of nonsignificance; or
 - [b] The issuance of a SEQRA statement of findings; or
 - [c] A determination that the proposed action is consistent with a previous statement of findings.
 - [2] The Planning Board's decision shall contain specific findings demonstrating the application's compliance with the criteria for approval set forth in Subsection E above. The Planning Board's decision may attach any reasonable conditions to assure conformance with the intent and objectives of these regulations.
- (g) Filing. The decision of the Planning Board shall be filed in the office of the City Clerk within five business days after such decision is rendered and a copy thereof shall be mailed to the applicant. In the event of denial, the Planning Board's decision shall contain a written, reasoned elaboration in support of the decision.
- (h) Modification. Changes or modification to the approved traditional neighborhood development plan, including, but not limited to, modifications to the regulating design manual, shall require review and approval by the Planning Board.
- (i) Time limits.
 - [1] An application for site plan approval of the traditional neighborhood development plan, or a phase thereof, shall be submitted within one year of the Planning Board's grant of traditional neighborhood development plan approval. Failure to submit an application for site plan approval within that period shall render the traditional neighborhood plan approval null and void and of no force and effect.
 - [2] Construction work on the traditional neighborhood development must commence within three years from the date of any final site plan approval and all other required permits or approvals by involved agencies. If construction does not commence within said period, then the traditional neighborhood development plan approval shall become null and void and all rights shall cease.

- [3] Construction of the entire traditional neighborhood development must be completed within the time frame proposed by the applicant in its TND plan and approved or modified by the Planning Board at the time of approval. If the traditional neighborhood development is not completed within said time period, then the approval of those phases not substantially completed shall become null and void and all rights therein shall cease.
- [4] Individual approved phases within the traditional neighborhood development shall be undertaken in the time frame prescribed by the Planning Board in its approval resolution. Each section shall be substantially completed in no more than five years.
- [5] Upon written request by the applicant, any of the time limits prescribed above may be extended by the Planning Board for good cause. Among the examples of good cause are delays occasioned by lawsuits, poor market conditions, unforeseen site conditions and force majeure. The Planning Board shall not withhold such extension unless it finds that the applicant is not proceeding with due diligence or is otherwise violating the conditions upon which the approval was granted. Extensions shall not exceed three years unless the applicant submits a written request for further extension.
- [6] Within the time limits prescribed above, and for any extension period granted by the Planning Board, the traditional neighborhood development plan shall be deemed to have obtained vested rights for purposes of completing the approved development improvements notwithstanding any changes to the Zoning Law.

I. Conflicts.

- (1) To the extent any provision of this section, including any provision of the approved regulating design manual, conflicts with any provision of any other article in this chapter, the provisions of this section shall control.
- (2) The Common Council hereby declares its legislative intent to supersede any provision of any local law, rule, or regulation or provision of the law inconsistent with this section. The provisions of law intended to be superseded include all the City Law and any other provision of law that the City may supersede pursuant to the Municipal Home Rule Law and the Constitution of the State of New York. The courts are directed to take notice of this legislative intent and apply it in the event the City has failed to specify any provision of law that may require supersession. The Common Council hereby declares that it would have enacted this section and superseded such inconsistent provision had it been apparent.

J. Definitions. As used in this section, the following definitions shall apply:

CONSTRUCTION WORK or CONSTRUCTION

Disturbance of the project site and continued activity to install utilities, roads or other infrastructure or the process of erecting any structure in accordance with the final approved site plan.

FINAL SITE PLAN APPROVAL

The signing of the site plan by the Planning Board Chairman with an endorsement by stamp or other writing indicating that the plan has received final site plan approval and indicating the date of such final approval.

LIVE/WORK UNIT

A two- or three-story individually deeded unit consisting of commercial or office space on the ground level with a living unit on the above floor or floors which can be owner-occupied and/or leased for a permitted use as regulated as a mixed-use building.

Provides flexibility to encourage redevelopment

Hilton Head Island, South Carolina, Land Management Ordinance >> CHAPTER 4. - ZONING DISTRICT REGULATIONS
>> **ARTICLE XI. - REDEVELOPMENT FLOATING ZONE >>**

ARTICLE XI. - REDEVELOPMENT FLOATING ZONE

Sec. 16-4-1101. - Purpose

Sec. 16-4-1102. - Applicability

Sec. 16-4-1103. - Approval

Sec. 16-4-1104. - Floating Zone Restrictions

Sec. 16-4-1105. - Minor Amendments

Sec. 16-4-1101. - Purpose

The purpose of the Redevelopment Floating Zone is to allow a property to redevelop in a manner that is more flexible than the design standards and other design criteria required of new development. The Redevelopment Floating Zone is designed to promote redevelopment to improve sites while still maintaining island character and encourage owners of nonconforming properties on the Island to redevelop without requiring complete conformance with the current provisions of this Title. The needs and goals of the Comprehensive Plan support the creation of this zone to encourage redevelopment.

(Revised 3/6/07—Ordinance 2007-05)

Sec. 16-4-1102. - Applicability

- A. The Redevelopment Floating Zone may be applied for by qualifying parcels island-wide to redevelop with flexibility in design standards and other design criteria. Redevelopment is defined as the renovation of a previously developed site to the density allowed under Section 16-4-1601, or the existing density, whichever is greater. Cosmetic changes to the exterior of the structure(s) and interior renovations do not qualify as redevelopment. The following parcels qualify:
1. Parcels that contain a nonconforming structure or site feature; or
 2. A conforming parcel that redevelops in conjunction with a parcel that contains a nonconforming structure or site feature.
- B. Parcels that are zoned for and developed as single family residential do not qualify for this zone.

(Revised 3/6/07—Ordinance 2007-05; Revised 2/3/09—Ordinance 2009-02)

Sec. 16-4-1103. - Approval

Approval of the Redevelopment Floating Zone shall only occur through the process described in Article 16 of Chapter 3.

(Revised 3/6/07—Ordinance 2007-05)

Sec. 16-4-1104. - Floating Zone Restrictions

All proposed land uses must conform to the uses allowed in the base district. The Redevelopment Floating Zone may be applied for and allow nonconforming uses to remain and contain modifications of design standards and other design criteria, which shall be limited to the items listed below. Any design standards or other design criteria not listed in this section shall meet the current requirements of this Title.

- A. **Setbacks.** The adjacent use and street setbacks required in Section 16-5-704 may be reduced by up to 50% of the required distance.
- B. **Setback Angles.** The setback angle required in Section 16-5-704 may be increased based on the proposed height of the structure and the distance of the setback. This requirement shall not be

increased to exceed a 75 degree setback angle.

- C. **Adjacent Street Buffer.** The adjacent street buffer required in Section 16-5-806 may be reduced by up to 50% of the required distance.
- D. **Adjacent Use Buffer.** The adjacent use buffer required in Section 16-5-806 may be reduced by up to 50% of the required distance.
 - 1. A utility easement may be located within any required adjacent use buffer area if the provisions of Section 16-5-809B are met.
- E. **Specific Buffer Requirements.** The buffer for loading, service, and utility areas required in Section 16-5-807B may be reduced if deemed practicable by Town Council; however, additional planting or screening may be required. In no case shall the adjacent use buffer be less than what is required by Paragraph D above.
- F. **Impervious Coverage.** The impervious coverage of a site shall not be increased beyond the maximum permitted by the base district or if nonconforming, what legally existed on the site prior to redevelopment. In no case shall the impervious coverage exceed 80% of the site.
- G. **Open Space.** The open space on a site shall not be reduced beyond the minimum required by the base district or if nonconforming, what legally existed on the site prior to redevelopment. In no case shall the open space be less than 20% of the site.
- H. **Height.** Any structure that is nonconforming due to height may be rebuilt to the height that legally existed prior to the redevelopment if deemed practicable by Town Council. Town Council's decision shall be based on the ability to recapture the existing density of the site and the height of existing structures that currently surround the site.
- I. **Density.** The maximum density permitted on a site by Section 16-4-1501 may not be increased beyond the existing density of a site. If the proposed redevelopment will result in a change in the use or uses of the site, the impact of the proposed land uses on infrastructure, surrounding properties and the adequacy of the site improvements such as parking and stormwater will be evaluated. This evaluation may result in approving a density that still may be nonconforming but is less than what currently exists on the site.
 - 1. Nonconforming square footage may be converted to another use if the density of the proposed use is based on square footage and the proposed use is permitted within the zoning district where the property is located.
 - 2. Nonconforming square footage may be converted to Mixed Use residential as defined in Chapter 10 of this Title if the use is permitted within the zoning district where the property is located.
 - 3. Sites redeveloping using the floating zone are not eligible for bonus densities found in Section 16-4-1602 if they are proposing to redevelop at a density greater than what is allowed by Section 16-4-1601
- J. **Parking.** Parking design standards may vary according to the following:
 - 1. Regular parking spaces that are no less than 8.5 feet by 18 feet or compact parking spaces that are no less than 8.5 feet by 15 feet may be reconstructed to the same size that legally existed prior to the proposed redevelopment.
 - 2. In addition to shared parking agreements allowed in Section 16-5-1202, up to 20% of the required parking spaces may be accounted for off-site, where public parking areas or on-street parking is available.
 - 3. Section 16-5-1202 states that access to remote or off-premise parking shall not cross any arterial street except at a pedestrian controlled signalized intersection. This requirement may be waived if deemed practicable by Town Council. Town Council's decision shall be based on safety information provided by the applicant that shows there is adequate and safe pedestrian ingress and egress from the site to offer off-premise parking.
 - 4. Section 16-5-1204B and C state that parking spaces that adjoin a median at the end of a row of parking shall be expanded to 10 feet in width for both regular spaces and compact spaces. This requirement may be reduced to 9 feet or what legally existed on the site prior to

- redevelopment.
5. Section 16-5-1204C limits the number of compact spaces on site to one fifth of the required parking. This number may be increased to the amount that legally existed on the site prior to redevelopment.
 6. The number of parallel parking spaces limited by Section 16-5-1204E may be increased if deemed practicable by Town Council.
 7. Section 16-5-1206H states that the size of parking medians and the number of continuous parking spaces may be modified by the Administrator to preserve trees and other vegetation. These requirements may be modified by Town Council for reasons other than preserving trees and other vegetation.
 8. Section 16-5-1201A states that on-street parking may be utilized on non-arterial streets for public parks only. On-street parking may be approved elsewhere if deemed practicable by Town Council.
- K. **Trees.** A site that proposes to provide less than the required amount of tree coverage may be permitted to remain under the required amount if Town Council determines that the applicant has taken all reasonable steps to meet the required number of caliper inches of trees on the project site, and the applicant deposits a tree mitigation fee in a Town administered tree replacement fund in lieu of providing additional trees. See Section 16-6-409 for details regarding the tree replacement fund.

(Revised 3/6/07—Ordinance 2007-05; Revised 10/6/09—Ordinance 2009-33)

Sec. 16-4-1105. - Minor Amendments

- A. Minor amendments to an approved Redevelopment Floating Zone shall be reviewed and, if appropriate, approved by the Administrator. Minor amendments shall be amendments that do not make the site nonconforming to the adopted design standards or other design criteria. Minor Amendments shall not further relax a design standard or other design criteria that has been modified by granting of the Zoning Map Amendment for the Redevelopment Floating Zone.
- B. Denial of proposed minor amendments by the Administrator may be appealed within 14 calendar days of the decision to the Board of Zoning Appeals.

(Revised 3/6/07—Ordinance 2007-05)

Reduced fees for low/mod income housing development

Sec. 15-5-211. - Generally.

- (a) *Other fees superseded:* The following schedules and regulations regarding fees are hereby adopted and supersede all regulations and schedules regarding fees published in the International Codes and National Electrical Code.
- (b) *Fees mandatory:* No permit shall be issued until the fees prescribed in this section shall have been paid. Nor shall an amendment to a permit be approved until the additional fee, if any, due to an increase in the estimated cost of the building or structure, shall have been paid.
- (c) *Waiver of fees:*
- (1) Fees shall be waived for single family construction alterations to enlarge, alter, repair, remodel or add additions to existing structures when the value of said alteration is less than one thousand dollars (\$1,000.00).
 - (2) Fees of less than two hundred dollars (\$200.00) for repair or renovation of single-family structures when the work to be performed is sponsored by a 501(C)(3) organization shall be waived upon submission of a letter to the building official verifying the sponsorship of the work to be performed.
 - (3) The town manager may waive all costs, bonds and fees associated with this chapter for a special event under Section 17-12-115 which is solely sponsored and operated by an organization which is exempt from federal income taxation under section 501(c) of the Internal Revenue Code.
 - (4) The town manager may waive all costs, bonds and fees associated with this chapter for an event which does not expect the minimum number of personnel to qualify as a special event under Section 17-12-115 and is solely sponsored and operated by an organization which is exempt from federal income taxation under section 501(c) of the Internal Revenue Code.
- (d) *Failure to obtain permit:*
- (1) If any person commences work on a building or structure before obtaining the necessary permit from the applicable governing body, he shall be subject to the penalty prescribed herein.
 - (2) Where work for which a permit is required by this code is started or proceeded with prior to obtaining said permit, the fees herein specified shall be doubled. The payment of such double fee shall not relieve any persons from fully complying with the requirements of this code in the execution of the work or from any other penalties prescribed herein.
- (e) *Records of fees collected:* The building official shall keep a permanent and accurate accounting of all permit fees and other moneys collected, the names of all persons upon whose account the same was paid, the full date, and the amount thereof.
- (f) *By whom fees to be paid:* Any and all fees shall be paid by the person to whom the permit is issued.
- (g) *Separate permit required:* A separate permit will be required for each building. Multiple buildings are not allowed to be issued on one (1) permit.
- (h) *Reduction of fees for qualified affordable/moderate income housing construction.* Permit fees shall be reduced up to a maximum of fifty (50) percent for any affordable/moderate income housing units so qualified by the Town's Director of Planning. Proof of qualification shall consist of the provision of legally tendered documents either establishing the recordation of a Density Housing Agreement (LMO: Chapter 4 Moderate Income Housing Program) or, in the case of a project not requesting a density bonus, a sworn affidavit filed by the building entity establishing that units will be sold or rented exclusively to households with incomes equal to or less than eighty (80) percent of the most recent median annual income of Beaufort County and identifying the number and placement of the affordable housing units. Plan checking fees shall be calculated based on reduced building permit fee. No reduction shall be provided for any penalties owed if work is undertaken without a permit.
- (i) *Definitions for the purposes of this article:*
- Affordable housing* is defined as housing units either operated as rental or available for sale exclusively to households with incomes equal to or less than eighty (80) percent of the most recent median family annual income

of Beaufort County.

Moderate income housing is defined as residential units either operated as rental or available for sale exclusively to households with incomes equal to or less than one hundred and twenty (120) percent of the most recent median family annual income of Beaufort County and are subject to a Density Housing Agreement (LMO: Chapter 4 Article XVII Section 16-4-1704A.1.)

(j) *Fees established.* Construction permit fee reduction shall be calculated as follows:

(1) *Rental residential:* A scaling percentage based upon the percentage of housing units within the development which are reserved for qualifying individuals or households. The reduction schedule is:

Percent of affordable units	Percent reduction
0–10	10
11–20	20
21–30	30
31–40	40
41 or greater	50

(2) *Owner occupied residential:* A reduction of fifty (50) percent of the construction permit fee.

(Ord. No. 01-07, § 1, 6-5-01; Ord. No. 04-14, § 1, 4-6-04; Ord. No. 06-18, § 1, 9-5-06; Ord. No. 2010-08, § 1, 4-20-10)

Accessory Apartments Law

Town of Huntington, NY
Monday, October 29, 2012

Article XX. Accessory Apartments

[Added 1-22-1991 by L.L. No. 1-1991; Editor's Note: Section 5 of this local law provided that "The Town Board shall appoint, prior to January 30, 1994, a Citizens' Advisory Committee, which Committee shall be charged with the duty of evaluating and making recommendations and findings of fact as to the implementation of this local law and which Committee shall further be charged to report to the Town Board no later than May 1, 1984." amended 7-15-1991 by L.L. No. 5-1991; 8-30-1994 by L.L. No. 6-1994; 6-6-1995 by L.L. No. 1-1995; 9-19-1995 by L.L. No. 3-1995; 4-17-1996 by L.L. No. 7-1996; 10-8-1996 by L.L. No. 10-1996; 12-17-1996 by L.L. No. 13-1996; 7-1-1998 by L.L. No. 30-1998]

§ 198-132. Legislative intent.

- A. It is the purpose of this Article to provide an opportunity, in locations where adverse impacts do not result and in a manner consistent with the Town wide Comprehensive Plan, for the creation of accessory apartments within the existing structure of owner-occupied single-family detached dwellings. It is the intent of this article to meet the special housing needs of small households and to allow for the efficient use of the Town's existing stock of single-family dwellings. It is also the intent of this article to increase compliance with building and fire codes, assist individuals and families with limited incomes, reduce the impact of foreclosure and deferred property maintenance, thereby preserving property values and the health, safety and general welfare of the community.
- B. Nothing in this article shall be deemed to abolish, impair, supersede or replace existing remedies of the Town, county or state or existing requirements of any other provision of local laws or ordinances of the Town or county or state laws and regulations. In the case of a conflict between this article and other regulations, that which sets the more stringent requirement will prevail.
- C. Nothing in this article shall be deemed to abolish any permit validly issued prior to July 1, 1998, under this chapter which no longer conforms to the area and setback requirements set forth hereinafter.
- D. Notwithstanding the provisions hereinbefore set forth, any permit validly issued prior to July 1, 1998, which no longer conforms to the area and setback requirements set forth hereinafter shall be renewable and transferable in accordance with the provisions of § 198-136F(1) as hereinafter set forth.
- E. It is the intention of the Town Board to allow the renewal of permits issued pursuant to § 198-143A as long as the requirements of this Article, the Code of the Town of Huntington, New York State Uniform Fire Prevention and Building Code and the conditions, rules and/or regulations of any other agency having jurisdiction are satisfied. Notwithstanding the above, a permit issued pursuant to § 198-143A cannot be transferred to a new owner.

[Amended 7-2-2002 by L.L. No. 25-2002]

- F. It is the intention of the Town Board to exercise its authority pursuant to Municipal Home Rule and Town Law § 274-b to empower the Zoning Board of Appeals to hear and determine applications for accessory apartment permits in accordance with this article.

[Added 3-13-2012 by L.L. No. 7-2012]

§ 198-133. Permit required; prohibitions; presumptions.

[Amended 7-2-2002 by L.L. No. 25-2002; 10-16-2006 by L.L. No. 30-2006; 2-6-2007 by L.L. No. 8-2007]

- A. Conditional Use. In residence districts where authorized by this Chapter, an accessory apartment may be maintained as a

conditional use only by permission of the Zoning Board of Appeals and upon compliance with the requirements of this Article, the Code of the Town of Huntington, the Fire Code and Property Maintenance Code of the State of New York, the Residential Code of the State of New York and the rules and regulations of any other agency having jurisdiction, including such reasonable conditions as may be imposed by the Zoning Board of Appeals. In reviewing applications for accessory apartments, the Zoning Board shall consider the factors set forth in this Article instead of supplementary regulations for conditional uses set forth elsewhere in this Chapter.

[Amended 3-13-2012 by L.L. No. 7-2012]

B. Prohibitions.

- (1) It shall be unlawful to use, establish, maintain, operate, occupy, rent or lease any portion of any premises as an apartment for residential occupancy in the Town of Huntington without first having obtained an accessory apartment permit. Failure or refusal to procure an accessory apartment permit shall be deemed a violation of this Article.
- (2) It shall be unlawful for a property owner or person in charge of property to knowingly or recklessly lease or sublease an accessory apartment to a registered sex offender, or to otherwise permit or allow such offender to use or occupy said accessory apartment as his residence or domicile. For the purpose of this article the term "registered sex offender" shall be defined as in § 194-2 of the Huntington Town Code.
- (3) It shall be unlawful for a property owner or person in charge of property to establish or maintain an accessory apartment if a registered sex offender occupies, is domiciled or resides in the main dwelling of the single family home. For the purpose of this article the term "registered sex offender" shall be defined as in § 194-2 of the Huntington Town Code.

C. In the absence of a valid accessory apartment permit, there shall be a rebuttable presumption that a building or dwelling unit zoned for single or one-family occupancy is occupied by more than one family if any two or more of the following features are found to exist on the premises by the Director of Public Safety, his or her designee and/or any person authorized to enforce or investigate violations of the Code of the Town of Huntington:

[Amended 5-8-2007 by L.L. No. 18-2007]

- (1) More than one (1) mailbox or mail slot or post office address upon the premises;
- (2) More than one (1) gas meter;
- (3) More than one (1) electric meter;
- (4) More than one (1) connecting line for cable or utility services;
- (5) Separate entrances for segregated parts of the dwelling, including but not limited to bedrooms;
- (6) Permanent partitions or internal doors which may serve to bar access between segregated portions of the dwelling, including but not limited to bedrooms;
- (7) A separate written or oral lease or rental arrangement, payment or agreement for portions of the dwelling among its owner(s) and/or occupants and/or persons in possession thereof;
- (8) The inability of any occupant or person in possession thereof to have unimpeded and/or lawful access to all parts of the dwelling unit; or
- (9) Two (2) or more kitchens each containing one (1) or more of the following: a range, oven, hotplate, microwave or other similar device customarily used for cooking or preparation of food and/or a refrigerator or sink.

- (10) More than one doorbell or doorway located on the same side of the dwelling unit.

[Added 10-16-2007 by L.L. No. 35-2007]

- D Failure to transfer permit. In the event an application for a transfer of an accessory apartment permit for owner-occupied dwellings has not been filed by the new owner(s) within ninety (90) days of the closing of title as required by § 198-135 (B), there shall be a presumption that an apartment is being operated, used, rented, leased and/or maintained by the new owner(s) in violation of law and without benefit of an accessory apartment permit. *Editor's Note: Former Subsection E, Verified statement, added 5-8-2007 by L.L. No. 18-2007, which immediately followed this subsection, was repealed 10-16-2007 by L.L. No. 35-2007.*

§ 198-134. Accessory apartment permit; conditions.

[Amended 7-2-2002 by L.L. No. 25-2002]

- A An accessory apartment permit shall be issued only after a public hearing held pursuant to § 198-137 and upon a finding by the Zoning Board of Appeals that the following conditions are satisfied.

[Amended 4-19-2005 by L.L. No. 14-2005; 3-13-2012 by L.L. No. 7-2012]

- (1) Unless otherwise provided in this Article, the single-family dwelling is the principal residence (domicile) of the owner. The owner shall be a natural person.
- (2) Unless otherwise provided in this Article, the property for which the accessory apartment permit is sought shall have a minimum lot size of seven thousand five hundred (7,500) square feet and a lot frontage of at least seventy-five (75) linear feet. In the case of a cul-de-sac, the lot width shall be measured at the front building line of the single-family dwelling.
- (3) Is limited in occupancy to one (1) person for each seventy (70) square feet of habitable bedroom living space of the accessory apartment. Children under five (5) years of age shall not be included in the definition or calculation of occupancy. The proposed accessory apartment shall have no less than three hundred (300) square feet of habitable living space nor more than six hundred fifty (650) square feet of habitable living space and shall be limited to a maximum of two (2) bedrooms.
- (4) Will not create nor maintain an additional front, external entrance door. All other exterior entrance doors shall be located at the sides or rear of the dwelling. All electrical service panels, electric meters and water meters shall be located so as not to be visible from the street. No exterior changes shall be made so as to alter its single-family appearance.
- (5) Is the subject of a valid certificate of occupancy as a single-family dwelling issued at least three (3) years prior to the date of the application hereunder or was constructed prior to the need for the issuance of the same.
- (6) All structures on the property, including the proposed accessory apartment, comply with the requirements of this Article, the Code of the Town of Huntington, the Fire Code and Property Maintenance Code of the State of New York, the Residential Code of the State of New York, and the rules and regulations of any other agency having jurisdiction. No portion of a single family dwelling or accessory apartment shall utilize a cellar or attic, or any portion thereof, as habitable space unless a waiver is issued by the New York State Building Code Board of Review, its successor in interest, or other agency having jurisdiction.
- (7) Is situated on a lot providing three (3) unobstructed off-street parking spaces for each dwelling unit so contained. Such spaces shall be paved with asphalt, concrete or other suitable material of a permanent nature as may be approved by the Zoning Board of Appeals. The maximum width of such spaces shall not exceed eighteen (18) feet or twenty-four (24%) percent of the lot frontage whichever is less. The number of off-street parking spaces required

may be increased or decreased as conditions warrant in the discretion of the Zoning Board of Appeals for good cause shown.

(8) Unless otherwise provided in this Article, the lot for which the accessory apartment permit is sought is not located in an area where ten (10%) percent or more of the lots within a one-half-mile radius of the subject parcel contain accessory apartments. The Hearing Officer may recommend, and the Zoning Board may approve, a variance of this requirement when, due to the sparsity of development in the surrounding area, it is not practicable to maintain the ten-percent cap on accessory apartments.

(9) No accessory apartment may be contained in any building or structure other than the main building on any lot. A homeowner shall be granted only one (1) accessory apartment permit, and only one (1) accessory apartment shall be permitted per dwelling and per lot.

B. The Hearing Officer shall specifically address and the Zoning Board of Appeals shall find, prior to the issuance of an accessory apartment permit, that:

[Amended 2-6-2007 by L.L. No. 8-2007; 3-13-2012 by L.L. No. 7-2012]

(1) The proposed accessory apartment will be properly located and serviced with respect to water supply, waste disposal, fire protection and other public amenities.

(2) The proposed accessory apartment will not substantially contribute to traffic congestion or traffic hazards.

(3) All structures, landscaping and paving on a lot on which an accessory apartment is located shall be maintained in a neat and clean manner, including but not limited to driveways, walkways, sidewalks adjoining the subject parcel, exterior shingles, paint, shutters and trim, as well as landscaping, lawns and shrubbery.

(4) The proposed accessory apartment will not have a significant adverse impact on the value of neighboring properties or overall land-use density in the surrounding area.

(5) Use and occupancy of the proposed apartment will not unreasonably conflict with a stable, uncongested single family environment and will be compatible with the character of the neighborhood in which the dwelling is located.

(6) The proposed apartment will not substantially change the single-family appearance of the dwelling.

(7) The use will be in harmony with and promote the general purpose and intent of this Article.

(8) A registered sexual offender is not residing in or occupying the main dwelling of the property, and that the accessory apartment will not be leased or subleased to a registered sexual offender, or otherwise used or occupied by such an offender as his residence or domicile.

C. As a condition to issuance of an accessory apartment permit, the Hearing Officer may recommend and the Zoning Board of Appeals may impose such condition(s) as deemed proper and necessary upon the apartment, the single-family dwelling structure, and/or the property to preserve the character of the neighborhood and/or the health, safety and welfare of neighboring residents.

[Amended 3-13-2012 by L.L. No. 7-2012]

D. The issuance of an accessory apartment permit shall be specifically conditioned upon the following:

[Amended 4-8-2003 by L.L. No. 14-2003]

(1) An inspection by the Director of Public Safety, or his/her designee, for the purpose of determining whether the proposed accessory apartment is in compliance with the Code of the Town of Huntington, the Fire Code and Property Maintenance Code of the State of New York, the Residential Code of the State of New York, and the rules

and regulations of any other agency having jurisdiction. The failure to schedule an inspection after due notice from the Town or resisting, obstructing and/or impeding the agents, servants, officers and/or employees of the Town of Huntington during an inspection of the premises shall be a violation of this Article and subject to the fines and penalties provided herein. A fee of seventy-five (\$75) dollars shall be imposed upon the owner of the property for each inspection that is required to be rescheduled.

[Amended 11-5-2008 by L.L. No. 38-2008 *Editor's Note: This local law provided that it take effect 1-1-2009.* ; **3-13-2012 by L.L. No. 7-2012]**

- (2) A duly executed sworn affidavit signed by the applicant affirming that no other apartment is being maintained, owned or operated on the subject property in violation of the Accessory Apartment Law. Additionally, the affidavit shall set forth that all conditions underlying the issuance of an accessory apartment have been met. The sworn affidavit shall be created by and filed with the Accessory Apartment Bureau. This requirement is waived upon a full consensual inspection of all structures on the property as set forth (D)(1) herein.

[Amended 3-13-2012 by L.L. No. 7-2012]

- (3) The right of the Director of Public Safety, or his/her designee, in the event of a declared emergency, and upon notice to the property owner, to enter upon any portion of the premises to protect the health, safety and welfare of residents or to perform any duty required of him/her under the Code of the Town of Huntington, the Fire Code and Property Maintenance Code of the State of New York, the Residential Code of the State of New York, or rules and regulations of any other agency having jurisdiction. Any person or business entity who resists, obstructs or impedes the agents, servants, officers or employees of the Town of Huntington in the performance of their duties in the course of an emergency shall be in violation of this Article and subject to the fines and penalties provided herein.

[Amended 10-16-2006 by L.L. No. 30-2006; 3-13-2012 by L.L. No. 7-2012]

- (4) The inclusion in any lease, rental or other agreement for the occupancy of said apartment, a statement disclosing that the provisions of (D)(1), (2) and (3) are conditions to the issuance of the accessory apartment permit.

[Amended 3-13-2012 by L.L. No. 7-2012]

- (5) The submission of a sworn and notarized affidavit signed by the applicant representing to the Town that a registered sex offender is not nor will be residing in the main dwelling of the property; that the accessory apartment is not nor will be leased or subleased to a registered sex offender; nor will a registered sex offender be permitted to reside in or be domiciled in such apartment. The affidavit shall also state that the applicant is making such representations with full knowledge that the Town of Huntington is relying on these statements as a basis to issue a permit.

[Added 2-6-2007 by L.L. No. 8-2007]

§ 198-135. Term of permit.

[Amended 7-2-2002 by L.L. No. 25-2002]A permit for an accessory apartment shall remain in effect until the earlier of the following occurrences:

- A. One (1) year from the date an accessory apartment permit is issued by the Accessory Apartment Bureau; or

[Amended 3-13-2012 by L.L. No. 7-2012]

- B. Transfer of title of a single-family structure containing an accessory apartment, except that a permit for an owner-occupied structure may be transferred if the new owner(s) files an application for a transfer of the permit pursuant to § 198-136(F)(1) and (2), within ninety (90) days of the closing of title, and the main dwelling will be or is the principal residence of the new owner upon sale. Such transfer of the permit will not take effect until the new owner(s) submits a

complete application and such application is recommended for approval by the Hearing Officer, and approved by the issuance of a statement of determination by the Zoning Board of Appeals. A current permit will be null and void at the expiration of such ninety-day period where a transfer of ownership has occurred without the required application for a transfer of a permit having been filed. In the event an application for a transfer of an accessory apartment permit has not been filed by the new owner(s) in violation of this Article, there shall be a presumption that an accessory apartment is being operated, used, rented, leased and/or maintained by the new owner(s) in violation of law; or

[Amended 3-13-2012 by L.L. No. 7-2012]

C. Upon a determination by the Zoning Board of Appeals that the permit holder and/or occupant(s) of the dwelling unit(s) located within the residential structure has violated a condition of the permit pursuant to § 198-141 and the permit is revoked; or

[Amended 3-13-2012 by L.L. No. 7-2012]

D. The permit is terminated by operation of law or order of the court.

§ 198-136. Application for a permit, permit renewal and transfer of permit; fees.

A. The owner of a single-family dwelling, where authorized by this chapter, may apply to the Hearing Officer for a permit to maintain an accessory apartment. The application shall be in writing and in a form to be prescribed by said Hearing Officer and acknowledged by the applicant in the form of an affidavit verified under oath.

B. Applications shall set forth the following:

[Amended 3-13-2012 by L.L. No. 7-2012]

- (1) The name, address, contact number(s) and e-mail address of the property owner.
- (2) The location and Suffolk County Tax Map Number of the property where an accessory apartment is proposed or a transfer or renewal of a permit is requested.
- (3) Such other information as the Hearing Officer or Zoning Board of Appeals may require.

C. All applications shall be accompanied by:

[Amended 3-13-2012 by L.L. No. 7-2012]

- (1) A survey of the premises at which the accessory apartment is contemplated, at a scale and size suitable for filing.
- (2) A floor plan of any existing dwelling and one (1) photograph each of the front, rear and each side of any existing dwelling on the premises which is the subject of the application, taken within two (2) weeks of making the application, and, if not included on the survey, a site plan, drawn to scale, showing all buildings, structures, walks, drives, other physical features of the premises and the location of and access to existing and proposed off-street parking.
- (3) A floor plan of the proposed dwelling as same shall exist after any alterations or modifications made for such accessory apartment.
- (4) A fully complete application to the Department of Engineering, Building and Housing for all necessary building permits.
- (5) A copy of the recorded deed to the real property and a complete copy of all covenants and restrictions imposed upon the property, whether or not recorded in the Office of the Suffolk County Clerk.

[Amended 7-2-2002 by L.L. No. 25-2002]

- (6) A listing of all owners of record of all properties within a five-hundred-foot radius of the exterior limits of the subject real property.
 - (7) Photographs depicting the front, back and sides of the dwelling, as well as photographs depicting the location of any existing driveways.
 - (8) Proof of residency of the owner(s).
 - (9) Photo identification of the owner(s).
 - (10) Affidavit(s) of the owner(s) disclosing any and all parties having any financial or ownership interest in the property and whether any such party in interest is subject to the provisions of the Code of Ethics of the Town of Huntington.
Editor's Note: See Ch. 29, Ethics.
- D. Applications for an accessory apartment permit, or for a renewal or transfer thereof, shall be accompanied by a duly executed and acknowledged written consent of the applicant authorizing an inspection of the premises under review as set forth in § 198-134(D).

[Amended 7-2-2002 by L.L. No. 25-2002; 3-13-2012 by L.L. No. 7-2012]

E. Renewals.

- (1) Any permit issued under this article may be renewed for an additional term by application as in the event of an original application. The notice and/or hearing requirements of § 198-137 shall not apply to applications for renewal, except that the Hearing Officer shall have the authority to require a hearing on notice when, in his/her discretion, special circumstances exist which would require public input and in such event the requirements of § 198-137 are applicable. Thereafter, whether or not a hearing is held, the matter shall proceed in accordance with the provisions of § 198-140.

[Amended 3-13-2012 by L.L. No. 7-2012]

- (2) Said renewal application shall be subject to all inspections and payment of the applicable fee. The fee for renewal of an existing permit shall be received no later than thirty (30) days after the expiration of the existing permit. All fees received after thirty (30) days of the expiration of the existing permit shall be subject to a late filing fee in accordance with the following schedule:

[Amended 11-5-2008 by L.L. No. 38-2008 Editor's Note: This local law provided that it take effect 1-1-2009.]

Payment Received:	Late Filing Fee:
31-59 days	\$75.00
60-89 days	\$125.00
90-120 days	\$175.00
After 120 days	Subject to Revocation

F. Transfer of permits.

- (1) An accessory apartment permit, except for a permit issued pursuant to § 198-143(A), may be transferred to a subsequent property owner by application as in the event of an original application and in accordance with § 198-135

- (B). The notice and hearing requirements of § 198-137 shall not apply to an application for transfer of a permit, except that the Hearing Officer shall have the authority to require a hearing on notice when, in his/her discretion, special circumstances exist which would require public input and in such event the requirements of § 198-137 are applicable. Thereafter, whether or not a hearing is held, the matter shall proceed in accordance with the provisions of § 198-140.

[Amended 7-2-2002 by L.L. No. 25-2002; 3-13-2012 by L.L. No. 7-2012]

- (2) Said transfer application shall be subject to all inspections and payment of the applicable fee.

G. Fees.

- (1) The fee for the initial permit application for all permits that are applied for before any notice of violation is issued for operating an illegal apartment shall be one hundred seventy-five (\$175) dollars, which shall be nonrefundable and paid at the time of filing the application.

[Amended 11-5-2008 by L.L. No. 38-2008 Editor's Note: This local law provided that it take effect 1-1-2009.]

- (2) The fee for the initial permit application for all permits that are requested after a notice of violation has been issued for operating an illegal apartment shall be five hundred (\$500) dollars, which shall be nonrefundable and paid at the time of filing the application.
- (3) The fee for the transfer of a permit shall be one hundred twenty-five (\$125) dollars and the fee for the renewal of a permit shall be twenty-five (\$25) dollars.

[Amended 7-2-2002 by L.L. No. 25-2002; 11-5-2008 by L.L. No. 38-2008 Editor's Note: This local law provided that it take effect 1-1-2009.]

§ 198-137. Public hearing.

[Amended 3-13-2012 by L.L. No. 7-2012]

- A. Unless otherwise provided in this article, an application for an accessory apartment permit shall require a public hearing at a time and place established by the Hearing Officer or the Zoning Board of Appeals, as the case may be, but in no event later than sixty-two (62) days from the date a complete application is received, unless extended by mutual consent of the applicant and Hearing Officer/Zoning Board.
- B. Notice of public hearing. Notice of the public hearing before the Hearing Officer shall be drafted by the Town, and shall state the time and place of the hearing, the location of the property which is the subject of the application, and that an application has been made for a permit to maintain an accessory apartment.
- (1) Publication. Notice of the public hearing shall be published by the Town in the official Town newspaper(s) once per week for two (2) consecutive weeks prior to the scheduled hearing date. The last publication shall be at least five (5) days prior to the scheduled hearing date.
- (2) Mailing. The applicant shall mail notices of the public hearing, postmarked no later than twenty (20) days before the hearing, to the owners of all properties located within a five-hundred-foot radius of the exterior limits of the applicant's total property holdings as shown on the current tax roll. The applicant shall file a United States postal service certificate of mailing for each and every notice mailed no less than five (5) working days before the hearing. Failure to mail the notices or file proof thereof as herein specified shall result in postponement of the public hearing.

§ 198-138. (Reserved)

Editor's Note: Former § 198-138, Delegation of authority, was repealed 3-13-2012 by L.L. No. 7-2012.

§ 198-139. Appointment and authority of Hearing Officer.

[Amended 4-13-1999 by L.L. No. 7-1999; 3-13-2012 by L.L. No. 7-2012]

- A. The Hearing Officer shall be appointed by and serve at the pleasure of the Town Board, at a rate of compensation established by the Board.
- E. The Hearing Officer shall be authorized to adopt rules necessary for the conduct of affairs, in keeping with the provisions of this article.

§ 198-140. Public Hearings and procedure.

[Amended 7-2-2002 by L.L. No. 25-2002; 3-13-2012 by L.L. No. 7-2012]An accessory apartment permit may only be issued after a public hearing and compliance with all applicable laws, rules, and regulations.

- (A) Administrative Proceedings. The Hearing Officer shall consider the application and evidence, and shall, within 62 days of the close of the hearing, submit his or her written findings and recommendations to the Zoning Board of Appeals for ultimate determination. A copy of the Hearing Officer's recommendations shall be filed with the Huntington Town Clerk and served upon the applicant by regular mail and/or certified mail, return receipt requested to the address shown on the application within five (5) business days after a recommendation is rendered.
 - (1) The applicant and any person aggrieved by the recommendation of the Hearing Officer may, within twenty (20) days from the date of filing of the report with the Town Clerk file written objections, if any, to the findings and recommendations. A copy of the zoning board application shall be enclosed for use by the applicant when the report is mailed. A copy of the Hearing Officer's Report; a complete zoning board application with all required attachments, and any other evidence deemed necessary by the applicant or person aggrieved shall be provided with the objections. The Zoning Board may require additional information or documentation before the application is deemed complete and scheduled for a hearing. All applications to the Zoning Board shall be accompanied by an application fee in an amount set forth in Chapter **A204** of the Huntington Town Code, and shall be filed within the prescribed twenty (20)-day period. Failure to file a complete application within such period shall be deemed a waiver of the applicant or aggrieved party's right to a public hearing before the Zoning Board unless the Zoning Board, for good cause shown, approves an extension of time. The Zoning Board is authorized to waive the public hearing where there has been no written request for one within the required time period.
 - (2) If no objection to the report is filed, the Zoning Board of Appeals shall consider the Hearing Officer's recommendation, the application for an accessory apartment permit, permit renewal, or transfer of permit and may adopt or reject, in whole or in part, any portion thereof as the Board deems advisable or necessary under the circumstances. No public hearing shall be required unless specifically requested by the Zoning Board, and then in such event, the hearing shall be on such notice as set forth in (B) herein. The Zoning Board's determination shall be final, and shall be filed in the Office of the Huntington Town Clerk and mailed to the applicant for a permit or permit renewal at the address shown on the application by regular and/or certified mail, return receipt requested.
- (B) Zoning Board Proceedings. Any hearing held before the Zoning Board of Appeals shall be on such notice and on such terms as required for other applications for special use permits before the Board. The Zoning Board of Appeals shall consider the application, the Hearing Officer's report, together with such other evidence deemed necessary by the Board, and may adopt or reject, in whole or in part, any portion thereof as the Board deems advisable or necessary under the circumstances. The Zoning Board's determination shall be final, and shall be filed in the Office of the Huntington Town Clerk and mailed to the ZBA applicant at the address shown on the application by regular and/or certified mail, return receipt requested. If the Zoning Board denies an application, no application by the same property owner shall be accepted for filing sooner than one (1) year of the date the denial is filed with the Huntington Town Clerk.

- (C) Conduct of hearings. At the hearing before the Hearing Officer or Zoning Board of Appeals, the applicant shall be entitled to be represented by legal counsel and provided with an opportunity to be heard. He may present the testimony of witnesses, experts and other evidence in his own behalf as he deems necessary and relevant to the subject matter of the hearing. All hearings shall be recorded.

§ 198-141. Revocation, modification or amendment of permit.

[Amended 7-2-2002 by L.L. No. 25-2002; 11-5-2008 by L.L. No. 38-2008 Editor's Note: This local law provided that it take effect 7-7-2009. ; 3-13-2012 by L.L. No. 7-2012]

- (A) All permits shall be subject to revocation by the Zoning Board upon a finding by the Board, after a public hearing held on notice, that the permit holder and/or occupant has not complied with one or more conditions of the accessory apartment permit as approved by the Zoning Board.
- (B) The Department of Public Safety shall notify the Hearing Officer if there has been a violation of the Huntington Town Code, the Residential Code of New York State, the Fire and Property Maintenance Code of the State of New York, the rules of any agency having jurisdiction, or of any condition of the accessory apartment permit. The Hearing Officer may recommend that the permit be revoked, amended or modified upon a finding, after a public hearing, that the permit holder or any occupant of the building is in violation thereof.
- (C) Public hearing. The public hearing shall be held on fifteen (15) days prior written notice to the permit holder by mailing notice to the address shown on the application, to the occupant(s) of the building, if known, by mailing notice to the property address, and to the owners of all properties located within five hundred (500) feet of the property line of the subject premises. If the name(s) of the occupant(s) are not known then the notice shall be addressed to "occupant(s)." The Accessory Apartment Bureau shall mail notices of the public hearing by regular mail and shall file a certificate of mailing with the Hearing Officer no later than five (5) days before the scheduled hearing date. Said notice shall state the nature of the alleged violation(s), the date, time and place of the hearing.
- (D) Administrative proceedings. The Hearing Officer shall consider the matter, and shall, within sixty-two (62) days of the close of the hearing, submit his or her written findings and recommendations to the Zoning Board of Appeals for ultimate determination. A copy of the Hearing Officer's recommendations shall be filed with the Huntington Town Clerk for public inspection and served upon the permit holder by regular mail and/or certified mail, return receipt requested to the address shown on the application, and to the occupants of the building by mailing the report to the property address.
- (i) The permit holder and any person aggrieved by the recommendation of the Hearing Officer may, within twenty (20) days from the date of filing of the report with the Town Clerk file written objections, if any, to the findings and recommendations. A copy of the zoning board application shall be enclosed for use by the permit holder when the report is mailed. A copy of the Hearing Officer's Report; a complete zoning board application with all required attachments, and any other evidence deemed necessary by the ZBA applicant shall be provided with the objections. The Zoning Board may require additional information or documentation before the application is deemed complete and scheduled for a hearing. All applications to the Zoning Board shall be accompanied by an application fee in an amount set forth in Chapter A204 of the Huntington Town Code, and shall be filed within the prescribed twenty (20) day period. Failure to file a complete application within such period shall be deemed a waiver of the permit holder or aggrieved party's rights to a public hearing before the Zoning Board of Appeals unless the Zoning Board, for good cause shown, approves an extension of time. The Zoning Board is authorized to waive the public hearing where there has been no written request for one within the required time period.
- (2) If no objection to the report is filed, the Zoning Board of Appeals shall consider the Hearing Officer's recommendation, the notice of the Director of Public Safety, and other relevant evidence, and may adopt or reject, in whole or in part, any portion thereof as the Board deems advisable or necessary under the circumstances. No public hearing shall be required unless specifically requested by the Zoning Board, and then in such event, the hearing shall be on such notice as set forth in (C) herein. The Zoning Board's determination shall be final, and shall be filed in the

Office of the Huntington Town Clerk and mailed to the permit holder at the address shown on the application and to the occupants of the building at the property address by regular and/or certified mail, return receipt requested.

- (E) Zoning Board of Appeals. Any hearing held before the Zoning Board of Appeals shall be on such notice and on such terms as established for revocation, modification, or amendment of special use permits before the Board. The Zoning Board of Appeals shall consider the objections and the Hearing Officer's report, together with such other evidence deemed necessary by the Board, and may adopt or reject, in whole or in part, with or without conditions, any portion thereof as the Board deems advisable or necessary under the circumstances. The Zoning Board's determination shall be final, and shall be filed in the Office of the Huntington Town Clerk and mailed to the permit holder and ZBA applicant, if they are not the same, at the address shown on the application by regular and/or certified mail, return receipt requested and to the occupants of the building at the property address.
- (F) Conduct of hearings. At the hearing before the Hearing Officer or Zoning Board of Appeals, the permit holder and occupants of the building shall be entitled to be represented by legal counsel and provided with an opportunity to be heard. They may present the testimony of witnesses, experts and other evidence in their own behalf as they deem necessary or relevant to the subject matter of the hearing. All hearings shall be recorded.
- (G) Revocation. If the Zoning Board revokes the special use permit, no application for the same apartment shall be accepted for filing sooner than three (3) years of the date the revocation is filed with the Huntington Town Clerk. If an accessory apartment permit for a non-owner occupied parcel is revoked, the permit shall not be renewed, restored or reissued. It shall be unlawful to operate, maintain, rent, lease, advertise or occupy an accessory apartment if the accessory apartment permit has been revoked, and any person who commits an offense against this section shall be deemed in violation of this article.
- (H) Modification and amendment of permit. If the Zoning Board of Appeals modifies or amends a permit, it shall be unlawful to operate, occupy or maintain an accessory apartment in a manner that deviates from the modification or amendment, and any person who commits an offense against this section shall be deemed in violation of this article.

§ 198-142. Annual permit fees.

[Amended 7-2-2002 by L.L. No. 25-2002; 11-5-2008 by L.L. No. 38-2008 Editor's Note: This local law provided that it take effect 7-7-2009 ; 3-13-2012 by L.L. No. 7-2012]

- A Upon approval by the Hearing Officer of an application for an owner-occupied accessory apartment permit, there becomes immediately due and payable a fee of two hundred and fifty (\$250) dollars for each one-year period or part thereof that said permit is in existence. In the event all owners of property granted a permit are sixty-five (65) years of age or older, the fee for an owner-occupied accessory apartment permit shall be one hundred fifty (\$150) dollars for each one-year period or part thereof upon submission of proper proof of age to the Accessory Apartment Bureau.
- B The Town Board may from time to time adopt and amend a schedule of fees and surcharges to be imposed upon applicants for permits authorized by this article.

§ 198-143. Non-owner occupied properties.

[Amended 4-8-2003 by L.L. No. 14-2003; 3-13-2012 by L.L. No. 7-2012]

- (A) Any application for an accessory apartment filed prior to December 31, 1997 by a property owner who did not reside at the property and was granted a permit shall be allowed to continue, subject to compliance with the provisions of this chapter, the rules and regulations of any agency having jurisdiction, and the conditions of the permit.
- (B) Renewal of permit. Any permit issued for a non-owner occupied property may be renewed for an additional term of one (1) year by application as in the event of an original application. The notice and/or hearing requirement of § 198-137 shall

not apply to applications for renewal, except that the Hearing Officer and/or the Zoning Board of Appeals shall have the authority to call a hearing on notice when, in their discretion, special circumstances exist which would require public input. Said renewal shall be subject to an inspection and payment of the permit fee.

(C) Nonresident representatives.

- (1) All persons who are granted a permit for non-owner occupied properties and who are not residents of the Town of Huntington shall designate a person who is a resident of the Town of Huntington and notify the Hearing Officer of such designation and to whom they will give power of attorney to act on their behalf in all matters related to the conditions and requirements of the accessory apartment permit. They also appoint the Huntington Town Clerk to be their representative for the service of process in any matter concerning the accessory apartment. The Clerk's responsibility will be to send a copy of said process to the address of the property owner on file in the office of the Receiver of Taxes and prepare and retain affidavits of mailing of said process.
- (2) All persons who are granted a permit for non-owner occupied properties and who are residents of the Town of Huntington but will absent themselves from the Town for a period in excess of forty-five (45) days shall designate during that period of absence a person who is a resident of the Town of Huntington and who will be present during the permit holder's period of absence to whom the permit holder designates and gives power of attorney to act on the permit holder's behalf in all matters related to the conditions and requirements of the accessory apartment permit and shall notify the Hearing Officer of such designation. Service of process shall be as set forth in (C)(1) above.

§ 198-144. Non-owner occupied permits; term of permit.

[Amended 7-2-2002 by L.L. No. 25-2002; 3-13-2012 by L.L. No. 7-2012]A permit for an accessory apartment issued to an owner who does not reside at the property shall remain in effect until the earlier of the following occurrences:

- A. One (1) year from the date an application for an accessory apartment permit is issued; or
- B. Transfer of title of the single-family dwelling in which the accessory apartment is located; or
- C. Upon a determination by the Zoning Board of Appeals, after a public hearing, that the owner, the person having possession and/or occupant(s) of the dwelling unit(s) located within the residence building are guilty of a violation; or
- D. The permit is terminated by operation of law or order of the court.

§ 198-145. Fees for non-owner occupied properties.

[Amended 11-5-2008 by L.L. No. 38-2008; Editor's Note: This local law provided that it take effect 1-1-2009. 3-13-2012 by L.L. No. 7-2012]The following fees shall be payable for properties containing an accessory apartment that are not owner occupied:

- (A) The sum of four hundred seventy-five (\$475) dollars for each one-year period or part thereof that said permit is in existence.
- (B) The Town Board may from time to time adopt a schedule of reasonable fees and surcharges to be imposed upon applicants for permits authorized by this article.
- (C) Cash security. In addition to the permit fee, the property owner shall also post the sum of one thousand (\$1,000) dollars cash security for each apartment up to five (5) and, for every additional four (4) apartments, or fraction thereof, an additional security of one thousand (\$1,000) dollars with the Comptroller of the Town of Huntington.
- (D) Forfeiture of security. The security will be forfeited under the following conditions:

- (1) The non-owner occupied permit is revoked; or
 - (2) The premises is not in compliance with the Code of the Town of Huntington, the Fire Code and Property Maintenance Code of the State of New York, the Residential Code of New York State, or rules and regulations of any other agency having jurisdiction; or
 - (3) The permit is not renewed and the property is not restored or altered to comply with the statutes set forth in (D)(2) above within sixty (60) days after the expiration date of the permit; or
 - (4) The term of the permit has expired and the property is not restored or altered to comply with the statutes set forth in (D)(2) above within sixty (60) days after the expiration date of the permit.
- (E) Return of Security. The cash security shall be returned to the permit holder upon the occurrence of the following:
- (1) The use of the premises is restored to a single-family dwelling; is in compliance with the statutes set forth in (D)(2) above; and the permit has been returned to the Accessory Apartment Bureau; or
 - (2) Upon an approved transfer to a owner-occupied applicant.
- (F) The fee for the transfer of a non-owner occupied permit to an owner occupied permit shall be two hundred and fifty (\$250) dollars, and the fee for the renewal of a non-owner occupied permit shall be one hundred seventy-five (\$175) dollars.

§ 198-146. Exemptions.

[Amended 4-19-2005 by L.L. No. 14-2005]

A. Take Back the Blocks Program.

- (1) A not-for-profit agency as defined in § 501(c)(3) of the United States Code, or successor law, who is participating in and satisfies the criteria of the "Take Back the Blocks Program," and the Huntington Community Development Agency may apply for and receive an accessory apartment permit if it lawfully holds title to a single-family structure identified as part of such Program. The application fee and annual permit fee for an accessory apartment shall be waived while the property is owned by the not-for-profit agency or the Huntington Community Development Agency. The lot frontage of the property shall be no less than fifty (50) linear feet. While the property must have a valid certificate of occupancy, the certificate need not be in place for a period of three (3) years as provided in § 198-134 (A)(5) and the provisions of § 198-134(A)(8) shall be waived. In all other respects, the requirements of this Article shall be applicable to such properties.

[Amended 3-7-2006 by L.L. No. 4-2006; 3-13-2012 by L.L. No. 7-2012]

- (2) Upon the sale of the property by a qualified not-for-profit agency or the Huntington Community Development Agency to a new owner, the new owner shall be required to apply for a transfer of the accessory apartment permit, except that the Hearing Officer may waive the ninety-day period set forth in this Article. The application fee to transfer the permit and the accessory apartment permit fee for the first year of ownership shall be waived. All properties sold by the not-for-profit agency or the Huntington Community Development Agency shall be occupied by the new owner in accordance with the Accessory Apartment Law in order to qualify for the exemptions.
- (3) The exemptions provided in this section shall apply only to purchasers who, at the time of purchase, are participants in and satisfy the criteria adopted by the Town Board as part of the "Take Back the Blocks Program." These exemptions shall continue upon subsequent transfers of ownership only if future purchaser(s) meet the criteria established by the Town Board.
- (4) The Town Board may, from time to time, amend any portion of the "Take Back the Blocks Program" as it deems

necessary, including the criteria qualifying not-for-profit agencies, designated properties and prospective purchasers.

§ 198-147. (Reserved)

Editor's Note: Former § 197-147, Appeals, added 7-2-2002 by L.L. No. 25-2002, was repealed 3-13-2012 by L.L. No. 7-2012.

§ 198-148. Penalties for offenses.

[Amended 7-2-2002 by L.L. No. 25-2002; 10-16-2006 by L.L. No. 30-2006; 2-6-2007 by L.L. No. 8-2007; 10-16-2007 by L.L. No. 35-2007; 5-17-2010 by L.L. No. 9-2010]The Town Board intends to exercise its authority under § 10(1)(i) and (ii)(a) (6), (a)(11) and (a)(12); § 10(1)(ii)(d)(3); and § 10(4)(b) of the Municipal Home Rule Law, § 268(1) of the Town Law and any other applicable provision of law now or hereinafter enacted, to supersede and/or expand upon the applicable provisions of § 268(1) of the Town Law, and any other applicable or successor law pertaining to the enforcement of local laws and ordinances in order to impose a penalty and fine structure that best reflects the needs of the community.

- A. Any person or business entity who is the owner or is in charge of the property who commits an offense against the provisions of this Article or has control of the property and permits an offense to exist shall be guilty of a violation, punishable by a fine or penalty of not less than one thousand (\$1,000) dollars nor more than five thousand (\$5,000) dollars upon a conviction of a first offense; upon a conviction of a second offense, within a period of five (5) years of the first conviction, a fine of not less than two thousand (\$2,000) dollars nor more than ten thousand (\$10,000) dollars and upon conviction of a third or subsequent offense, within a period of five (5) years of the first and second convictions, a fine of not less than four thousand (\$4,000) dollars nor more than fifteen thousand (\$15,000) dollars or by imprisonment not exceeding fifteen (15) days, or by both such fine and imprisonment. Each day, or part thereof, such offense continues, following notification by the Town or service of a summons, shall constitute a separate offense, punishable in like manner.
- B. For each violation of the provisions of § 198-133(B)(2) or (B)(3), the property owner or person in charge of property shall be issued a Notice of Violation and shall take all necessary actions within forty-five (45) days of the date of the notice to remove the sex offender from the premises, and if, at the end of such period the sex offender has not been removed and/or a summary proceeding in a court of competent jurisdiction to remove such offender has not been commenced by the property owner, then such owner shall be deemed to have committed an offense against this Chapter, and shall upon conviction thereof be subject to a fine or penalty of Two Thousand Five Hundred (\$2,500) Dollars for a conviction of a first offense; upon the occurrence of a second or subsequent offense, the property owner or person in charge of property shall be deemed to have committed a misdemeanor and upon conviction thereof shall be subject to a fine or penalty of Two Thousand Five Hundred (\$2,500) Dollars or imprisonment not exceeding six (6) months, or by both such fine and imprisonment. Each week, or part thereof, such violation continues following the expiration of such forty-five (45) days shall constitute a separate offense punishable in like manner.
- C. For each violation of the provisions of § 198-134(D)(1) of this Article, any person or business entity who is the owner or person in charge of the property where such violation has been committed or exists, or who commits such offense or permits the offense to persist shall be held liable, on conviction thereof, to a fine or penalty not less than two hundred fifty (\$250) dollars and not more than five hundred (\$500) dollars for each week the inspection is not conducted or cannot be completed.
- D. For each violation of the provisions of § 198-134(D)(3) of this Article, any person or business entity who is the owner or person in charge of the property where such violation has been committed or exists, or who commits such offense or permits the offense to persist shall be held liable, on conviction thereof, to a fine or penalty of one hundred and fifty (\$150) dollars.

38, if all requirements of that section have been met.

(2) After expiration of the single one-year extension as provided in Subsection **H(1)**, no construction equipment shall be stored on any property unless a permit has been obtained from the Board of Appeals. Continued storage of contractor's equipment without a permit shall subject the property owner and occupant to all existing penalties for violation of the Zoning Ordinance.

I. In an application for a new special permit under this § **220-38** or upon an application for a renewal of an existing permit, it shall be appropriate for the Zoning Board of Appeals to consider the history of the use or uses at the property in determining whether or not a special permit shall issue. Past violation at the property shall be sufficient reason in and of itself to deny the issuance of a new special permit or to deny the renewal of an existing permit.

(1) In case of an existing special permit under this § **220-38**, upon proof of a violation at the property, the Zoning Board of Appeals is authorized to suspend the special permit for a period of time or to revoke the special permit in its entirety. Such suspension or revocation may be accomplished only after notice to the special permit holder of a hearing at which he will be entitled to present evidence.

(2) Upon a revocation of a special permit, the Zoning Board of Appeals may refuse to hear a new application for a special permit for a period of time up to five years. The period of time during which the Zoning Board of Appeals may refuse to hear an application for a special permit will be considered the period of revocation, notwithstanding the fact that this period is beyond the term of the revoked two-year permit.

(3) Upon proof of a violation at the property during a period of suspension or revocation, an application for a special permit at the property may, in the discretion of the Zoning Board of Appeals, be forever barred for so long as the property is in the same ownership or control.

§ 220-39. Private kennels.

Private kennels shall be permitted in residence districts on lots of four acres or more, provided that:

- A. Only dogs owned by the occupant are kept therein, and the total number of such dogs over six months of age shall not exceed 10.
- B. No run shall be less than 100 feet from any property line.
- C. No dogs shall be permitted in runs before 8:00 a.m. or after dark.
- D. No dogs shall be left outdoors unless a responsible person is on the premises.
- E. Any dog prone to excessive barking shall be confined indoors.

§ 220-40. Accessory apartments.

[Amended 4-25-1989; 4-21-1998 by L.L. No. 2-1998; 8-18-1998 by L.L. No. 8-1998; 5-6-2003 by L.L. No. 5-2003] It is the specific purpose and intent of this section to allow accessory apartments on one-family parcels of minimum size of 1/2 acre to provide the opportunity for the development of affordable housing units to meet the needs of the elderly, the young, persons of middle income, and the relatives or domestic employees of the owners of the principal residence. It is also the purpose of this limited, special use provision to allow more efficient use of the Town's existing stock of dwellings and the Town's existing stock of accessory buildings, to allow existing residents the opportunity to remain in large, underutilized houses by virtue of the added income for them from an accessory apartment, and to protect and preserve property values in the Town of Lewisboro. No new approvals of special permits will be issued whenever a total of 300 special permits have been approved. To help achieve these goals to promote the other objectives of this chapter and of the Town Development Plan, the following specific standards and limitations are set forth for such accessory apartment use.

A. Occupancy.

- (1) The owner(s) of the one-family lot upon which the accessory apartment is to be located shall occupy and maintain as his or her legal full-time residence at least one of the dwelling units on the lot.
- (2) The maximum occupancy of the accessory apartment is four persons.

B. Location and number of units.

- (1) An accessory apartment may be located in the principal dwelling building or in a permitted accessory building, such as a barn or garage, and may include existing, new, or expanded structure construction.
- (2) There shall be no more than one accessory apartment permitted per one-family building lot.
- (3) An accessory apartment is not permitted on any single lot where more than one dwelling unit already exists, regardless of whether the additional dwelling is a prior nonconforming dwelling unit or not. The property owner's right to subdivide his or her property shall be deemed to be waived if there is an accessory apartment in an accessory building, unless the proposed subdivided lots still meet all of this section's requirements without a variance.

C. Size.

- (1) The minimum floor area for an accessory apartment located within a principal dwelling building shall be 300 square feet, but in no case shall it exceed 25% of the total floor area of the dwelling building in which it is located unless, in the opinion of the Zoning Board of Appeals, a greater amount of floor area is warranted by the specific circumstances of the particular building. It shall be in the discretion of the Zoning Board of Appeals to allow an increase in the footprint of the principal dwelling building, but in no case shall such increase in footprint exceed 25% of the existing footprint. Any such addition must be accompanied by an approved building permit and certificate of occupancy.
- (2) For an accessory apartment located in an existing accessory building, the minimum floor area shall also be 300 square feet. In addition, it shall also be in the discretion of the Zoning Board of Appeals to allow an increase in the footprint of the accessory building of up to 600 square feet. Any such addition must have an approved building permit and a certificate of occupancy.
- (3) Each accessory apartment, whether in a principal dwelling unit or an accessory building, shall be limited to a maximum of two bedrooms.

D. Other requirements.

- (1) Exterior appearance. Principal buildings containing an accessory apartment shall have only one front or principal entry to the building, and the accessory apartment shall be located, designed, constructed, and landscaped so as to preserve the appearance of the principal building as a single-family residence to the maximum extent feasible and further to enhance and not detract from the single-family character of the principal building and the surrounding neighborhood. An accessory apartment may have a separate, distinct entry as long as said entry, in the opinion of the permitting agency, does not detract from the single-family character of the principal building.
- (2) Off-street parking. Off-street parking requirements shall be that two off-street parking spaces must be provided for each dwelling unit on the property of the applicant. Additional parking areas shall be paved only when proven necessary and shall be screened and buffered from adjacent properties to the extent possible.
- (3) Approval of utilities. Prior to the issuance of a building permit for the establishment of an accessory apartment in a principal dwelling or the conversion of an existing accessory building to an accessory apartment use, all septic systems and wells must be approved by the Westchester County Department of Health. In addition, the

Department of Health must approve both the location and adequacy of septic systems and wells and any change in the number or location of bedrooms. NOTE: This section may be waived by the Building Inspector if there is no addition to the existing residence or the basic bedroom count and location remain the same.

E. Term and conditions of permit.

- (1) An accessory apartment use permit shall be issued for a ten-year period. The permit may be renewed for additional ten-year periods following inspection of the premises by the Building Inspector, submission of a renewal application form issued by the Building Department and a sworn affidavit stating that the conditions as originally set forth by the Zoning Board of Appeals have not changed in any way. The Building Inspector shall specifically determine that the premises still meet the standards of the Town of Lewisboro Housing Code and regulations and that the original qualifying conditions still exist.
- (2) The permit shall also state that it shall become null and void if any conditions are not complied with and if the owners of the property as identified in the permit cease to occupy one of the dwelling units on the premises as his legal residence. In the event of the transfer of title to the property to other than a spouse or a trust for the owner, the permit shall expire when the current lease expires or the tenant in residence at the time of title transfer relinquishes his/her residency; at which time, the new owner must apply for a new permit to continue the accessory apartment use.
- (3) Accessory apartments shall be subject to inspection by the Building Department every two years to verify that the units remain as approved. A fee for this inspection, the amount of which is to be set by the Town Board, may be charged for each inspection.
- (4) At the time of the biennial inspection, a registration form shall be completed by the owner of the accessory apartment and returned to the Building Department within 10 days of receipt. This form shall include the basic facts about the accessory apartment, including owner's name(s), tenant's name(s), location, size, and percentage of the principal building it occupies. Registration forms must be signed by the property owner and notarized.
 - (a) Registration forms for middle-income accessory apartments shall include the amount of monthly rent paid by the tenant and the annual gross income of the tenant, as reported on federal income tax forms for the previous year.
 - (b) Failure to return the biennial registration form shall constitute a violation of the special permit and could trigger revocation procedures by the Zoning Board of Appeals.

F. All accessory apartments, whether in the principal dwelling building or an accessory building, must meet the standards of the Town of Lewisboro Housing Code and regulations. Accordingly, inspections for compliance as required by the Building Inspector will be made, and a certificate of occupancy must be secured prior to the use of the accessory apartment. A property owner who accepts a special permit under this section makes a contract with the Town. Accordingly, notwithstanding acceptance of inspection of the accessory apartment upon renewal application and at biennial registration, if the need arises, authority is also included for periodic inspections to determine if the original qualifying conditions still exist at any time during the term of the permit. Refusal by the property owner or the tenant of any inspection of the premises by the Building Inspector's office will constitute a violation of the special permit. A violation hearing will be scheduled before the Zoning Board of Appeals, which could result in the revocation of the special permit.

G. Assessment. The property which contains any accessory apartment shall be assessed in the manner authorized by the State of New York. If the owner of an accessory apartment has agreed to register the apartment as a middle-income apartment and to limit the monthly rent to the amount set forth in § **220-26F(4)** of this chapter, the Assessor shall take the limitation on rental income into account in determining the amount, if any, the accessory apartment will add to the assessed value of the property.

H. Filing. A copy of the original special permit signed by the Chairman of the Zoning Board of Appeals and by the property owner, with a copy of Subsection **E**, shall be filed with the County Clerk, Division of Land Records, Westchester County, by the Town at the permit holder's expense, within 30 days of the date of approval of the original permit.

I. Administration. The Housing Committee and the Housing Administrator shall monitor middle-income accessory apartments in the Town and, through the Building Department, shall oversee the regulations pertaining thereto. Specifically, the Housing Committee and Housing Administrator shall be responsible for:

- (1) Maintaining a list of available middle-income accessory apartments.
- (2) Determining a prospective renter's eligibility for renting a middle-income accessory apartment.
- (3) Maintaining a list of eligible renters of middle-income accessory apartments.
- (4) Monitoring the turnover in the owners of middle-income accessory apartments.
- (5) Monitoring the turnover in the renters of middle-income accessory apartments.
- (6) Establishing policies and procedures, as well as the requisite forms required, to review income and eligibility requirements and rents charged.

J. Other provisions.

- (1) A fee shall be paid in an amount set forth in a fee schedule *Editor's Note: The fee schedule is on file in the Town offices.* established by resolution of the Town Board.
- (2) Rent. The rent for any middle-income accessory apartment shall not exceed the permitted rentals for middle-income dwelling units, as described in § **220-26F(4)** of this chapter.
- (3) If any middle-income unit shall become vacant, the owner shall inform the Housing Administrator of the vacancy. The Housing Administrator shall inform the eligible middle-income persons on his or her waiting list of the vacancy.
- (4) The owner of a unit may list his or her unit as a middle-income unit. The unit, once listed as a middle-income unit, will be eligible for assessment as provided in § **220-40G** of this chapter and shall be subject to the rent limitations and other rules established for middle-income housing units.
- (5) Occupancy. The occupants of a middle-income accessory unit must qualify as members of a middle-income family, as defined in § **220-2** of this chapter.
- (6) Term. Once an accessory apartment is listed as a middle-income unit, it must remain as a middle-income unit for the full term of its permit.
- (7) The owner of a middle-income accessory apartment shall have the right to choose any tenant from the list of eligible tenants that is maintained by the Housing Administrator and Housing Committee Chairman.
- (8) Exemptions. In the event that no middle-income family is on the Housing Committee's waiting list for a middle-income accessory apartment, or in the event that no family on the waiting list agrees to rent the accessory apartment, the Housing Committee may exempt the accessory apartment from the above middle-income requirements for the term of the next lease or occupancy.

§ 220-40.1. Accessory residence dwellings.

[Added 4-6-1999 by L.L. No. 3-1999]An accessory residence dwelling, not to exceed one per lot, incidental and subordinate

Accessory Residences

Town of Lewisboro, NY
Wednesday, October 24, 2012

§ 220-40.1. Accessory residence dwellings.

[Added 4-6-1999 by L.L. No. 3-1999]An accessory residence dwelling, not to exceed one per lot, incidental and subordinate to a principal detached one-family dwelling, and located on the same lot, is subject to the following standards and requirements:

- A. Minimum lot area. A minimum lot area of 20 acres shall be provided and shall include a minimum buildable area, as defined herein, two times that required for an individual lot in the zoning district in which the accessory residence dwelling is to be located.
- B. Lot, yard and bulk requirements. All lot, yard and bulk requirements of the zoning district in which the accessory residence dwelling is to be located shall apply.
- C. Location. An accessory residence dwelling shall be sited in a manner that will permit future subdivision and separation of all buildings in conformance with the minimum lot area and bulk yard requirements of the zoning district in which the accessory residence dwelling is to be located. Subdivision approval shall not be granted if any nonconformity would be established due to the existing use, size or location of an accessory residence dwelling.
- D. Access. Street access may be shared with that of the principal one-family residence; additional street curb cuts or separate access driveways shall not be required.
- E. Size; number of bedrooms.
 - (1) The exterior size of an accessory residence dwelling shall not exceed 1,500 square feet, or be less than 600 square feet, in gross floor area, excluding unhabitable and unfinished garage and basement space as defined herein.
 - (2) A maximum of two bedrooms is permitted in an accessory residence dwelling, provided that adequate water supply and sewage disposal facilities are provided.
- F. Water supply and sewage disposal. Prior to issuance of a building permit for an accessory residence dwelling, all water supply and sewage disposal systems shall be approved by the Westchester County Department of Health and New York City Department of Environmental Protection, as appropriate.
- G. Prohibition of other permitted accessory uses. The establishment of an accessory residence dwelling on a lot shall prohibit the use of that lot and any buildings on the lot as an accessory apartment, as defined herein; and the existence of an accessory apartment will prohibit the establishment of an accessory residence dwelling. Further, the accessory use of renting of rooms shall be strictly prohibited in both the principal and accessory residence dwellings; and the accessory use of a professional office, studio or home occupation shall be strictly prohibited in the accessory residence dwelling, or by any occupant of the accessory dwelling.
- H. Parking.
 - (1) Off-street parking areas and access drives shall be located, designed, screened and buffered so as to minimize disturbances to adjacent properties.
 - (2) Two parking spaces shall be required for the accessory residence dwelling and shall be provided as required by Article VII of this chapter.

- b. Parking shall be provided on-site that accommodates the anticipated traffic volumes and does not adversely impact sensitive areas or water quality.
- c. The use must comply with all applicable local, county, state and/or federal requirements.

3. Accessory, Agricultural Retail, Major

- a. Major accessory agricultural retail activities must meet the same standards applicable to minor accessory agricultural retail activities, except that (i) the limitation on agricultural special events does not apply, and (ii) the provisions of b and c below apply.
- b. All applicants for major agricultural retail must apply for and obtain an Agricultural Retail Plan through the Agricultural Conditional Use procedure in BIMC 2.16.050.
- c. The activity may continue as long as the use continues to comply with the criteria that were in effect at the time of original approval. If the activity ceases operation for more than one year (four consecutive seasons) it shall be required to reapply.

4. Accessory Agricultural Special Event

- a. A permitted or approved conditional agricultural use may have any number of agricultural-related special events.
- b. A permitted or approved conditional agricultural use may have a maximum of four non-agricultural special events (such as weddings, conferences or parties) per year. A special event can last up to a maximum of two consecutive days. If the special event lasts longer than two consecutive days, each additional period of up to two days shall be considered a separate special event.
- c. An agricultural special event shall be reviewed through the agricultural retail process.



5. Accessory Dwelling Unit

- a. An Accessory Dwelling Unit may be created within, or detached from, any Single-family Dwelling, whether existing or new, as a subordinate use, where permitted ("P") by this chapter.
- b. In the shoreline jurisdiction, an Accessory Dwelling Unit may be created within, or detached from, any Single-family Dwelling, whether existing or new, as a subordinate use, where conditional ("C") pursuant to this chapter. See BIMC 16.12 for shoreline conditional use process.
- c. Only one Accessory Dwelling Unit may be created per parcel.
- d. No variances shall be granted for an Accessory Dwelling Unit.
- e. One off-street parking space shall be provided in addition to off-street parking that is required for the primary dwelling.
- f. Accessory Dwelling Units shall be designed to maintain the appearance of the primary dwelling as a Single-family Dwelling containing 800 sq. ft. of floor area or less. If a separate outside entrance is necessary for an Accessory Dwelling Unit located within the primary dwelling, that entrance must be located either on the rear or side of the building.
- g. If an accessory dwelling unit is constructed in conjunction with a garage, the square footage of the garage shall not count towards the 800 square-foot limitation.
- h. An accessory dwelling unit not attached to the single-family dwelling may not contain any accessory use other than a garage.
- i. No recreational vehicle shall be an accessory dwelling unit.

- j. When stairs utilized for the ADU are enclosed within the exterior vertical walls of the building, they shall count towards the floor area of the ADU.
- k. The ADU shall share a single driveway with the primary dwelling.
- l. School impact fees and qualified exemptions from those fees as provided in BIMC 15.28 shall apply.
- m. All other applicable standards including, but not limited to, lot coverage, setbacks, parking requirements, and health district or city requirements for water, sewer, and/or septic must be met.

6. Accessory Agricultural Processing & Livestock or Poultry Slaughtering

- a. Accessory Agricultural Processing and Livestock or poultry slaughtering must comply with all applicable governmental standards and guidelines, including those established by the U.S. Department of Agriculture, the U.S. Environmental Protection Agency, the Washington State Department of Ecology, the Washington State Department of Agriculture, and the Kitsap County Health District, including without limitation those addressing treatment of wastes, water discharge, odor control, and setbacks from natural features and surrounding properties.
- b. If the livestock or poultry to be slaughtered are not raised on the property but are transported onto the property for slaughtering, an agricultural retail plan shall be required to be approved through the Agricultural Conditional Use process in BIMC 2.16.050, and the activity shall be required to comply with the terms of that agricultural retail plan once approved.
- c. If slaughtering activities take place outdoors and are located within 100 feet of any residence on adjacent property that was existing when the slaughtering activity began, they shall be screened by permanent or temporary structures so that slaughtering activities cannot be seen from adjacent residential properties.

7. Accessory On-site Treatment and Storage Facilities for Hazardous Wastes

This use is subject to the state siting criteria of Chapter 70.105 RCW.

8. Accessory Outdoor Storage

- a. In the NSC district, Outdoor Storage is subject to the performance standards of BIMC18.06.050.B.10.
- b. In the WD-I district,
 - i. Outdoor Storage that does not exceed 1,000 sq. ft. in area and is associated with an outright permitted use is a permitted (“P”) use; and
 - ii. Outdoor Storage greater than 1,000 sq. ft. in area and associated with an outright permitted use is a conditional (“C”) use.

9. Accessory Rainwater Harvesting Barrels

Accessory Rainwater Harvesting Barrels are a permitted accessory structure in all zone districts.

10. Accessory Small Wind Generator System

Accessory Small Wind Generator Systems are subject to the height and setback requirements of each district, including modifications pursuant to 18.12.040.

NYS Town Law- Authorizing Legislation Incentive Zoning

- ~~c. That the burden upon land within a sending district from which development rights have been transferred shall be documented by an instrument duly executed by the grantor in the form of a conservation easement, as defined in title three of article forty-nine of the environmental conservation law, which burden upon such land shall be enforceable by the appropriate town in addition to any other person or entity granted enforcement rights by the terms of the instrument. All provisions of law applicable to such conservation easements pursuant to such title shall apply with respect to conservation easements hereunder, except that the town board may adopt standards pertaining to the duration of such easements that are more stringent than such standards promulgated by the department of environmental conservation pursuant to such title. Upon the designation of any sending district, the town board shall adopt regulations establishing uniform minimum standards for instruments creating such easements within the district. No such modification or extinguishment of an easement shall diminish or impair development rights within any receiving district. Any development right which has been transferred by conservation easement shall be evidenced by a certificate of development right which shall be issued by the town to the transferee in a form suitable for recording in the registry of deeds for the county where the receiving district is situated in the manner of other conveyances of interests in land affecting its title.~~
 - ~~d. That within one year after a development right is transferred, the assessed valuation placed on the affected properties for real property tax purposes shall be adjusted to reflect the transfer. A development right which is transferred shall be deemed to be an interest in real property and the rights evidenced thereby shall inure to the benefit of the transferee, and his heirs, successors and assigns.~~
 - ~~e. That development rights shall be transferred reflecting the normal market in land, including sales between owners of property in sending and receiving districts, a town may establish a development rights bank or such other account in which development rights may be retained and sold in the best interest of the town. Towns shall be authorized to accept for deposit within the bank gifts, donations, bequests or other development rights. All receipts and proceeds from sales of development rights sold by the town shall be deposited in a special municipal account to be applied against expenditures necessitated by the municipal development rights program.~~
 - ~~f. That prior to designation of sending or receiving districts, the legislative body of the town shall evaluate the impact of transfer of development rights upon the potential development of low or moderate income housing lost in sending districts and gained in receiving districts and shall find either there is approximate equivalence between potential low and moderate housing units lost in the sending district and gained in the receiving districts or that the town has or will take reasonable action to compensate for any negative impact upon the availability or potential development of low or moderate income housing caused by the transfer of development rights.~~
3. The town board adopting or amending procedures for transfer of development rights pursuant to this section shall follow the procedure for adopting and amending its zoning ordinance or local law, as the case may be, including all provisions for notice applicable for changes or amendments to a zoning ordinance or local law. Nothing in this section shall be construed to invalidate any provision for transfer of development rights heretofore or hereafter adopted by any local legislative body.

§ 261-b. Incentive zoning; definitions, purpose, conditions, procedures.

1. Definitions. As used in this section:
 - (a) "Incentives or bonuses" shall mean adjustments to the permissible population density, area, height, open space, use, or other provisions of a zoning ordinance or local law for a specific purpose authorized by the town board.
 - (b) "Community benefits or amenities" shall mean open space, housing for persons of low or moderate income, parks, elder care, day care or other specific physical, social or cultural amenities, or cash in lieu thereof, of benefit to the residents of the community authorized by the town board.

- (c) "Incentive zoning" shall mean the system by which specific incentives or bonuses are granted, pursuant to this section, on condition that specific physical, social, or cultural benefits or amenities would inure to the community.
2. Authority and purposes. In addition to existing powers and authorities to regulate by planning or zoning, including authorization to provide for the granting of incentives, or bonuses pursuant to other enabling law, a town board is hereby empowered, as part of a zoning ordinance or local law adopted pursuant to this article, or by local law or ordinance adopted pursuant to other enabling law, to provide for a system of zoning incentives, or bonuses, as the town board deems necessary and appropriate consistent with the purposes and conditions set forth in this section. The purpose of the system of incentive, or bonus, zoning shall be to advance the town's specific physical, cultural and social policies in accordance with the town's comprehensive plan and in coordination with other community planning mechanisms or land use techniques. The system of zoning incentives or bonuses shall be in accordance with a comprehensive plan within the meaning of section two hundred sixty-three of this article.
3. Implementation. A system of zoning incentives or bonuses may be provided subject to the conditions hereinafter set forth.
- (a) The town board shall provide for the system of zoning incentives or bonuses pursuant to this section as part of the zoning ordinance or local law. In providing for such system the board shall follow the procedure for adopting and amending its zoning ordinance or local law, including all provisions for notice and public hearing applicable for changes or amendments to a zoning ordinance or local law.
- (b) Each zoning district in which incentives or bonuses may be awarded under this section shall be designated in the town zoning ordinance or local law and shall be incorporated in any map adopted in connection with such zoning ordinance or local law or amendment thereto.
- (c) Each zoning district in which incentives or bonuses may be authorized shall have been found by the town board, after evaluating the effects of any potential incentives which are possible by virtue of the provision of community amenities, to contain adequate resources, environmental quality and public facilities, including adequate transportation, water supply, waste disposal and fire protection. Further, the town board shall, in designating such districts, determine that there will be no significant environmentally damaging consequences and that such incentives or bonuses are compatible with the development otherwise permitted.
- (d) A generic environmental impact statement pursuant to the provisions of 6 NYCRR 617.15 shall be prepared by the town board for any zoning district in which the granting of incentives or bonuses have a significant effect on the environment before any such district is designated, and such statement shall be supplemented from time to time by the town board if there are material changes in circumstances that may result in significant adverse impacts. Any zoning ordinance or local law enacted pursuant to this section shall provide that any applicant for incentives or bonuses shall pay a proportionate share of the cost of preparing such environmental impact statement, and that such charge shall be added to any site-specific charge made pursuant to the provisions of section 8-0109 of the environmental conservation law.
- (e) The town board shall set forth the procedure by which incentives may be provided to specific lands. Such procedure shall describe: (i) the incentives, or bonuses, which may be granted by the town to the applicant; (ii) the community benefits or amenities which may be accepted from the applicant by the town; (iii) criteria for approval, including methods required for determining the adequacy of community amenities to be accepted from the applicant in exchange for the particular bonus or incentive to be granted to the applicant by the town; (iv) the procedure for obtaining bonuses, including applications and the review process, and the imposition of terms and conditions attached to any approval; and (v) provision for a public hearing, if such public hearing is required as part of a zoning ordinance or local law adopted pursuant to this section and give public notice thereof by the publication in the official newspaper of such hearing at least five days prior to the date thereof.
- (f) All other requirements of article eight of the environmental conservation law shall be complied with by project sponsors for actions in areas for which a generic environmental impact statement

has been prepared including preparation of an environmental assessment form and a supplemental environmental impact statement, if necessary.

- (g) Prior to the adoption or amendment of the zoning ordinance or local law pursuant to this section to establish a system of zoning incentives or bonuses the town board shall evaluate the impact of the provision of such system of zoning incentives or bonuses upon the potential development of affordable housing gained by the provision of any such incentive or bonus afforded to an applicant or lost in the provision by an applicant of any community amenity to the town. Further, the town board shall determine that there is approximate equivalence between potential affordable housing lost or gained or that the town has or will take reasonable action to compensate for any negative impact upon the availability or potential development of affordable housing caused by the provisions of this section.
 - (h) If the town board determines that a suitable community benefit or amenity is not immediately feasible, or otherwise not practical, the board may require, in lieu thereof, a payment to the town of a sum to be determined by the board. If cash is accepted in lieu of other community benefit or amenity, provision shall be made for such sum to be deposited in a trust fund to be used by the town board exclusively for specific community benefits authorized by the town board.
4. Invalidation. Nothing in this section shall be construed to invalidate any provision for incentives or bonuses heretofore adopted by any town board.

S 261-c. Planned unit development zoning districts*. A town legislative body is hereby authorized to enact, as part of its zoning local law or ordinance, procedures and requirements for the establishment and mapping of planned unit development zoning districts. Planned unit development district regulations are intended to provide for residential, commercial, industrial or other land uses, or a mix thereof, in which economies of scale, creative architectural or planning concepts and open space preservation may be achieved by a developer in furtherance of the town comprehensive plan and zoning local law or ordinance. * NB Effective July 1, 2004 S 262. Districts. For any or all of said purposes the town board may divide that part of the town which is outside the limits of any incorporated village or city into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this act; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of buildings, throughout such district but the regulations in one district may differ from those in other districts.

S 262-a. Town of Lansing; division of certain parts thereof. For any and all of the purposes set forth in article sixteen of the town law, the town board of the town of Lansing may divide all or part of that portion of the town which is outside the limits of any incorporated village or city into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this section; including construction, reconstruction, alteration or use of buildings, structures or land. All such regulations adopted by the town board shall be uniform for each class or kind of buildings, throughout such district; but the regulations in one district may differ from those in other districts.

S 263. Purposes in view. Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, flood, panic and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefor; to facilitate the practice of forestry; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

Town of Wilson, NY
Wednesday, October 24, 2012

Chapter 130. ZONING, INCENTIVE

[HISTORY: Adopted by the Town Board of the Town of Wilson 12-9-1996 by L.L. No. 4-1996. Amendments noted where applicable.]

GENERAL REFERENCES

Zoning — See Ch. 127.

§ 130-1. Purpose and intent.

The purpose and intent of these provisions are to offer incentives to applicants who provide amenities that assist the Town to implement specific physical, cultural and social policies in the Master Plan as supplemented by the local laws and zoning ordinances adopted by the Town Board.

§ 130-2. Districts designated for incentives.

All zoning districts are designated as eligible for zoning incentives. Incentives may be offered to applicants who offer an acceptable amenity to the Town in exchange for the incentive.

§ 130-3. Amenities for which incentives may be offered.

A. The following amenities may be either on or off the site of the subject application:

- (1) Affordable housing.
- (2) Passive and active open spaces and related improvements.
- (3) Parks.
- (4) Child-care or elder-care facilities.
- (5) Utilities.
- (6) Road improvements.
- (7) Health or other human-service facilities.
- (8) Cultural or historic facilities.
- (9) Other facilities or benefits to the residents of the community.
- (10) Any combination of amenities and/or cash in lieu of any amenity(s).
- (11) Benefits to Wilson Central School system programs.

B. These amenities shall be in addition to any mandated requirements pursuant to other provisions of the Zoning Ordinance of the Town of Wilson. *Editor's Note: See Ch. 127, Zoning.*

§ 130-4. Incentives permitted.

The following incentives may be granted by the Town Board to the applicant on a specific site:

- A. Increases in residential/nonresidential unit density.
- B. Changes of use.
- C. Increases in lot coverage.
- D. Changes in setbacks or height.
- E. Increases in floor area.
- F. Reduction of open spaces.
- G. Any other changes in the Zoning Ordinance of the Town of Wilson provisions.

§ 130-5. Criteria and procedure for approval.

- A. Applications for incentives in exchange for amenities shall be submitted to the Town Board. In order to preliminarily evaluate the adequacy of amenities to be accepted in exchange for the requested incentive, the following information shall be given by the applicant:
 - (1) The proposed amenity.
 - (2) The cash value of the proposed amenity.
 - (3) A narrative which:
 - (a) Describes the benefits to be provided to the community by the proposed amenity.
 - (b) Gives preliminary indication that there is adequate sewer, water, transportation, waste disposal and fire protection facilities in the zoning district in which the proposal is located to handle the additional demands the incentive and amenity, if it is an on-site amenity, may place on these facilities beyond the demand that would be placed on them as if the district were developed to its fullest potential.
 - (c) Explains how the amenity helps implement the physical, social or cultural policies of the Master Plan as supplemented by the local laws and ordinances adopted by the Town Board.
 - (4) The requested incentive.
- B. The Town Board shall review the proposal and inform the applicant whether or not the proposal is worthy of further consideration. If it is deemed worthy of further consideration, the applicant may then submit two sketch plans to the Planning Board:
 - (1) The first sketch plan.
 - (a) The first sketch plan shall show how the site will be developed, with the amenity, if it is on-site. The plan shall show existing development, property owner's names and tax account numbers for all property within 500 feet of the property lines of the proposed project or such other distance as specified by the Town Board.
 - (b) If the incentive will result in a structural height increase, the applicant shall submit an elevation drawing, at a scale of 1/4 inch equals one foot, which shows the height permitted by district regulations, the proposed additional height, the distance to other principle structures on-site and on adjacent properties and their heights as well as property line locations.
 - (c) If the incentive will result in a setback or open space reduction, the drawing shall show this

reduction in relation to the principle structures on-site and on adjacent properties, as well as property line locations.

- (2) The second sketch plan should also meet all Town ordinance requirements and show existing development, property owners names and tax account numbers for all property within 500 feet of the property line of project site or such other distance as specified by the Town Board, but shall only show how the site would be developed exclusive of any amenity or incentive.
 - (3) The applicant shall also submit such additional information and plans as may be required by the Planning Board which, in its judgment, are necessary in order to perform a thorough evaluation of the proposal.
- C. The Planning Board will review the proposal and report to the Town Board with its evaluation of the adequacy with which the amenity(s)/incentive(s) fit the site and how they relate to adjacent uses and structure. The Planning Board's review shall be limited to the planning design and layout considerations involved with project review or such other issues as may be specifically referred by the Town Board. The Planning Board's report shall be submitted to the Town Board within 70 days from the date of the Planning Board meeting at which the proposal is first placed on the agenda. This time period may be extended/suspended for good cause by the Town Board.
- D. The Town Board will review the Planning Board's report. The Town Board will notify the applicant as to whether it is willing to further consider the, proposal and hold a public hearing thereon. For Town Board public hearings on incentive zoning requests, the Town Clerk shall give notice of the hearing in the official newspaper of the Town at least five days prior to the date of the hearing.
- E. All applicable requirements of the State Environmental Quality Review (SEQR) Act shall be complied with as part of the review and hearing process. In addition to other information that may be required as part of an environmental assessment of the proposal, the assessment shall include verification that the zoning district in which the proposal is to be located has adequate sewer, water, transportation, waste disposal and fire protection facilities to:
- (1) First, serve the remaining vacant land in the district as though it were developed to its fullest potential under the district regulations in effect at the time of the amenity/incentive proposal; and
 - (2) Then, serve the on-site amenity and incentive given the development scenario in Subsection E(1) above.
- F. Following the hearing and in addition to compliance with all SEQR requirements, the Town Board shall, before taking action, refer the proposal for review and comment to other governmental agencies as may be required and may refer the proposal to the Planning Board and other Town boards and officials for review and comment. In order to approve an amenity/incentive proposal, the Town Board shall determine that the proposed amenity provides sufficient public benefit to provide the requested incentive. Thereafter, the Planning Board is authorized to act on an application for preliminary approval pursuant to the Town Zoning Ordinance. *Editor's Note: See Ch. 127, Zoning.*
- G. Following preliminary plan approval and subject to meeting all conditions imposed on the preliminary plan, including all documentation required by the Town Attorney and Town Board on the amenity, the applicant may submit a final plan for review and approval.

§ 130-6. Cash payment in lieu of amenity.

If the Town Board finds that a community benefit is not suitable on site or cannot be reasonably provided, the Town Board may require a cash payment in lieu of the provision of the amenity. These funds shall be placed in a trust fund to be used by the Town Board exclusively for amenities specified prior to acceptance of funds. Cash payments shall be made prior to the issuance of a building permit. Cash payments in lieu of amenities are not to be used to pay general and ordinary Town expenses.

§ 130-7. Applicability of state law.

The provisions of § 261-b of the Town Law shall also be applicable to this chapter as if fully set forth herein, except, if there is a conflict between this chapter and § 261-b of the Town Law, the provisions of this chapter shall apply.

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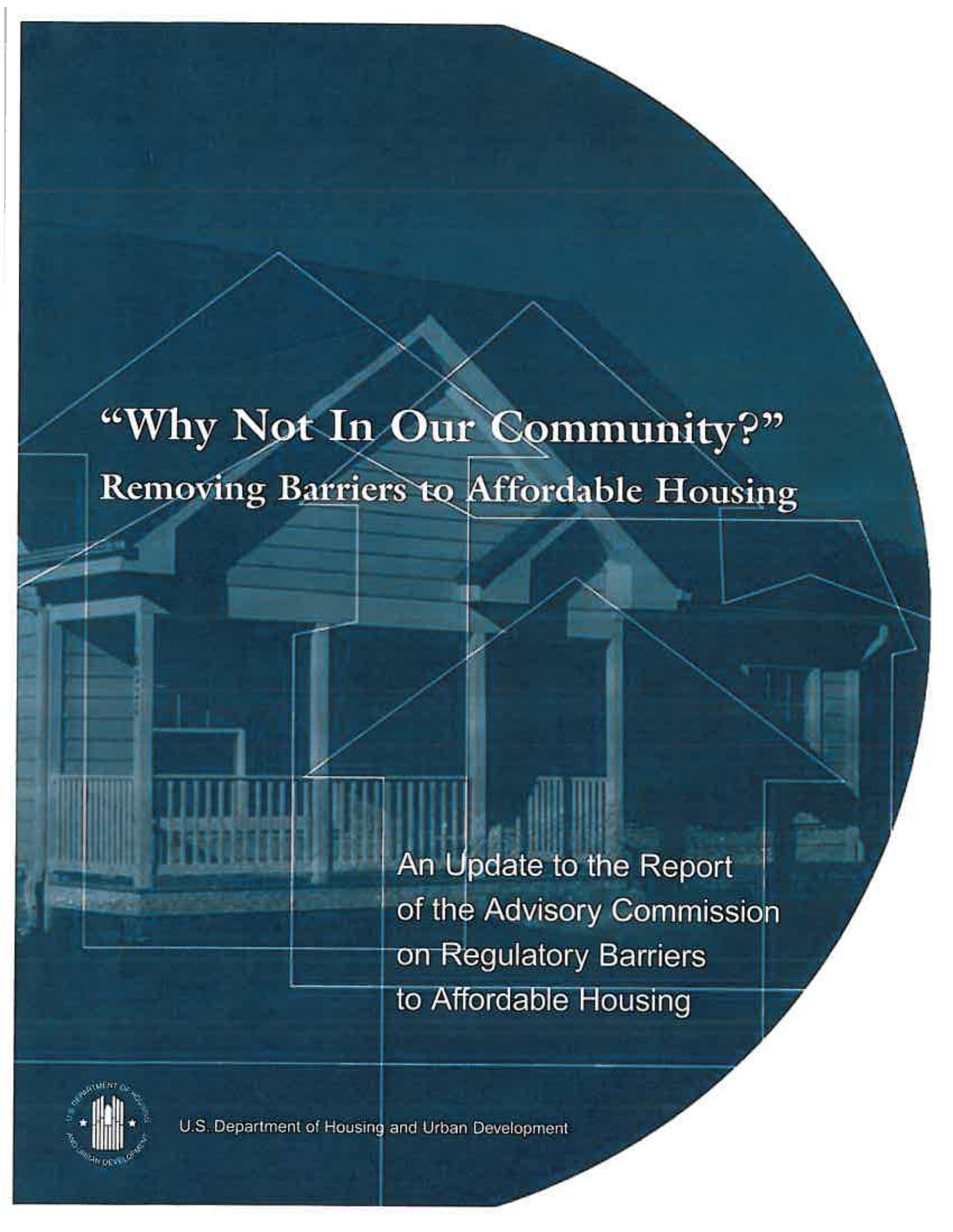
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“Why Not In Our Community?”

Removing Barriers to Affordable Housing

An Update to the Report
of the Advisory Commission
on Regulatory Barriers
to Affordable Housing



U.S. Department of Housing and Urban Development

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U.S. Department of Housing and Urban Development
Office of Policy Development and Research





Foreword

The mission of the U.S. Department of Housing and Urban Development is to increase homeownership, promote community development, and expand access to decent affordable housing without discrimination. Increasingly, we find that many of the constraints to providing affordable housing and to developing communities lie within the communities and their regions in the form of regulatory barriers.

Regulatory barriers were exposed as a problem 13 years ago, when the Advisory Commission on Regulatory Barriers to Affordable Housing submitted its report, *“Not In My Back Yard”: Removing Barriers to Affordable Housing*. Despite some areas of progress, the Advisory Commission’s finding that exclusionary, discriminatory, or unnecessary regulations reduce the availability of affordable housing remains true today.

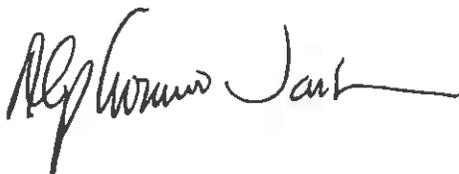
At the direction of President Bush, I am therefore pleased to publish this update to the 1991 Advisory Commission’s report. Besides illustrating the Administration’s and Department’s commitment to affordable housing, it demonstrates an ability to innovate and reach beyond narrow views of the federal government as funder and regulator. HUD has grasped this opportunity to establish policies that lead and enable state and local partners to address the issues we all deal with on a daily basis.

In June 2003, HUD launched a department-wide initiative among senior staff entitled *America’s Affordable Communities Initiative: Bringing Homes Within Reach Through Regulatory Reform*. The Initiative reinforces HUD’s commitment to work with states and communities to break down the regulatory barriers that needlessly drive up housing costs and reduce the nation’s stock of affordable housing. The first fruits of this effort are abundantly evident in this document.

The update describes recent trends in regulatory barriers to affordable housing, reviews recent efforts by states and local communities to reduce regulatory barriers, and details actions being implemented by the Department to reduce regulatory barriers.

HUD is addressing these issues in a number of ways through this Initiative. The Department is leading by example—streamlining program regulations and ensuring that program applicants have appropriately addressed regulatory barriers. We developed our Regulatory Barriers Clearinghouse website (www.regbarriers.org) to share barrier reduction information and best practices with communities across the nation.

My hope is that this update will increase awareness of regulatory barriers and stimulate additional national dialogue on this important issue.



Alphonso Jackson
Secretary



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Background

Thirteen years ago, the Advisory Commission on Regulatory Barriers to Affordable Housing submitted its report, *“Not In My Back Yard”*: *Removing Barriers to Affordable Housing* (the 1991 Report). Its basic finding remains true today: exclusionary, discriminatory, or unnecessary regulations constitute formidable barriers to affordable housing. Understanding that government should help, not hinder, the creation and rehabilitation of affordable housing, then-Secretary of Housing and Urban Development Mel Martinez resolved that regulatory barriers to affordable housing must become an issue of national concern and action. Today, Secretary Alphonso Jackson is equally committed to knocking down barriers to affordable housing, as he makes clear in the following statement:

As a long-time advocate for increased affordable housing, I know that regulatory barriers have an enormous impact on the cost and availability of housing for hard-working American families. For the past three years, we at HUD have been working with states and local communities to break down these barriers. I am committed to assuring that this important work continues.

No clear “bright line” definition can delineate when a state or local policy is a regulatory barrier—each policy or rule must be assessed on its own merits. Many policies and regulations that restrict housing are implemented or promulgated with other worthy goals. A policy, rule, process, or procedure is considered a barrier when it prohibits, discourages, or excessively increases the cost of new or rehabilitated affordable housing without sound compensating public benefits.

Although Recommendation 6-16 of the 1991 Report suggested creating an Office of Regulatory Reform to develop ways to reduce regulatory barriers at the state and local levels, former

Secretary Martinez and then-Deputy Secretary Jackson realized that creating a separate office would only create more bureaucracy, add expense, and take a considerable amount of time. Seeking a daily focus on this issue, they ordered senior staff immediately to undertake a department wide initiative entitled *America’s Affordable Communities Initiative: Bringing Homes Within Reach Through Regulatory Reform* (the Initiative).

The Initiative seeks to help state and local governments identify regulatory barriers to affordable housing. It also assists community and interest groups and the general public in understanding that well-designed, attractive affordable housing can be an economic and social asset to a community.

Housing is affordable if a low- or moderate-income family can afford to rent or buy a decent quality dwelling without spending more than 30 percent of its income on shelter. Some describe affordable housing for moderate-income families as America’s workforce housing. The increased availability of such housing would enable hard-working and dedicated people—including public servants such as police officers, firefighters, schoolteachers, and nurses—to live in the communities they serve. The social and economic benefits of having these hard-working citizens live in the communities in which they work is self-evident. Removing affordable housing barriers could reduce development costs by up to 35 percent; then, millions of hard-working American families would be able to buy or rent suitable housing that they otherwise could not afford.

For lower-income families and individuals, subsidies can be essential tools for helping them gain stability and self-sufficiency. People who have built or tried to build affordable housing, however, recognize the constraints imposed by unnecessary

or excessive barriers. Barrier removal will not only make it easier to find and obtain approval for affordable housing sites; it also will enable available funds to go further in meeting vital housing needs.

The Initiative has made reducing regulatory barriers to affordable housing a top departmental priority receiving high-level attention on a daily basis. HUD hopes that this effort will change the outdated thinking of citizens and public officials from “not in my back yard” to “why not in our community?”

Some progress has been made in responding to the concerns raised by the Advisory Commission, but the problem of regulatory barriers persists. This update does not aim to recreate the 1991 Report, but seeks to examine the trends in the regulatory environment affecting housing development in the past 13 years. In addition, this update charts a workable and innovative strategy for HUD to help states and local communities reduce regulatory barriers. It also includes a plan for decreasing barriers to affordable housing production at the federal level.

The update is organized into the following sections:

Section I describes recent trends and demonstrates that the problem of regulatory barriers to affordable housing still remains.

Section II reviews recent efforts by states and local communities to reduce regulatory barriers.

Section III identifies some of the major actions being implemented by the Department to reduce regulatory barriers.

The Appendix is a reprint of the first part of the 1991 Report’s executive summary. This document summarizes the problem of regulatory barriers to affordable housing. Readers unfamiliar with the general nature of regulatory barriers to the development of rental and affordable housing may find it helpful to review the Appendix before reading Sections I through III.



Section I. Regulatory Barriers to Affordable Housing Persist

Although a number of studies and commissions, since as early as 1967, have addressed the issue of regulatory barriers, the 1991 Report for the first time identified regulatory reform as a necessary component of any overall national housing policy. The 1991 Report found that various regulatory barriers—public processes and requirements that significantly impede the development of affordable housing without commensurate health or safety benefits—directly raise development costs in some communities by as much as 35 percent. These regulatory barriers have other significant negative impacts on the country’s ability to meet national housing needs. By constraining overall supply and the market’s ability to respond to demand, housing prices and rents in many markets are inflated. Regulations that restrict market rate and affordable housing options, such as higher density housing, multifamily rental housing, accessory units, and manufactured homes, further exacerbate the problem by limiting or excluding many affordable housing options.

The 1991 Report identified a number of causes—including infrastructure costs, local building practices, bureaucratic inertia, and property taxes—for this extensive network of regulatory barriers to affordable housing development. The 1991 Report, however, concluded that one powerful motive lay behind many of these regulatory barriers: opposition by residents and public officials alike to various types of affordable housing in their communities. This opposition, which the 1991 Report called “not in my back yard” (NIMBY), was found to be a pervasive practice motivating local political officials to intentionally limit growth in general and affordable housing in particular. Notwithstanding the achievement of some reforms, “NIMBYism” continues to prompt the implementation of regulatory barriers that pose major obstacles to rental housing, high-density development, and other types of affordable housing.



EVIDENCE THAT REGULATORY BARRIERS INCREASE HOUSING COSTS

Recent research has confirmed that regulatory barriers pose a major obstacle to the development of affordable housing. Consider the following examples:

- One study found that excessive regulation drove up the cost of a new home in New Jersey by as much as 35 percent.
- Another study determined that the price of newly built homes in New York City would decline by as much as 25 percent if the city reduced regulatory barriers.

The results of these and other recent studies are summarized in Table 1.

While regulatory barriers are not the only factors responsible for increasing housing costs, they are major factors. Their significant role in driving up housing costs poses a crucial obstacle to achieving the national goal of increased homeownership. Regulatory barriers also have a negative impact on costs for all types of housing, whether single-family or multifamily, manufactured or site-built.

Regulatory barriers also affect the location of housing. To the extent that regulatory barriers prevent development in the suburbs and other areas of high job growth, they can force lower income households to live far from job opportunities. This home-to-work distance can make it more difficult for the unemployed to find work; for the employed, it lengthens the commute, which lowers the quality of life.

STUDY	FINDING
Sundig and Swoboda (2004)	Various forms of housing regulation decreased the total amount of housing built and increased prices by as much as \$40,000.
Ben-Joseph (2003)	Regulatory system has gotten more complex over the last two decades and constitutes the single greatest problem in getting housing built.
Glaeser and Gyourko (2002)	Government regulation is responsible for high housing costs where high costs exist. Measures of zoning strictness are highly correlated with high prices.
Dewey (2001)	The typical new Alachua County, Florida, household pays more than its actual share of infrastructure costs by \$3,114, demonstrating how ill-conceived fees can undermine affordable housing.
Baden and Coursey (2000)	In suburban Chicago, municipal fees increase new housing costs by 70% to 210% of the actual fee imposed, which ranges from \$2,224 to \$8,942 for an average four-bedroom home in the study.
Green and Malpezzi (2000)	Moving from a light regulatory environment to a heavy regulatory environment raises rents by 17%, increases house values by 51%, and lowers homeownership rates by 10 percentage points.
Luger and Temkin (2000)	Excessive regulation can raise the final new home price by \$40,000 to \$80,000, or approximately 35%. In New Jersey, this amount prices approximately 430,000 households out of the market.
Mayer and Somerville (2000)	A metropolitan area with a 4.5-month delay in approval and two different types of growth control restrictions would experience 45% (estimated) less construction than a metropolitan area with a 1.5-month approval delay and no growth-management policy.
Phillips and Goodstein (2000)	Portland's Urban Growth Boundary law has increased median house prices in the Portland metropolitan area.
Green (1999)	In Waukesha County, Wisconsin, banning manufactured homes increased home prices by 7.1% to 8.5%. Increasing required minimum frontage by 10 feet drove up prices by 6.1% to 7.8%.
Levine (1999)	A study of 490 California cities and towns found that growth control measures that remove land from development or require less intense development reduced rental and ownership housing. Impacts on rental housing were particularly severe.
Salama, Schill, and Stark (1999)	In New York City, the price of newly built homes could decline by 25% if the city implemented a comprehensive barrier removal strategy.
National Association of Home Builders (1998)	In 42 metropolitan areas, eliminating unnecessary government regulations, fees, and delays could reduce housing costs by 10%. Results varied significantly by area.


TRENDS IN THE REGULATORY ENVIRONMENT
AFFECTING HOUSING DEVELOPMENT

Since 1991, regulatory barriers to development of market rate, rental, and affordable housing have become more widespread in suburban regions and some rural areas as communities seek to limit population growth. Generally, regulatory tools that were barriers then remain barriers today. Regulatory mechanisms, such as restrictive zoning, excessive impact fees, growth controls, inefficient and outdated building and rehabilitation codes, multifamily housing restrictions, and excessive subdivision controls have been in use for decades. These controls have become more sophisticated and prevalent. The current regulatory framework makes building a range of housing types increasingly difficult, if not altogether impossible, in many areas. Although some recent market research appears to indicate a greater willingness by the general population to accept affordable housing for moderate or middle income families in their communities, no evidence exists that such abstract acceptance has translated into large-scale action at the local level to undertake significant regulatory reform.

The following trends stand out:

- *Increased complexity of environmental regulation.* Over the past decade, environmental protection regulation has increased in complexity, resulting in lengthy review and approval processes, additional mitigation requirements, and new requirements for consultants. Although environmental protection is an important national objective, inefficient implementation of environmental regulations results in higher development costs and restricted development opportunities.
- *Misuse of smart growth.* A major change in the development climate over the past decade is the rapid emergence of the smart growth movement. Some smart growth principles, such as higher density development, can facilitate the development of affordable housing. A number of communities, however, have used

smart growth rhetoric to justify restricting growth and limiting developable land supply, which lead to housing cost increases.

- *Still NIMBY in the suburbs.* Many suburban communities continue to enact affordable housing restrictions, use exclusionary zoning practices, impose excessive subdivision controls, and establish delaying tactics for project approvals. These development barriers can effectively exclude rental and affordable housing development in a community.
- *Impact fee expansion.* Impact fees are an accepted and growing mechanism to finance the infrastructure and public services associated with new development. Although some impact fees reflect actual front-end infrastructure development costs, others are disproportionate to communities' actual costs, reflect an unnecessarily high level of infrastructure investment, or are assessed in a regressive manner.
- *Urban barriers—building codes, rehabilitation, and infill development.* Slow and burdensome permitting and approval systems, obsolete building and rehabilitation codes, and infill development difficulties remain serious impediments to affordable housing development in cities. Obsolete building and rehabilitation codes are one of the most widespread urban regulatory obstacles, requiring old-fashioned and expensive materials, outdated construction methods, and excessive rehabilitation requirements that make construction and rehabilitation more expensive in certain regions.

Each trend is described in detail below.

Increased Complexity of Environmental Regulation

Environmental protection regulation is essential to building healthy and sustainable communities. Environmental protection and affordable housing development need not be competing objectives. How these regulations are implemented, however,

often has the unintended consequence of preventing development of much-needed affordable housing. Good planning considers, integrates, and balances a host of public objectives: a clean environment, adequate public infrastructure, schools, quality of life, and fiscal concerns, as well as housing needs and future growth accommodation. Unfortunately, in practice, developmental and environmental reviews are often two distinct processes with often-conflicting standards and approval procedures. Such inefficiencies result in conflicting environmental requirements, prolonged review processes, lack of justification for environmental decisions, and regulations that extend beyond the scope of the desired goals—all combining to reduce the supply of developable land and increase the cost of development.

A number of trends indicate that since 1991 poorly designed environmental procedures and regulatory processes have become more significant barriers to the development of affordable housing. Major trends include the proliferation of national mandates, the increasing complexity of urban environmental regulations, layering of additional local environmental laws, and the misuse of environmental regulations by those opposed to affordable housing.

Major National Mandates. National mandates such as environmental impact assessments, clean water, safe drinking water, wetlands protection, endangered species protection, and clean air remain in force and have become more complex. As clean water quality and wetlands protection became higher priorities in the 1990s, regulations for these mandates were broadened to encompass storm water management and were made more stringent. In particular, the federal government made the general nationwide wetlands permit—the most common type of development permit issued—increasingly difficult to obtain. Greater uncertainty, delays, reduced land availability, and increased housing construction costs have resulted. Many of the problems result from administrative procedures that are vague, not time-sensitive, or poorly integrated into the overall planning and

developmental review process. The lack of clarity and certainty regarding wetlands determinations is an example of such a problem.

As the federal government delegated greater responsibility to the states to implement environmental mandates, the states added their own requirements, increasing the layers of regulatory reviews that proposed developments must undergo.

Environmental Regulations in Cities. A notable exception to the growing complexity of environmental reviews has been in “brownfields,” urban properties or facilities whose development or redevelopment may be complicated by the potential presence of site contamination. Federal, state, and local governments have worked together to streamline and simplify brownfield clean-up requirements to promote urban revitalization.

This cooperation and partnership could serve as a model for other areas of environmental regulation.

Local Environmental Regulations. In addition to the barriers driven by national environmental regulation, the 1990s saw the emergence of purely local environmental regulations. In many cases, local regulations duplicate federal and state environmental regulation and are not integrated into pre-existing local planning processes, creating new procedures, reviews, and requirements. For example, a number of communities now require their own environmental impact statements. Such requirements are often superfluous, as they are over and above existing local requirements for environmental reviews required as part of the comprehensive planning and development approval process. In many cases, they become one more tool to stop development.

Misuse of Smart Growth

Smart growth refers to an amalgam of ideas, planning concepts, and goals intended to improve urban/suburban livability and reduce sprawl. This term is increasingly used in public regulatory and policy debates regarding planning, land use, and density. Many smart growth principles appear

consistent with the goal of promoting affordable housing. In practice, however, a number of communities, especially in the suburbs, have used the smart growth rhetoric only to justify growth controls that act as substantial regulatory barriers to affordable housing.

Although no clear consensus exists on what constitutes smart growth, some elements such as expanding housing choices, increasing density, and enhancing the fairness and predictability of development decisions would, if actually implemented, be valuable tools for expanding housing affordability, especially in the suburbs. Many national organizations that support smart growth understand the importance of housing affordability and support reforms that would eliminate many regulatory barriers. There have been some examples which have demonstrated that NIMBY resistance can be overcome and high-density developments built because of the adoption of local smart growth policies.

More generally, however, these components of the smart growth agenda are far less likely to be adopted in most suburban jurisdictions than those limiting growth. Under the rubric of smart growth, citizens and community groups that have long objected to affordable housing now have an intellectual justification to limit growth and exclude affordable housing. The result is that affordable housing advocates, the local business community, builders, and landowners find it ever more difficult to resist policies that restrict overall housing supply. Downzoning, higher impact fees, mandated amenities, and building moratoriums represent the types of barriers and regulations that a growing number of communities have begun to implement to slow or stop growth. If only such selected parts of the smart growth agenda (open space, growth limits, moratoria) are enacted, smart growth will endanger, rather than encourage, housing affordability.

Still NIMBY in the Suburbs

Many suburban communities continue to pass affordable housing restrictions, make the approval processes increasingly complicated, use exclusionary zoning practices, impose excessive subdivision controls, and put in place tactics to delay project approvals. These barriers can exclude rental and affordable housing developments in a community.

Affordable Housing Restrictions. Limited empirical data exists that tracks how many suburban communities ban or discourage affordable housing options. However, most experts agree that problems have not improved substantially over the past 13 years. Regulatory conditions often make affordable housing the most difficult to build. Too few communities provide a diversity of development options, such as multifamily housing, duplexes, or manufactured housing. NIMBY sentiment plays a key role in the exclusion of these types of housing.

Although research strongly argues to the contrary, advocates of restrictions on multifamily housing development often argue that such development will reduce property values and increase the demand for public services. As a result, many suburban communities do not permit multifamily housing development anywhere in the jurisdiction. Also prevalent are restrictions on other economical forms of housing, such as accessory apartments, duplexes, and manufactured housing. In other communities, zoning rules may permit the construction of affordable housing options, but NIMBY sentiments derail efforts to actually develop such options.

Growing Complexity of Approvals. Administrative processes for developmental approvals continue to become more complex with ever-lengthening reviews and requirements for multiple, duplicative approvals. Each time a community adds substantive requirements, the review process becomes more complicated and burdensome. Rarely are pre-existing regulations reviewed to determine whether they are still needed or conflict with new regulations. Too many communities see little

public benefit in streamlining the processes, even though each day of unnecessary delay eventually raises development costs with subsequent increases to housing prices and rents. In some cases, an unnecessarily complex approval system may be consciously used by communities and opponents of affordable housing as a growth management tool, a way to extract greater concessions from the developer, or a method for keeping out affordable housing.

Excessive Subdivision Controls. Subdivision ordinances, which regulate the land development, infrastructure, and site design characteristics of new housing, are a primary tool communities use to plan and regulate residential development. Some of these controls unnecessarily raise the cost of housing. Such excessive controls, often referred to as “gold-plated” standards, may mandate excessively wide streets or require, for example, at least 4.5 parking spaces per dwelling unit, even for multifamily development. Many communities require excessively rigorous standards to reduce long-term maintenance costs on the infrastructure they will eventually inherit from developers or to preclude lower cost developments. The new homebuyer, however, is the one who eventually pays the price in higher initial costs for a home.

Inefficient Permitting and Approval Systems. The land development review process also has become more complicated and contentious. Among other issues, the increased use of discretionary approvals, planned unit developments (PUDs), and layered approval systems have added to the burden and complexity of the approval process. More and more, approvals require a complex negotiating process between the developer and the community. Some communities have eliminated zoning “as of right” and treat all new development as a PUD for review and approval. Time is critical in housing development, because financing and profitability depend on keeping to the schedule. It is no longer unusual, however, for it to take developments 5 years or more to gain all the necessary permits and approvals.

Impact Fee Expansion

A dramatic change in the regulatory environment since the release of the 1991 Report has been the widespread adoption of impact fees. Using local power to regulate land use, communities are asking developers to bear a larger share of the front-end burden of supplying new infrastructure and added services as a means of paying for continued growth. Although not new, impact fees are becoming a prevalent financing strategy for new development almost everywhere across the United States—and they are often a significant impediment to the development of affordable housing. The higher costs of building homes due to impact fees are passed on to the homebuyers. In many communities, these fees exceed \$10,000 per unit; a number of communities in California now report fees of \$45,000 per unit and higher.

While all impact fees increase the cost of new housing, some are more reasonable than others. Localities are often constrained in setting property tax levels by state taxation limits and have little choice but to impose impact fees to help pay for rapid growth. Other communities are unwilling to raise property taxes to provide schools or more services. Impact fees have increased in popularity because they provide a politically attractive mechanism for raising revenue. When they are set at a fair, reasonable, and predictable level, they can be an efficient means of paying for growth-related infrastructure costs.

Impact fees pose the greatest barrier to affordable housing when they are regressive or disproportionate to actual development costs. Unlike property taxes, which are based on home value, impact fees can be regressive if they are assessed on a per-unit basis. In such cases, a home built for \$80,000 is subject to the same fees as a \$300,000 home. Regressive impact fees can pose an insurmountable barrier to affordable housing development. In 2001, for example, the Waukesha, Wisconsin, chapter of Habitat for Humanity sat idle because it could not afford to build affordable units as a result of skyrocketing impact fees.

Far too often, impact fees are used to pay costs unrelated to the development. This forces developers to pay not just for the marginal costs of the housing they produce (that is, the costs associated directly with the new housing), but also for public goods for the entire community.

Urban Barriers—Building Codes, Rehabilitation, and Infill Development

Despite some progress in reducing regulatory barriers in a number of cities, urban centers generally continue to rely on an assortment of obsolete building regulations that impede infill development. These barriers continue to exist, despite the demand for new and rehabilitated residential units. Regulatory barriers to urban development include a diverse and often archaic and complex mixture of building codes, labor ordinances, and local tax provisions. In cities particularly, the development approval process tends toward a multilayered approach requiring coordination among various dissimilar agencies. Maneuvering through such processes typically adds significant additional time and cost constraints to projects already hampered by the challenges of site assembly, obtaining clear title, and the unique challenges of urban sites.

Despite a growing need for housing rehabilitation, many cities continue to use building codes that emphasize criteria more suitable for new construction to the detriment of rehabilitation activities. In a 1998 survey of building code authorities, respondents cited regulatory requirements as frequent impediments to increased rehabilitation. Of 223 officials surveyed, more than 80 percent reported building requirements requiring a review by two or more city agencies that often failed to communicate during the approval process.

Infill development, the method by which housing is generally built in older cities, involves a complicated and time-consuming process of land acquisition and regulatory approvals. Difficulties in acquiring a sufficient number of parcels for infill development continue to prevent many builders from using the economies of scale that they rely on when developing affordable housing in the suburbs. Such acquisitions are complicated by the tedious, antiquated procedures many cities employ for delinquent tax foreclosures or condemnations. In concert with the additional difficulties builders encounter when attempting to obtain clear title to various unrelated parcels, these complexities continue to bog down time-sensitive projects to the point of infeasibility.



Section II. Efforts to Solve Barrier Problems at the State and Local Level

The growing complexity of the regulatory environment poses a serious obstacle to the development of affordable homeownership and rental housing. However, this impediment is not insurmountable. A number of states and localities have made progress in reducing regulatory barriers to affordable housing. HUD's online Regulatory Barriers Clearinghouse (www.regbarriers.org) provides a database of state and local strategies and success stories about removing regulatory barriers.



STATE EFFORTS TO REDUCE REGULATORY BARRIERS

States play an important role in reducing regulatory barriers to affordable housing. State-level enabling legislation sets the ground rules for local land use controls, which can encourage or discourage affordable housing development. Most states have devolved land use control to localities and employ a hands-off approach to land use planning. However, a number of states have recently taken action to reform the regulatory barriers within their local communities. Consider the following examples:

Idaho enacted legislation requiring municipalities to permit manufactured home sitings in residential areas. The increased availability of such housing will increase many families' affordable housing options.

Florida created a statewide one-stop permitting system to make state reviews more user-friendly without diminishing environmental, public health, or safety standards. Florida also adopted an expedited system to process state permits for affordable housing projects and is actively studying how to streamline building code provisions to facilitate the rehabilitation of existing structures.

Minnesota created a new property tax classification that encourages property owners to preserve and create affordable housing. The legislation enables qualifying property owners to take a deduction of up to 50 percent from their property taxes. From its inception to 2001, 107,000 units have qualified for this property tax break; approximately 40 percent of these were formerly market-rate units.

New Jersey adopted a new housing rehabilitation code that has decreased rehab costs by 25 percent and increased rehab activity by approximately 25 percent.

Table 2 provides additional examples of state actions taken since the 1991 Report to reduce regulatory barriers to affordable housing.

STATE	ACTION
California (1991)	California amended its Health and Safety Code to require a housing strategy to provide for a coordinated system of housing planning and to help communities meet their fair share of regional housing needs. 1991, S.B. No. 913, P. 8171.
Connecticut (1991)	Municipalities are authorized to implement inclusionary zoning to promote the development of affordable housing for long-term retention by use of deed restrictions, density bonuses, and requiring payments into a housing trust fund. 1991, H.B. No. 7118, P. 987.
Illinois (1992)	Illinois requires an analysis of the impact on affordable housing of every bill that potentially increases or decreases the cost of constructing, purchasing, owning, or selling a single-family residence. 1992, H.B. No. 3803, P. 5033.
Idaho (1993)	Idaho amended its statute defining "single-family dwelling" to include homes in which eight or fewer unrelated elderly persons reside. Local governments may not require special permits or variances for the operation of such residences. 1993, S.B. 1021, P. 83.
Washington (1993)	The Affordable Housing Advisory Board and the State Department of Community Development prepare a plan including identification of regulatory barriers to affordable housing and recommendations for meeting affordable housing needs; local governments must incorporate these recommendations concerning development and placement of accessory apartments. The State Department of Community Development is to provide technical assistance to local governments to help remove such barriers. 1993, S.B. No. 5584, P. 3387.
California (1994)	Certain proposals for developing affordable housing are exempt from most requirements relating to environmental impact statements. 1994, S.B. No. 749, P. 8909.
Georgia (1994)	The legislature established the Barriers to Affordable Housing Committee to study possible elimination of the barriers to affordable housing. The Committee is charged with looking at building codes, property taxes, tax incentives, zoning and other land-use issues, and housing appropriations at all levels. 1994, S.R. 406, P. 3333.
Oregon (1995)	Oregon enacted provisions to require certain municipalities to inventory the supply of housing and buildable land in their urban growth areas to determine density and growth rates and to analyze housing needs. If necessary, the municipality must amend its urban growth boundary to include sufficient buildable land to accommodate housing needs. 1995, H.B. 2709.
Florida (1999)	Florida created a functional statewide, one-stop permitting system to make permitting in the state more user-friendly without diminishing environmental, public health, or safety standards. The legislation also is intended to encourage local governments to expedite and streamline permitting, to adopt best management practices, and to integrate the local permitting process with the statewide one-stop permitting process. Counties can obtain grants to coordinate their permitting process with the state system. 1999, S.B. 662.

(chart continues on following page)

STATE	ACTION
Idaho (2001)	Municipalities are required to permit siting of manufactured homes in residential areas. A municipality may require that a manufactured home have a garage or carport constructed of like materials only if the same requirement applies to other newly constructed traditional homes. 2001, H.B. 154.
Florida (2002)	The legislature directed the Florida Building Commission to develop building code provisions to facilitate rehabilitation of existing structures and identify legislative changes required to implement code provisions. 2002, H.B. 1307. Florida amended its statutes relating to affordable housing. Among the changes is a requirement that the processing of permits for affordable housing be expedited to a greater degree than other projects. 2002, H.B. 547.
Illinois (2002)	The Illinois Local Planning Technical Assistance Act defines a comprehensive plan, which must include a housing element, whose "purpose... is to document the present and future needs for housing within the jurisdiction of the local government, including affordable housing and special needs housing; take into account the housing needs of a larger region; identify barriers to the production of housing, including affordable housing; access [sic] the condition of the local housing stock; and develop strategies, programs, and other actions to address the needs for a range of housing options" (emphasis added). 2002, H.B. 4023/Public Act 92-0768.



LOCAL EFFORTS TO REDUCE REGULATORY BARRIERS

Some localities also have taken actions to reduce regulatory barriers to affordable housing. For example, New York City recently announced a comprehensive barriers removal strategy that involves overhauling the city's outdated building code, rezoning commercial and industrial areas for residential use, developing city-owned property for affordable housing that the city has usually sold at auction, and streamlining the approval process. The barrier removal strategy is crucial to meet the goals of Mayor Michael Bloomberg's \$3 billion housing plan to rehabilitate and preserve 38,000 units of existing housing and build 27,000 new units. Other examples include the following:

Tucson, Arizona, allows streamlined processing of requests to create small subdivisions. If the proposed subdivision meets certain criteria, only a final plan approval process is undertaken.

Berkeley, California, operates a one-stop permit center that has reduced the time required to review development projects, thus removing a major problem faced by developers.

Cincinnati, Ohio, guarantees that plans for small projects (up to 20 units) will receive approval or disapproval of plans with explanation within 8 to 10 days after submission.

Cambridge, Massachusetts, offers an expedited review process for townhouse development.

Significant improvements also have been made in streamlining environmental regulation in cities, most notably for brownfields. These changes have helped make well-positioned land available for affordable infill housing development on sites with pre-existing infrastructure and have returned land to the property tax rolls. Some cities have combined these efforts with funding to redevelop brownfields and restore the land to productive use. For example, through its City of Chicago Corporate Funds, Chicago has spent more

than \$4 million of general city resources on brownfields remediation for housing development.

A recent and encouraging development has been the emergence of public/private partnerships at the local level that include regulatory reform and barrier removal as part of their overall housing strategy. For example, the Silicon Valley Manufacturing Group, a partnership of leading businesses, local governments, and public officials in the Silicon Valley, supports barrier removal and affordable housing production to tackle the lack of affordable housing in the area. A current priority of the organization addresses streamlining California's environmental review process for

infill development. Another local effort, the Long Island Campaign for Affordable Rental Housing, a network of business, public, civic, and nonprofit organization leaders, works with officials of Long Island, New York, municipalities to identify and promote affordable housing through zoning reform, public land re-use, tax abatement, and other incentives. In the Boston area, the Commonwealth Housing Task Force, a broad coalition of public and private leaders, including the Greater Boston Chamber of Commerce, recently called on communities and the state to enact new zoning rules to allow more apartments and single-family homes on smaller lots.



Section III. HUD's Commitment to Barrier Removal Efforts

The ultimate actions needed to reduce regulatory barriers to the production and development of affordable housing are principally within the control of state and local governments. HUD is not in a position to reduce these barriers. HUD can ensure, however, that the Department's own rules do not constitute barriers to affordability. It can also take a leadership role in working with states and local communities to identify strategies to reduce regulatory barriers or mitigate their impact.

HUD has addressed these issues by implementing an ongoing effort to remove the Department's own regulatory barriers; establishing barrier removal as a significant departmental policy priority; disseminating information on best practices to state and local governments; building coalitions of groups interested in reducing barriers; and continuing to conduct much-needed research into the subject of regulatory barrier issues. By placing the problems and issues related to regulatory barriers on the national agenda, HUD hopes to be a catalyst for reform.

HUD has taken a number of important steps to implement these strategies, some of which are described below:



CREATING THE AMERICA'S AFFORDABLE COMMUNITIES INITIATIVE

Early in 2003, the Department underscored the importance of addressing regulatory barriers by establishing the America's Affordable Communities Initiative. HUD created a department-wide Initiative Team responsible for coordinating all regulatory reform efforts. Established in the summer of 2003, the Initiative Team, consisting of highly experienced senior personnel, meets regularly and undertakes multiple responsibilities, including ensuring that the federal government, and HUD in particular, removes or reduces

federal barriers to housing affordability. The team coordinates a major research effort to better understand the impact of regulatory barriers on affordability and develops tools and strategies aimed at reducing these barriers.

The Initiative provides technical assistance to governments, local housing groups, associations, and housing advocates on strategies for reducing regulatory barriers, including model regulatory approaches and systems. It encourages a public/private partnership with state and local coalitions that addresses regulatory reform at state and local levels. Finally, the Initiative provides a prominent public voice for the issue of regulatory reform and, through speeches, conferences, and other venues, assures that this issue remains highly visible in the public policy arena. For more information on the Initiative, visit www.hud.gov/affordablecommunities.



LEADING BY EXAMPLE

HUD believes that it must review and, if necessary, remove or modify its own regulations that affect housing affordability, if the Department is to be a meaningful advocate for state and local reform. Since the Initiative was created, the Department has taken a number of major steps in this regard.

On November 25, 2003, the Department published a *Federal Register* notice seeking the assistance of current and former program participants, including state and local governments, public housing agencies, state finance agencies, nonprofit organizations, and other interested members of the public, in identifying HUD regulations that present barriers to affordable housing. HUD received 31 comments, many of them extensive, with a broad range of suggestions as to how the Department, through

administrative, regulatory, or statutory change, could address its own barriers to housing affordability. The affected offices within the Department are required to respond to each comment and recommend regulatory or administrative changes, or, if no action is to be taken, explain why suggested changes cannot be implemented. The Initiative Team reviews all Office responses to the *Federal Register* call for recommendations for reform. The Department's final response to these comments will also be published in the *Federal Register*.

The Secretary has also launched Operation Regnet, a department-wide effort in which all offices are directed to review their existing rules, major handbooks, notices of funding availability (NOFAs), and other notices to determine whether they constitute barriers to housing affordability. An example of such reform is the 2003 elimination of policies and procedures that the Department long had in place to approve planned unit developments (PUDs). Given the strong role state and local governments play in reviewing and approving PUDs, a HUD review was unnecessary. Elimination of this requirement reduces costs to both lender and developers and, ultimately, the homebuyer.

In addition, the Secretary has directed all offices, on a continuing basis, to review all pending rules, major handbooks, NOFAs, and other notices to ensure that the Department is not introducing new regulatory barriers to housing affordability. The Secretary has also asked the Initiative Team to review all these pending rules to assess independently whether they may be or may create regulatory barriers. HUD rules published in the *Federal Register* that address the production or rehabilitation of affordable housing will refer to this review procedure and include a finding as to whether such new rule or regulation is consistent with the objectives of regulatory reform.



REGULATORY BARRIER REFORM AS A DEPARTMENTAL POLICY PRIORITY

The Department traditionally includes in its NOFAs various policy priorities for which higher rating points are available to applicants that effectively address the departmental priority. To stress the importance of regulatory reform, on March 22, 2004, the Department published a *Federal Register* notice stating that it intended to include in most of its fiscal year 2004 NOFAs, including HUD's SuperNOFA, a policy priority for increasing the supply of affordable housing through the removal of regulatory barriers. The Notice included a detailed list of questions on the local regulatory environment to be asked of states, localities, and other applicants located in these jurisdictions. As a policy priority (and like the other policy priorities), higher rating points are available to applicants that choose to address these questions and are able to demonstrate successful efforts at regulatory reform within their jurisdiction. This policy priority is now included in almost all departmental NOFAs.



SECRETARIAL AWARDS

The Secretary has announced an Affordable Communities Awards program that will provide much-needed national recognition to states, cities, towns, counties, and other jurisdictions that have made significant changes in their procedures, processes, fees, and regulations to reduce regulatory barriers to the production of housing affordable to lower- and moderate-income families. This new awards program, showcasing successful efforts at barrier removal, is expected to make clear to other local governments that these efforts are important, possible, and worthy of national recognition. Nominations for the awards will come from individuals, states and localities, builders, associations, nonprofits, and others committed to regulatory reform.



COALITION-BUILDING AND EDUCATION

For regulatory barriers to be addressed effectively by the thousands of local jurisdictions that regulate development, attitudes and perceptions about affordable housing must change. Local governments, local constituencies, and the general public need to know that affordable housing is a community asset, not a burden. They must better understand the impact of excessive or duplicative regulations on housing supply and cost. HUD has committed itself to assuming a leadership role in this area by working with organizations interested in developing solutions to the problem and encouraging their implementation. HUD is working cooperatively with public interest organizations, industry groups, and state and local governments to build a public consensus for regulatory reform. The Department is convening a series of conferences in every region of the country to discuss regulatory barriers and to obtain recommendations on how the Initiative can better meet its goals.

As an important first step in this effort, in March 2004 the Department distributed a new brochure, *"America's Affordable Communities Initiative: Bringing Homes within Reach Through Regulatory Reform,"* to more than 25,000 mayors, county executives, and city managers across the nation. This brochure describes the Initiative, identifies common regulatory barriers, suggests possible solutions, and includes a letter from Secretary Jackson encouraging elected officials to conduct local public forums or establish local commissions to discuss regulatory barriers and their impact on the local supply of affordable housing.

Although extensive research has shown that an adequate supply of affordable housing is essential to the economic health and vitality of a region, many communities continue to view affordability as a liability rather than an asset. The Department continues to develop tools that may help overcome these misconceptions. Working together with organizations that include the American Institute of Architects, the Enterprise Foundation, the

Federal Home Loan Bank of Boston, and the Local Initiatives Support Corporation, HUD developed the Affordable Housing Design Advisor (www.designadvisor.org), a web-based tool to educate communities and affordable housing providers on the importance of good design, particularly in gaining broad-based community acceptance. A recent exhibit at the National Building Museum, *Affordable Housing: Designing an American Asset*, largely funded by the Department, presented the very best in affordable housing design. This exhibit will travel across the nation to educate communities that attractive, well-designed affordable housing can be a valuable community asset.



REGULATORY BARRIERS CLEARINGHOUSE

Collection and widespread dissemination of useful information on regulatory barriers and successful efforts that communities have taken to address these problems are essential components of any long-term barrier removal effort. HUD's Regulatory Barriers Clearinghouse (www.regbarriers.org) provides a database of state and local strategies used to address barriers and success stories involving their removal, an extensive publications list of studies and guidance materials, and an electronic newsletter that highlights success stories. This website also enables interested parties to subscribe to an email list to stay informed on the latest research and efforts that support regulatory solutions. The Clearinghouse was created to support state and local governments, nonprofit organizations, homebuilders, and others seeking information about barrier removal strategies, and laws, regulations, and policies affecting the development, maintenance, improvement, availability, and cost of affordable housing.



REGULATORY BARRIERS RESEARCH

The 1991 Report recommended that HUD expand its research efforts to better understand the impact of regulatory barriers on housing supply and costs and to develop model statutes and ordinances for state and local governments to use in reforming their own regulatory systems. Since the release of the 1991 Report, the Department has continuously supported research efforts to implement many of the Advisory Commission's recommendations, including extensive financial support for a 5-year research effort that developed model state planning and zoning enabling legislation. The Department, using landmark research in New Jersey, also developed new model rehabilitation code language that, when enacted at the state or local level, will provide the needed flexibility to accomplish cost-effective rehabilitation. These so-called "smart codes" have been enacted in New Jersey and Maryland with dramatic results in reducing costs and stimulating much-needed rehabilitation. A number of other local communities have already enacted or are considering similar smart codes.

Since the Initiative was created, HUD has significantly expanded its regulatory barriers research efforts. In April 2004, the Department convened a national conference on the status of regulatory barriers research with the goal of developing a long-term research agenda. Led by renowned academics in the field, participants also included representatives of local governments, housing practitioners, regulators, and affordable housing advocates. This conference was the first

comprehensive academic and policy review of regulatory barriers. For fiscal year 2004, HUD's Office of Policy Development and Research is spending approximately \$1.5 million on regulatory research, including research on land development standards, impact fees, and the development of a methodology for conducting housing impact analysis. Under the latter effort, HUD is developing an analytical tool that other federal agencies, as well as state and local governments, can use to conduct impact analysis of proposed rules and regulations to ensure that costs and consequences of regulations that affect affordability will be properly balanced against other important public purposes.

The Department has proposed more than \$1 million for regulatory barriers research for fiscal year 2005. This research effort will enable HUD to undertake new efforts to learn more about the nature and extent of the problem and develop promising strategies and tools for local governments to use to address barriers.

The Secretary and the Initiative Team are committed to a sustained effort to change not just regulations but, more importantly, the way that many communities view affordable housing. Access to adequate affordable housing is not simply a matter of equity. Increasing the supply of affordable housing will create jobs, stimulate economic growth, and sustain the long-term economic health of our cities and metropolitan areas. Regulatory barriers will fall only when Americans do not dismiss the term "affordable housing" with "not in my back yard" but respond with an affirmative "why not in our community?"



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In connection with the preparation of this analysis, HUD commissioned six outside papers to assess the continued relevance of regulatory barriers to housing development as an issue of public concern. Special thanks to the following individuals who wrote papers: Anthony Downs, Senior Fellow, The Brookings Institution; William A. Fischel, Professor of Economics, Dartmouth College; Michael Luger, Professor of Public Policy Analysis, Planning, and Business, University of North Carolina; Stuart Meck, Fellow of the American Institute of Certified Planners; Michael H. Schill, Professor of Law and Urban Planning, New York University; and Ronald D. Utt, Ph.D., Research Fellow, Domestic Policy, Heritage Foundation. These papers provided HUD staff with important new insights, critical analyses, and research findings that were essential to completion of this paper.



Appendix

1991 Executive Summary of *“Not In My Back Yard”*: Removing Barriers to Affordable Housing—The Report of the Advisory Commission on Regulatory Barriers to Affordable Housing

Millions of Americans are being priced out of buying or renting the kind of housing they otherwise could afford were it not for a web of government regulations. For them, America—the land of opportunity—has become the land of a frustrating and often unrewarded search for an affordable home:

Middle-income workers, such as police officers, firefighters, teachers, nurses, and other vital workers, often live many miles from the communities they serve, because they cannot find affordable housing there.

Workers who are forced to live far from their jobs commute long distances by car, which clogs roads and highways, contributes to air pollution, and results in significant losses in productivity.

Low-income and minority persons have an especially hard time finding suitable housing.

Elderly persons cannot find small apartments to live in near their children; young married couples cannot find housing in the communities where they grew up.

These people are caught in the affordability squeeze. Contributing to that squeeze is a maze of Federal, State, and local codes, processes, and controls. These are the regulatory barriers that—often but not always intending to do so—delay and drive up the cost of new construction and rehabilitation. These regulatory barriers may even prohibit outright such seemingly innocuous matters as a household converting spare rooms into an accessory apartment.

Government action is essential to any strategy to assist low- and moderate-income families in

meeting their household needs. But government action is also a major contributing factor in denying housing opportunities, raising costs, and restricting supply. Exclusionary, discriminatory, and unnecessary government regulations at all levels substantially restrict the ability of the private housing market to meet the demand for affordable housing, and also limit the efficacy of government housing assistance and subsidy programs.

In community after community across the country, local governments employ zoning and subdivision ordinances, building codes, and permitting procedures to prevent development of affordable housing. “Not In My Back Yard”—the NIMBY syndrome—has become the rallying cry for current residents of these communities. They fear that affordable housing will result in lower land values, more congested streets, and a rising need for new infrastructure such as schools.

What does it mean if there is not enough “affordable housing”? Most urgently, it means that a low- or moderate-income family cannot afford to rent or buy a decent-quality dwelling without spending more than 30 percent of its income on shelter, so much that it cannot afford other necessities of life. With respect to renters, the Commission is particularly concerned about those with incomes below 50 percent of the area median income. In other cases, it also means that a moderate-income family cannot afford to buy a modest home of its own because it cannot come up with the downpayment, or make monthly mortgage payments, without spending more than 30 percent of its income on housing.

Concern about the effect of regulations on housing affordability is not new. Other commissions over the past two decades have examined the causes, framed the issues, and recommended solutions concerning the impact of regulation on housing prices. The fact that the problem remains today should not deter continued efforts to resolve it. This Commission has therefore considered both what should be done and how to make sure that it is done.

Many forces in addition to regulatory barriers affect the problem of affordability of housing. Certainly some aspects of both the housing finance system and the tax structure seem to inhibit the availability of affordable housing. For very low-income households, the root problem is poverty. But even for very low-income households, regulatory barriers make matters worse.

Those other forces are beyond the purview of this Commission's study. What is within its purview is the effect of regulatory barriers on the cost of housing, and that is substantial. The Commission has seen evidence that an increase of 20 to 35 percent in housing prices attributable to excessive regulation is not uncommon in the areas of the country that are most severely affected.



THE BASIC PROBLEM

Whether the search for housing takes place in rapidly growing suburban areas or older central cities, the basic problem is the same: because of excessive and unnecessary government regulation, housing costs are too often higher than they should and could be. Yet the specific government regulations that add to costs in suburban and high-growth areas tend to differ from those adding to costs in central cities.

Regulatory Barriers in the Suburbs

In the nation's suburbs, the landscape of the affordability problem reveals a variety of topical features. Exclusionary zoning, reflecting the pervasive NIMBY syndrome, is one of the most

prominent. Some suburban areas, intent on preserving their aesthetic and socioeconomic exclusivity, erect impediments such as zoning for very large lots to discourage all but the few privileged households who can afford them. Some exclude, or minimally provide for, multifamily housing, commonly acknowledged to be the most affordable form of housing.

In theory a way of separating "incompatible" land uses to protect health and safety, zoning has become a device for screening new development to ensure that it does not depress community property values. As a result, some suburban communities, consisting mainly of single-family homes on lots of one acre or more, end up as homogeneous enclaves where households such as schoolteachers, firefighters, young families, and the elderly on fixed incomes are all regulated out.

Suburban gatekeepers also invoke gold-plated subdivision controls to make sure that the physical and design characteristics of their communities meet very demanding standards. Many of these communities are requiring that developers provide offsite amenities such as parks, libraries, or recreational facilities that can add substantially to the housing costs of new homebuyers.

Communities are increasingly charging large fees to developers who seek the privilege of building housing in them. These fees may bear little resemblance to the actual cost of providing services and facilities that new subdivisions require. Although fee schedules are often driven by fiscal concerns, they have a regressive effect. Fees are generally fixed regardless of how much they affect the cost of a new home. Thus, households that can only afford less expensive houses end up paying a higher proportion of the sales price to cover the cost of fees.

Slow and overly burdensome permitting is another regulatory obstacle. The original rationale for establishing permitting and approval processes is unassailable: to ensure that construction meets established standards related to health, safety, and other important public concerns. But, in many jurisdictions, the process involves multiple, time-

consuming steps that add unnecessarily to housing costs. Delays of 2 to 3 years are not uncommon. The affordability landscape comes most sharply into focus in areas that are experiencing rapid growth. These are the places that attract households seeking opportunities, and the places where growth-controlling regulations can add considerably to the cost of housing. Local residents—concerned about road congestion, overburdened sewer and water systems, overcrowded schools, and strained city budgets—have many ways to limit growth. Households that do not want to forgo the job opportunities in growing areas must often travel far afield to find affordable housing.

A look at some cost data can be very sobering. Land developers in Central Florida, a boom area under intense development pressure, must add a \$15,000 surcharge to the price of a \$55,000 house to cover the cost of excessive regulation. As a result, a \$55,000 house becomes a \$70,000 house. In Southern California, the cost of fees alone has contributed \$20,000 to the price of many new homes, and fees of \$30,000 or more are not rare. In New Jersey, developers report that excessive regulation is adding 25 to 35 percent to the cost of a new house. It is clear that the costs of regulation in suburban and high-growth areas are causing large numbers of households to forgo their dreams of homeownership or to make difficult tradeoffs involving very long commutes.

Regulatory Barriers in Cities

Any government regulation that adds to the cost of urban housing is especially significant because of the concentration of low-income households in central cities. Unlike suburban areas where large-scale new subdivision development is taking place, the regulatory problems in cities involve either the rehabilitation of older properties or new infill construction to provide affordable housing for families of limited means. Central-city reinvestment has been further compounded by restrictive and racially discriminatory lending practices.

Chief among the urban regulatory barriers are building codes geared to new construction rather than to the rehabilitation of existing buildings. The codes often require state-of-the-art materials and methods that are inconsistent with those originally used. For example, introducing newer technologies sometimes requires the wholesale replacement of plumbing and electrical systems that are still quite serviceable.

Excessively expensive requirements have also made new infill units in some urban jurisdictions more than 25 percent more expensive than identical units constructed in adjacent suburban localities that allow less costly materials and methods. Despite the pressing need to provide shelter for low-income households, city building codes seldom provide for the construction of “no-frills” affordable housing such as the new single-room-occupancy (SRO) hotels that have recently proven so successful in San Diego. Waivers on code requirements in that city cut the cost of some SRO living units by as much as 60 percent.

Other regulations that affect the availability of housing, such as rent control, also seem to ignore the plight of the poor. In the long run, the primary beneficiaries of rent control are frequently upper and middle-income groups rather than lower income households who need assistance in obtaining decent homes in safe neighborhoods. By limiting annual rent increases and thus providing incentives for higher income tenants to remain in older but pleasant neighborhoods, rent control hinders upward mobility of low-income families to better housing opportunities.

Urban neighborhoods could benefit substantially from such affordability-enhancing options as manufactured housing, the use of modular units in construction, and the legalization of accessory apartments. But, too often, regulatory barriers completely block or seriously impede the introduction of these options. Manufactured housing is still frequently relegated to rural areas by local zoning ordinances. State highway regulations and local building codes sometimes mandate modifications to modular units that offset the savings these prefabricated units can provide

for infill construction. Finally, local zoning regulations often prohibit accessory apartments, which could be a significant source of affordable housing: as many as 3.8 million units could be added to the nation's rental housing supply through this means alone.

Environmental Protection and Affordable Housing

Exerting considerable influence on both urban and suburban landscapes, otherwise valuable environmental protection regulations seriously restrict the amount of buildable land that is available for development. This effect raises the cost of what land remains open for homebuilding.

Regulations that mandate environmental impact studies increase developers' costs by prolonging the permitting process and thus increasing the carrying charges that they must pay to finance business operations. Costs are also raised by the assessment of special fees and exactions for wilderness and wildlife conservation. In some instances, developers are required to set aside land for preserves, pay mitigation fees, or undertake mitigation projects (such as creating a new wetland) in exchange for the use of property designated as a wetland. Increases in development costs associated with environmental protection are passed along to the consumer and thus have a direct effect on housing affordability.

Regulations for the protection of wetlands have hindered residential development in many areas. Over the past several years, the Federal definition of a wetland has become more expansive. Protection has recently been extended to some areas where the soil is only temporarily saturated with water for short periods each year. Considerable duplication exists between Federal and State regulations, rendering the permitting process for wetlands development unnecessarily lengthy and complicated and therefore unnecessarily expensive. At the Federal level, the jurisdictions of the Environment Protection Agency (EPA) and the Army Corps of Engineers overlap considerably, at times introducing conflicting expectations and requirements into the permit approval process.

The Endangered Species Act (ESA) also affects housing affordability. Designed to help ensure the survival and well-being of existing species of plants and animals, the ESA allows the Fish and Wildlife Service (FWS) to ban or severely restrict development in thousands of acres for years at a time, if such land is the habitat of a species judged to be "endangered" or "threatened." The ESA does not take into account the socioeconomic impact of these restrictions on human activity. Construction is allowed after the FWS approves a Habitat Conservation Plan, which usually involves the permanent establishment of preserves for the endangered animal.

These preserves increasingly involve the purchase of private, prime development land. Recently, in Riverside County, California, the initial phases of creating a 30-square-mile system of preserves for the Stevens Kangaroo Rat cost some \$100 million. Estimates of the entire protection effort run more than twice that amount. A special impact fee of \$1,950 is now levied on each acre of Riverside County that is developed, with new homebuyers bearing the cost. Housing affordability is becoming an inadvertent casualty of environmental protection.



ROOT CAUSES AND NEW DIRECTIONS

There can be little disagreement that government land-use and development regulations are often barriers to affordable housing. Why is this so, and what should be done about it?

Root Causes

Part of the problem involves a classic conflict among competing public policy objectives. Numerous Federal, State, and local regulations that are intended to achieve specific, admirable goals turn out to have negative consequences for affordable housing. The impact on housing costs may not have been considered when the regulations were promulgated.

Another major part of the problem is the fragmented structure of government land-use and development regulation. Not only do many local jurisdictions control land uses and development within each metropolitan area, but multiple levels of government, and a multiplicity of agencies at each level, also have responsibility for one aspect or another of this process. Duplication, uneven standards, and other cost-producing consequences result from this regulatory system. Hence, the cumulative impact goes well beyond the intent of sound and reasonable government oversight responsibilities.

Perhaps the most potent and, to date, intractable cause of regulatory barriers to affordable housing is NIMBY sentiment at the individual, neighborhood, and community levels. Residents who say “Not In My Back Yard” may be expressing opposition to specific types of housing, to changes in the character of the community, to certain levels of growth, to any and all development, or to economic, racial, or ethnic heterogeneity. In any case, the intention is to exclude, resist change, or inhibit growth.

The personal basis of NIMBY involves fear of change in either the physical environment or composition of a community. It can variously reflect concern about property values, service levels, fiscal impacts, community ambience, the environment, or public health and safety. Its more perverse manifestations reflect racial or ethnic prejudice masquerading under the guise of these other concerns.

NIMBY sentiment—frequently widespread and deeply ingrained—is so powerful because it is easily translatable into government action, given the existing system for regulating land use and development. Current residents and organized neighborhood groups can exert great influence over local electoral and land-development processes, to the exclusion of nonresidents, prospective residents, or, for that matter, all outsiders. Restrictions on affordable housing are the result.

New Directions

The root causes of regulatory barriers to affordable housing have been in place for many years, and the evidence is overwhelming that these barriers are unlikely to disappear, absent significant incentives and effort. All levels of government need to work at removing barriers in conjunction with private interests.

Certainly, the Federal Government needs first to put its own house in order. It should remove or reform existing Federal rules and regulations that have an adverse effect on housing affordability, and initiate procedures to minimize adverse effects in future regulations. Simply stated, Federal agencies promulgating major rules must account for the impacts of those rules on affordable housing.

Because States delegate authority to local governments to regulate land use and development, States should take the lead in removing regulatory barriers to affordable housing. What each State should do depends on its own circumstances and situation, but there is no question that State leadership is the only path likely to bring about desired change.

A few States have been substantially involved in attempting to promote affordable housing through the removal of regulatory barriers. Their efforts include recognizing affordable housing as a formal State goal, creating procedures for reconciling local regulations with State goals, eliminating redundant regulations, developing procedures for resolving disputes, setting statewide standards in support of affordable housing, eliminating discrimination against certain types of affordable housing, and providing State financial incentives for affordable housing and local regulatory reform. Clearly, however, more effort on the part of more States is called for.

Despite the appropriateness and desirability of State action, States are unlikely to play a strong role in the absence of Federal incentives to do so. Therefore, the Federal Government must take appropriate actions to engage the States. Such actions include conditioning Federal housing assistance on the establishment of State

and local barrier-removal strategies, relaxing Federal requirements in response to reform efforts, and providing planning grants to assist in barrier removal.

Finally, concerted educational and group actions are needed at the local level to expose the negative consequences of certain government regulations, build coalitions for pursuing regulatory reform, and stimulate local barrier-removal efforts. Such actions are intended to complement and reinforce proposed State and Federal actions. In this way, affordable housing can become a reality for those deprived of it by government regulation.



Fair Housing Council of Suburban Philadelphia

Fact Sheet on Fair Housing and Zoning and Land Use

What is Fair Housing?

Title VIII of the Civil Rights Act of 1968 (The Fair Housing Act)

Title VIII of the Civil Rights Act of 1968, as amended, is known as the Fair Housing Act. The Fair housing Act makes it illegal to discriminate in the sale, rental, financing, or insurance of a dwelling, or in any other type of housing related transaction on the basis of race, sex, religion, national origin, color, disability, or familial status (the presence of children under the age of 18 in the household). In addition, certain multifamily dwellings, constructed after 1991, are required to be accessible to persons with disabilities.

How Does the Fair Housing Act Relate to Zoning and Land Use?

According to the Fair Housing Act, a dwelling includes "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof". Therefore, decisions related to the development or use of such land may not be based upon the race, sex, religion, national origin, color, disability, or familial status of the residents or potential residents who may live in the dwelling. Similarly, a municipality may not make zoning or land use decisions based on neighbors' fears that a dwelling would be occupied by members of these protected classes. Zoning ordinances may not contain provisions that treat uses such as affordable housing, supportive housing, or group homes for people with disabilities differently than other similar uses, and municipalities may not enforce ordinances more strictly against housing occupied by members of the protected classes.

Another way that discrimination in zoning and land use may occur is when a facially neutral ordinance has a disparate impact, or causes disproportional harm, to a protected group. Land use policies such as density or design requirements that make residential development prohibitively expensive, prohibitions on multifamily housing, or a ceiling of 4 or fewer unrelated adults in a household may be considered discriminatory if it can be proven that these policies have a disproportionate impact on minorities, families with children, or people with disabilities.

Although zoning and land use is an area where municipalities have primary power, courts have consistently held that the Fair Housing Act prohibits local governments from exercising their zoning and land use powers in a discriminatory way.

What is a Reasonable Accommodation?

In addition to prohibiting discrimination against persons with disabilities, the Fair Housing Act also makes it unlawful to refuse to make "reasonable accommodations", or changes to rules, policies, practices, or services, when such accommodations are necessary to allow persons with disabilities an equal opportunity to use or enjoy a dwelling. Under the Fair Housing Act, an accommodation is considered "reasonable" if it does not impose an undue financial or administrative burden and if it does not fundamentally alter the zoning ordinance. Unless a municipality can prove that an accommodation request is unreasonable according to the above criteria, the municipality must grant the accommodation.

Exemptions to the Fair Housing Act

There is one exemption to the Fair Housing Act that applies to zoning and land use. Housing for older persons, or housing where 80% of the units are occupied by at least one person over the age of 55, is except from the portion of the Fair Housing Act that prohibits discrimination against families with children. According to the Housing for Older Persons Act, a housing facility or community for older persons may include "a municipally zoned area". Therefore, although a municipality would be prohibited under the Fair Housing Act from making a zoning or land use decision based on the presence of families with children residing in a dwelling or proposed development, any area zoned specifically for housing for older persons would be exempt from this prohibition.

Examples of Prohibited Activities Under the Fair Housing Act

- A municipality may not reject a proposed affordable housing development in response to neighbors' fears that such housing will be occupied by racial minorities.
- A municipality may not require neighbor notification or a public hearing only for the development of affordable housing or group homes, but not other types of residential development.
- A municipality may not refuse to allow an exception to a setback requirement as a reasonable accommodation for a disabled resident who must build a wheelchair ramp in order to access his or her home.
- A municipality may not impose spacing requirements on group homes for persons with disabilities.

- A municipality may not require additional studies or procedural steps or unnecessarily delay decision making when considering a development that may be occupied by members of the protected classes.

The following are examples of local fair housing cases that have involved zoning and land use:

- Horizon House Developmental Services, Inc. V. Township of Upper Southampton, PA: A 1,000 foot spacing requirement for group homes was found to violate the Fair Housing Act. Furthermore, requiring group homes to obtain a variance to locate within 1,000 feet of another group home was found to be an insufficient reasonable accommodation, and the township was ordered to cease enforcement of the spacing requirement.
- ReMed Recovery Care Centers v. Township of Willistown, PA: The township was ordered make a reasonable accommodation from its limitation on the number of unrelated persons that can constitute a family under its zoning ordinance, allowing a group home of 8 unrelated individuals rather than the 5 permitted under the zoning ordinance.
- United States v. City of Philadelphia: The city was ordered to provide a reasonable accommodation that would allow an exception to the rear yard requirement of the city's zoning ordinance, so that a non-profit organization could rehabilitate a building to use for a group home.

Further Reading

- The Fair Housing Act: www.usdoj.gov/crt/housing/title8.htm
- The Housing for Older Persons Act: www.fairhousing.com/index.cfm?method=page.display&pageID=443
- HUD/DOJ Joint Memo on Group Homes, Local Land Use, and the Fair Housing Act: www.usdoj.gov/crt/housing/final8_1.htm
- HUD/DOJ Joint Memo on Reasonable Accommodations Under the Fair Housing Act: www.usdoj.gov/crt/housing/jointstatement_ra.htm
- Addressing Community Opposition to Affordable Housing Development: A Fair Housing Toolkit (includes many further examples of fair housing cases involving zoning and land use): content.knowledgeplex.org/kp2/cache/documents/68549.pdf

About the Fair Housing Council of Suburban Philadelphia

Founded in 1956, the Fair Housing Council of Suburban Philadelphia (FHCSF) is the oldest fair housing council in the nation and serves Southeastern Pennsylvania. FHCSF has been serving Delaware County for 51 years and is the only Qualified Fair Housing Enforcement Organization, as designated by HUD that serves Delaware County. As an essential complement enforcement

activities, FHCSF sponsors and participates in educational workshops and forums, and develops educational materials that enable consumers to recognize housing discrimination when they encounter it, housing counselors to recognize when their clients encounter it, government officials to understand the ramifications of housing discrimination for their constituents, and housing providers to understand their responsibilities under the Fair Housing Act.

The mission of FHCSF is "To educate and advocate for equal access to quality, affordable housing for everyone in Southeast Pennsylvania."

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July, 2006

Creative Options for Affordable Housing

A Quick Guide for Activists and Policy Makers

by Jerry Kloby

Housing affordability continues to be a major problem for much of the nation. House prices increased a record 9.4 percent in 2005 (after inflation), and more homebuyers are on precarious footing as interest-only and subprime loans are rising dramatically. Harvard University's Joint Center for Housing Studies predicts more mortgage defaults as a result.¹

Housing costs are eating up more and more of household income, leading to an increase in the number of Americans who are "cost burdened" (paying more than 30 percent of their income for housing). From 2001 to 2004 the number of cost-burdened households increased from 31.3 million to 35 million, and the number of those that are severely cost burdened (paying more than 50 percent of their income for housing) increased to a record 15.8 million. The hardship rate is higher among renters, a reflection of the loss of affordable housing that has been taking place in much of the country for more than 30 years. From 1993 to 2003 the housing stock that is affordable to low-income renters dropped by 1.2 million to a lowly 5.4 million.

Housing affordability is a problem not just because of increasing housing costs but because of low wages. The federal government has not raised the minimum wage since 1997 and, although 20 states and the District of Columbia have passed laws raising the local minimum wage, there are far too many jobs that pay far too little.² Approximately 25 percent of the 133 million workers in the United States earn less than \$10 per hour, and 50

percent make less than \$15.45 per hour. Many Americans live on incomes too low for them to afford the high prices dictated by the housing market.

For example, in New Jersey, where the state minimum wage is \$6.15, the Fair Market Rent (FMR) for a two-bedroom apartment is \$1,085. In order to afford the FMR for a two-bedroom apartment, a minimum wage earner would have to work 136 hours per week, 52 weeks per year. In order to afford this level of rent and utilities, without paying more than 30 percent of income on housing, a one-worker household would have to be earning \$20.87 per hour.³

In addition to affordability, there are two other housing issues of major concern. One is sprawl, the other is racial segregation. For several decades the greatest housing development had been taking place in lower density counties, this trend led to great concern about the loss of open space, increased automobile use, endless shopping malls, cookie cutter architecture, a growing urban/suburban political divide, and similar issues. More recently, many cities have been experiencing a bit of a rebirth. Thirty-one central cities (of the nation's 50 largest metropolitan areas) lost population in the 1970s but of those 31, 16 reversed their decline within the past two decades.

The exodus to the suburbs has often been characterized as "white flight" and the white population in nearly all central cities continues to decrease today. (When the massive Levittown suburb was built in Long Island in the 1950s it was almost all white. In 1960 only 57 out of

65,276 residents were black, and in 1980 just 45 out of 57,045 were.⁴⁾

A recent study by John Logan of the Lewis Mumford Center for Comparative Urban Research found that residential segregation is still very widespread in the United States. According to the Logan report, the typical white American lives in a neighborhood that is 83 percent white and 7 percent black, and 70 percent of whites live in suburbs compared to 40 percent of blacks. In addition, the Harvard Civil Rights Project found that Asians and Hispanics live in somewhat more isolated settings now than they did in 1990.

Some municipalities lauded for their diversity are still, in many ways, fairly segregated. For example, in Montclair, New Jersey, a town noted for integration and liberalism, 33 percent of the residents are African American but half of them reside in just three of Montclair's twelve census tracts. Conversely, most of the township's white residents live in areas that are over 85 percent white.

Current residential demographic patterns are partly the result of past discrimination in housing (e.g. steering, restrictive covenants, and redevelopment policies that restricted housing for low-income households to certain concentrated areas), and partly the result of more general economic differences. In the United States the median household income of blacks is roughly 63 percent of the white median and current residential patterns are largely a result of these income differences. The redevelopment of urban and suburban areas without making provisions for affordable housing creates a disproportionate burden on black households. It also adds to the burden of senior citizens and others on fixed incomes.

Redevelopment Without Displacement?

Are there instruments that can help us redevelop neighborhoods without displacing the people in need, without sacrificing them for the sake of attracting high-income home buyers and tenants? There are two general ways of addressing the problem of housing affordability. One is to keep the prices low, the other is to take steps to improve the income and assets of lower-income households. Many successful and innovative strategies addressing both of these fronts have been adopted around the nation. Some of them include:

- **Community Land Trusts.** CLTs take real estate off the speculative market and ensure long-term affordability for renters and low-income homeowners.

CLTs are nonprofit corporations created to acquire and hold land for the benefit of a community and provide secure affordable access to land and housing for community residents. They develop housing through renovation or new construction and sell or rent to low-income families and promote neighborhood stability. The Durham CLT in North Carolina, for example, has renovated 109 single-family houses since 1987. The homes sell for less than half the city average and very few have been sold by their original owners.

- **Community Development Corporations.** CDCs that develop local properties and offer resident stock ownership opportunities in either the CDC or individual projects, can provide low-income and/or low-wealth residents with a financial share in neighborhood commercial real estate projects carried out by the CDC. CDCs are nonprofit entities established by local stakeholders—residents, business owners, faith-based institutions, service providers—whose goal is to revitalize a selected low- or moderate-income community. CDC commercial real estate developments include shopping centers and mini-malls in urban core areas, occupied by businesses that serve the needs of local residents. Resident ownership gives residents a greater stake and a better understanding, as well as a voice in everything that affects their neighborhoods.

- **Inclusionary zoning.** Typically, these are local requirements that a percentage of new housing be affordable to people of low and moderate incomes. Often developers are given something in return such as zoning variances or density bonuses. Inclusionary zoning can be an important tool for distributing affordable housing throughout a municipality and creating mixed-income communities.

- **Rent stabilization ordinances** can help promote stability by keeping rent increases to a minimum. The best rent control laws do not have vacancy decontrol clauses that allow landlords to raise rents when a tenant moves out. Such clauses give a financial incentive to destabilize a neighborhood. On the other hand, frequent changes of building ownership also contributes to destabilization so it is important to make sure that rent controls are not overly burdensome to landlords. In fact, court decisions require that rent control laws provide landlords with a procedure for claiming "hardship" (generally defined as less than a "fair return" on investments). Without a hardship appeals procedure, a rent control ordi-

nance may be found unconstitutional.

- **Limited Equity Co-ops.** LECs provide renters with a method for acquiring their building. They aim for democratically controlled home ownership opportunities and permanently affordable rates.

- **Housing Trust Funds.** HTFs are created legislatively. They dedicate ongoing revenue streams to increase the supply of affordable housing, and to keep that housing well maintained.

- **Developer Fees.** These fees are often implemented to generate a revenue stream for an affordable housing trust fund. A typical developer's fee might require that all developers contribute to the fund at a rate of 1 percent of the assessed value for new residential developments and 2 percent of assessed value for new commercial developments. In some locales, commercial linkage fees are used for similar ends. These ordinances link new commercial development to the need to provide affordable housing for the people who are likely to work there (they can also be used for other public purposes such as job training and environmental preservation). Linkage fees usually are based on the square footage of new commercial development and range from \$1 per square foot and up. State governments normally have to grant municipalities the authority to establish such fees and many set limits on how high they can be.

- **Living Wage Ordinances.** LWOs promote wages and benefits sufficient to lift workers out of poverty. The implementation of living wages is advanced through local ordinances that require public investment to adhere to living wage guidelines. For example, they may require that hourly pay be sufficient to keep the employee above the poverty line. A typical LWO requires that local government only award contracts to, or subsidize, those employers that pay livable wages. According to ACORN's Living Wage Resource Center, 122 LWOs have been adopted around the nation and they require wages that range from \$6.10 to \$12 per hour.

- **Local hiring requirements.** Municipal and county governments can require first hiring rules for its

subcontractors, assuring that local residents have first priority for new jobs. Similar requirements can be established that pertain to purchasing practices as well.

Other strategies include:

- Giving nonprofit CDCs the right to eminent domain, a court determined right to acquire certain properties for public use or improvement.

- Community mapping to identify key information regarding problem areas and potential neighborhood resources. Also serves to organize and educate.

- Protecting local assets, e.g. historical buildings, cultural organizations, social clubs, public spaces.

- Resident owned financial institutions. These institutions serve to pool the limited resources of lower income residents to make purchasing more effective or to form credit unions with a greater commitment to local needs.

- Local tax incentives. These could include lower property tax rates in designated areas, lower tax rates for residents below certain income levels, tax breaks for landlords who provide housing for lower-income tenants, etc.

Housing is a basic human need but it is also much more. Failure to provide affordable housing erodes communities and impacts on crime, safety, delinquency, and the educational success of our young. Solving the problems of housing scarcity and affordability does more than just provide homes for those who need them, it makes communities more secure and enjoyable places to live.

Notes:

¹ Most of the data for the first three paragraphs is from *The State of the Nation's Housing, 2006*, by The Joint Center for Housing Studies of Harvard University.

² U.S. Department of Labor, www.dol.gov/esa/minwage/america.htm.

³ National Low Income Housing Coalition, www.nlihc.org.

⁴ *New York Times*, Dec. 28, 1997.

The Institute for Community Studies can be reached via e-mail at ics@communityknowledge.net
Visit our Community Knowledge Net at www.communityknowledge.net

For more information about the policies discussed here, two good resources are the National Housing Institute (nhi.org) and PolicyLink (www.policylink.org).



Accessory Dwelling Units: Case Study



U.S. Department of Housing and Urban Development
Office of Policy Development and Research



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Accessory Dwelling Units: Case Study

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Accessory Dwelling Units: Case Study

Introduction

Accessory dwelling units (ADUs) — also referred to as accessory apartments, second units, or granny flats — are additional living quarters on single-family lots that are independent of the primary dwelling unit. The separate living spaces are equipped with kitchen and bathroom facilities, and can be either attached or detached from the main residence.¹ This case study explores how the adoption of ordinances, with reduced regulatory restrictions to encourage ADUs, can be advantageous for communities. Following an explanation of the various types of ADUs and their benefits, this case study provides examples of municipalities with successful ADU legislation and programs.

History of ADUs

Development of accessory dwelling units can be traced back to the early twentieth century, when they were a common feature in single-family housing.² After World War II, an increased demand for housing led to a booming suburban population. Characterized by large lots and an emphasis on the nuclear family, suburban development conformed to Euclidean-type zoning codes, a system of land-use regulations that segregate districts according to use.³

Suburbs continued to be a prevalent form of housing development throughout the 1950s and 1960s. The rapid growth of suburbs reinforced the high demand for lower-density development, and ultimately led most local jurisdictions to prohibit ADU construction. In spite of zoning restrictions, illegal construction of ADUs continued in communities where the existing housing stock was not meeting demand; San Francisco was one such community. During World War II, the Bay Area experienced a defense boom that created a high demand for workforce housing, resulting in a large number of illegally constructed second units. By 1960, San Francisco

housed between 20,000 to 30,000 secondary units, 90 percent of which were built illegally.⁴

In response to suburban sprawl, increased traffic congestion, restrictive zoning, and the affordable housing shortage, community leaders began advocating a change from the sprawling development pattern of suburban design to a more traditional style of planning. Urban design movements, such as Smart Growth and New Urbanism, emerged in the 1990s to limit automobile dependency and improve the quality of life by creating inclusive communities that provide a wide range of housing choices. Both design theories focus on reforming planning practices to create housing development that is high density, transit-oriented, mixed-use, and mixed-income through redevelopment and infill efforts.⁵

In the late 1970s to the 1990s, some municipalities adopted ADU programs to permit the use and construction of accessory units. Many of these programs were not very successful, as they lacked flexibility and scope. Although a number of communities still restrict development of accessory dwelling units, there is a growing awareness and acceptance of ADUs as an inexpensive way to increase the affordable housing supply and address illegal units already in existence.



Interior ADU — located in attic space
Photo credit: Town of Barnstable, Massachusetts

¹ Municipal Research and Services Center of Washington, *Accessory Dwelling Units*, October 1995, <http://www.mrsc.org/Publications/textadu.aspx#tenant>.

² Transportation and Land Use Coalition, *Accessory Dwelling Units*, <http://www.transcoalition.org/ia/acssdwel/01.html#body>.

³ Transportation Research Board, *The Costs of Sprawl Revisited*, 1998, http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp_rpt_39-a.pdf.

⁴ San Francisco Planning and Urban Research Association, *Secondary Units: A Painless Way to Increase the Supply of Housing*, August 2001, <http://www.spur.org/newsletters/0801.pdf>.

⁵ New Urban News, *The New Urbanism — An alternative to modern, automobile-oriented planning and development*, July 2004, <http://www.newurbannews.com/AboutNewUrbanism.html>.

Types of Accessory Dwelling Units

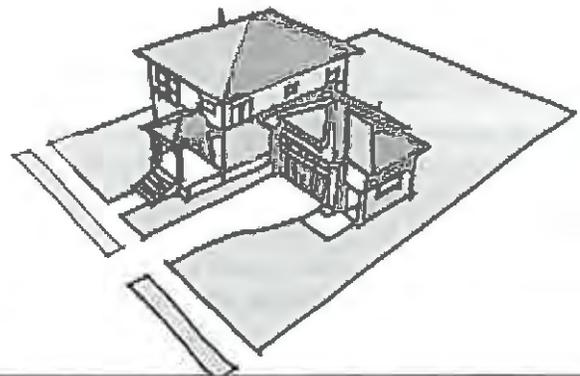
Depending on their location relative to the primary dwelling unit, ADUs can be classified into three categories: interior, attached, and detached.⁶ Interior ADUs are located within the primary dwelling, and are typically built through conversion of existing space, such as an attic or basement.

Attached ADUs are living spaces that are added on to the primary dwelling. The additional unit can be located to the side or rear of the primary structure, but can also be constructed on top of an attached garage. Detached ADUs are structurally separate from the primary dwelling. They can be constructed over existing accessory structures, such as a detached garage, or they can be built as units that are separate from accessory and residential structures.

Benefits of Accessory Dwelling Units

Accessory dwelling units offer a variety of benefits to communities. They help increase a community's housing supply, and since they cost less than a new single-family home on a separate lot, they are an affordable housing option for many low- and moderate-income residents.⁷ Elderly and/or disabled persons who may want to live close to family members or caregivers, empty nesters, and young adults just entering the workforce find ADUs convenient and affordable.⁸ In addition to increasing the supply of affordable housing, ADUs benefit homeowners by providing extra income that can assist in mitigating increases in the cost of living.

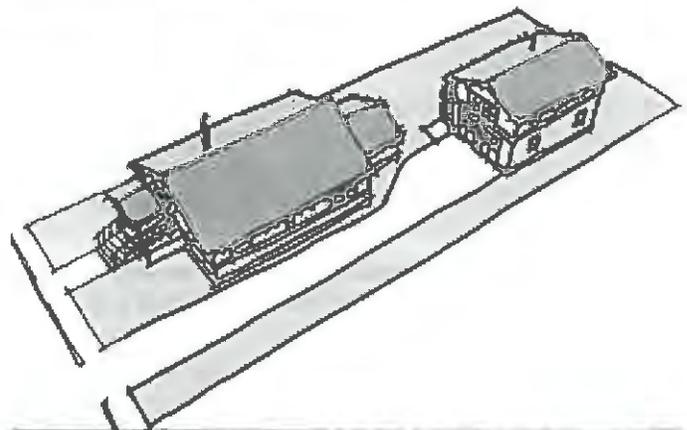
Accessory dwelling units have other advantages as well. They can be designed to blend in with the surrounding architecture, maintaining compatibility with established neighborhoods and preserving community character. Furthermore, there is no need to develop new infrastructure, since ADUs can be connected to the existing utilities of a primary dwelling. Allowing ADUs facilitates efficient use of existing housing stock, helps meet the demand for housing, and offers an alternative to major zoning changes that can significantly alter neighborhoods.⁹



ADU attached to the side of a garage addition
Illustration: RACESTUDIO and city of Santa Cruz



Attached ADU
Photo credit: <http://mass.gov>



Detached two-story ADU over garage
Illustration: RACESTUDIO and city of Santa Cruz

⁶ Transportation and Land Use Coalition.

⁷ Atlanta Regional Commission, *Accessory Dwelling Units*, August 2007, http://www.atlantaregional.com/documents/Accessory_Dwelling_Units_.pdf.

⁸ Ibid.

⁹ Municipal Research and Services Center of Washington.

Examples of ADU Ordinances and Programs

The following section of the case study provides an overview of ADU ordinances that have been adopted by five communities from across the nation. To gain a wider understanding of ADU programs in practice, the five communities have been chosen to represent a diverse range of geographic, demographic, and socioeconomic characteristics with different land use and growth control policies.

Lexington, Massachusetts

Lexington, Massachusetts is an affluent historic town, located 11 miles northwest of Boston, with a population of 30,355.¹⁰ According to the town's 2002 Comprehensive Plan, Lexington has largely exhausted its vacant unprotected land supply and is a highly built-out suburb with less than 1,000 acres of land available for new development.¹¹ Approximately 18 percent of the households in Lexington are eligible for affordable housing of some sort, and with a median home sales price of over \$600,000, many residents are being priced out of the housing market.¹² This limited growth potential and strong demand for affordable housing has led to the adoption of accessory apartment programs. The town implemented its first accessory unit bylaw in 1983, resulting in the construction of 60 units. In February of 2005, Lexington amended its bylaws to improve the clarity and flexibility of its ADU program.¹³ The town affirmed that the purpose of promoting ADUs is to increase the range of housing choices, encourage population diversity, and promote efficient use of the housing supply while maintaining the town's character.

The amended bylaws reduce or eliminate minimum lot size requirements, allow ADUs 'by-right' in homes built as recently as five years ago, and allow second units by special permit in new construction, or as apartments in accessory structures. The Lexington Zoning Code allows two ADUs per lot, provided the primary dwelling is connected to public water and sewer systems.¹⁴ Provisions allow absentee ownership for two years under special circumstances. In addition, a minimum of one off-street parking space

must be provided for every accessory unit. The by-right accessory apartments must be located within the primary dwelling and are allowed on lots that are at least 10,000 square feet. The maximum gross floor area of a by-right accessory apartment is 1,000 square feet and the unit cannot have more than two bedrooms.¹⁵

Increased flexibility in the program has proven beneficial to Lexington in the development of ADUs. According to Aaron Henry, Senior Planner for Lexington, the town's Housing Partnership Board is launching an education and outreach campaign for their ADU program to raise public interest.

Santa Cruz, California

Santa Cruz, California is a seaside city with a population of 54,600; it is one of the most expensive cities in the country in which to live. In 2006, the median price for a single-family home in Santa Cruz was \$746,000, which only 6.9 percent of the city residents could easily afford.¹⁶ In spite of the high cost of living, the city continues to be a desirable destination on account of its scenic location and proximity to San Francisco and the Silicon Valley. The location of a campus of the University of California — the area's largest employer — also adds to the demand for housing in Santa Cruz.¹⁷ Another contributing factor is the limited amount of land allowed for development within the city's



¹⁰ U.S. Census 2000, www.census.gov.

¹¹ Town of Lexington, *Comprehensive Plan*, 2002, <http://ci.lexington.ma.us/Planning/CompPlan.htm>.

¹² Town of Lexington, *Lexington Housing Strategy*, October 2007, [http://ci.lexington.ma.us/Planning/Documents/Housing%20Strategy%20\(Oct%202007\).pdf](http://ci.lexington.ma.us/Planning/Documents/Housing%20Strategy%20(Oct%202007).pdf).

¹³ The Massachusetts Smart Growth/Smart Energy Toolkit, *Accessory Dwelling Units (ADU) Suburban Case Study*, http://www.mass.gov/envir/smart_growth_toolkit/pages/CS-adu-lexington.html.

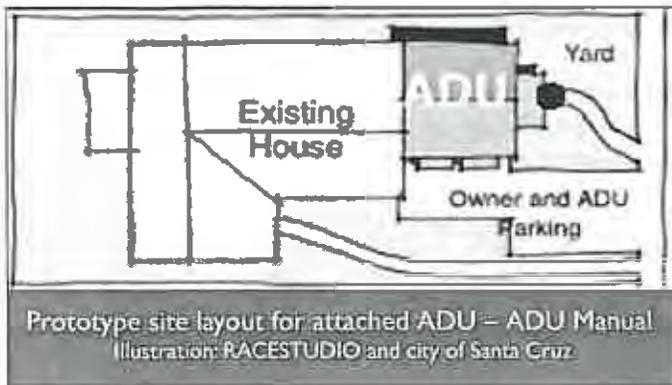
¹⁴ See Appendix A.

¹⁵ Town of Lexington, <http://ci.lexington.ma.us>.

¹⁶ City of Santa Cruz, <http://www.ci.santa-cruz.ca.us>.

¹⁷ Fred Bernstein, *Granny Flats for Cool Grannies*, February 2005, <http://www.fredbernstein.com/articles/display.asp?id=91>.

greenbelt. In order to preserve the greenbelt while accommodating new growth, promoting public transportation, and increasing the supply of affordable housing, the city adopted a new ADU ordinance in 2003.



This ordinance sets forth regulations for the location, permit process, deed restrictions, zoning incentives, and design and development standards for ADUs. Accessory dwelling units are permitted in designated residential zones on lots that are at least 5,000 square feet in area. No more than one ADU per lot is allowed and the property owner must occupy the primary or accessory dwelling unit. ADUs that do not meet the permitting requirements stipulated in the ordinance must undergo a public hearing process. Development fees are waived for ADUs made available for low- and very-low-income households.¹⁸

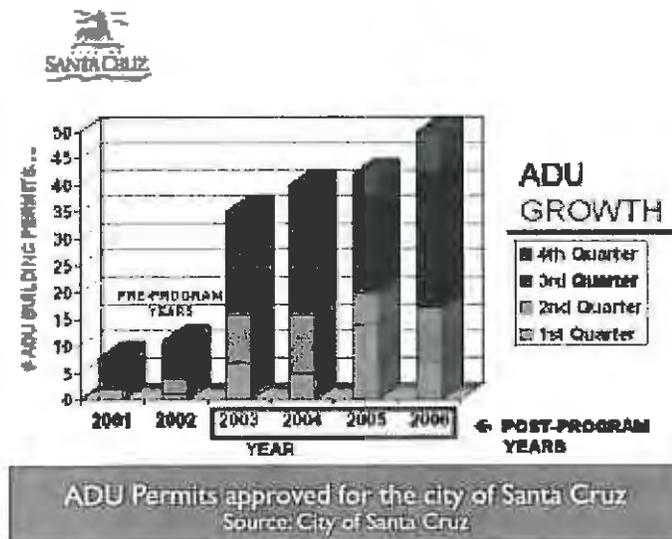
In addition to the ordinance that regulates the development of ADUs, Santa Cruz has established an ADU development program with three major components: technical assistance, a wage subsidy and apprentice program, and an ADU loan program.¹⁹ As part of the technical assistance program, the city published an ADU Plan Sets Book that contains design concepts developed by local and regional architects. Homeowners can select one of these designs and receive permits in an expedited manner. In addition, the city offers an ADU Manual, which provides homeowners with information on making their ADU architecturally compatible with their neighborhood, zoning regulations relevant to ADUs, and the permitting process.

Santa Cruz's ADU Development Program has won numerous awards and has been used as a model by other communities. According to Carol Berg, who is the housing and community development manager for the city, an average of 40 to 50 ADU permits have been approved every year since the start of the program. She attributes the program's success primarily to zoning changes that were adopted to facilitate development of ADUs, such as the elimination of covered parking requirements.

Portland, Oregon

With a population of approximately 530,000, Portland is the most populous city in the state of Oregon, and is noted for its strong land use control and growth management policies. Although Portland has had an ADU program in place for several years, ADU development was not effectively promoted until 1998, when the city amended its laws to relax the regulations governing ADUs.²⁰ The amendments eliminated the minimum square footage and owner-occupancy requirements. ADUs are now allowed in all residential zones with relaxed development standards.

Portland's regulations permit the construction of ADUs on lots with a single-family home, as long as they are smaller, supplementary to the primary residence, and no more than 800 square feet.²¹ They can be created by conversion of an existing structure or by construction of a new building. An early assistance process is available to help with project development for ADUs created through the conversion of an existing structure. ADUs that meet all the standards are permitted by right and do not require a land use review. No additional parking is required for accessory



¹⁸ See Appendix B.

¹⁹ City of Santa Cruz, *Accessory Dwelling Unit Development Program*, <http://www.ci.santa-cruz.ca.us>.

²⁰ Barbara Sack, city of Portland.

²¹ See Appendix C.

units. Portland's ADU program guide outlines ways to bring existing nonconforming units into compliance.

The city considers ADUs to be more affordable than other housing types because of the efficiency of the units in using fewer resources and reducing housing costs. City planner Mark Bello notes that allowing more ADUs did increase the housing supply, and that city residents viewed ADUs positively and were satisfied with the changes made. He also added, "There were no significant negative issues that arose from liberalizing Portland's code."

Barnstable, Massachusetts

With seven villages within its boundaries and a total population of 47,821, the town of Barnstable is the largest community in both land area and population on Cape Cod.²² Approved in November 2000, Barnstable's Accessory Affordable Apartment or Amnesty Program is a component of its Affordable Housing Plan.²³ The program guides creation of affordable units within existing detached structures or new affordable units within attached structures. Eligibility for the program is limited to single-family properties that are owner-occupied and multifamily properties that are legally permitted.

Barnstable's amnesty program is seen as a way to bring the high number of existing illegal ADUs into compliance with current requirements. In order to bring a unit into compliance, the property owner must agree to rent to low-income tenants — those earning 80 percent or less



of the area median income — with a minimum lease term of one year. The amnesty program offers fee waivers for inspection and monitoring of units and designates town staff to assist homeowners through the program's administrative process. The town can access Community Development Block Grant funds to reimburse homeowners for eligible costs associated with the rehabilitation or upgrade of an affordable ADU. Homeowners are also offered tax relief to offset the negative effects of deed restrictions that preserve the affordability of the units.²⁴

Through its Amnesty Program, the town of Barnstable has successfully brought many of its illegal accessory units into compliance, with the added benefit of increasing the supply of affordable housing. Since the start of the program, Barnstable has approved 160 affordable ADUs. Beth Dillen, Special Projects Coordinator for the town's Growth Management Department, noted that "the ADU program has been very well received and there has been no neighborhood opposition." The program has been successful in converting existing illegal accessory apartments into code-compliant ADUs. According to Building Commissioner Tom Perry, "The benefit to this program is twofold. It is increasing the affordable housing supply and it also makes units, that before were unsafe and illegal, safe and legal."

Wellfleet, Massachusetts — Home of Oysters...and ADUs

Wellfleet is located in Barnstable County, Massachusetts. Located on Cape Cod, Wellfleet is a tourist town with a

²² U.S. Census 2000, www.census.gov.

²³ See Appendix D.

²⁴ Town of Barnstable, *Accessory Affordable Apartment Program*, http://www.town.barnstable.ma.us/GrowthManagement/CommunityDevelopment/AccessoryHousing/AAAP-BROCHURE_rev041206.pdf.

year-round population of 3,500, which increases to 17,000 in the summer months. Sixty-one percent of the land area in Wellfleet is part of the Cape Cod National Seashore and about 70 percent of the entire land area is protected from development.²⁵ Wellfleet also has a growing concentration of elderly residents 65 years and older. A housing needs assessment study conducted by the town in 2006 recommended the adoption of an affordable ADU program to meet elderly housing needs and to increase the supply of affordable multifamily rental units.²⁶



The affordable ADU bylaw for Wellfleet allows up to three ADUs per lot in any district, but requires approval of a special permit from the Zoning Board of Appeals. Secondary units may be within, attached to, or detached from a



primary structure, and may not be larger than 1,200 square feet. Homeowners with pre-existing attached and nonconforming accessory apartments may only make changes that increase the conformity of the structures.²⁷

Unless the provisions are specifically waived, the construction of new ADUs must conform to all zoning bylaw provisions and the owner of the property must occupy either the ADU or the primary dwelling. Detached units must comply with all setback requirements. Owners are required to rent to low- or moderate-income households. Maximum rents follow the Fair Market Rental Guidelines published by HUD and the property owners must submit annual information on rents to be charged.

To encourage participation in the ADU program, Wellfleet has instituted a new affordable accessory dwelling unit loan program.²⁸ The program offers interest-free loans for homeowners to develop affordable accessory units. The funds can also be used by homeowners to bring their ADU up to code. Wellfleet offers tax exemptions to homeowners on the portion of the property that is rented as an affordable unit. According to Nancy Vail, Assessor for the Town of Wellfleet, the combined tax savings for all ADU property owners totaled \$7,971.17 for fiscal year 2008. Sixteen units have been approved since the start of the program in November 2006.

Fauquier County, Virginia

Fauquier County is a largely rural county located about 50 miles outside of Washington, D. C. Beginning in 1967, Fauquier County adopted strict zoning regulations to limit growth to nine defined areas as a means of preserving farmland and open space; in effect, establishing growth boundaries.²⁹ However, the county population is rapidly increasing. The 2006 U.S. Census population estimate for Fauquier County was 66,170, a 20 percent increase from 2000. A needs assessment study by the Fauquier County Affordable Housing Task Force found that between 2000 and 2006, the median housing price in Fauquier County increased 127 percent, while the median household income increased 21 percent. To accommodate its growing population, especially the need for workforce housing, the county encourages infill development within the nine defined areas, and is active in reducing barriers to affordable housing.

²⁵ Town of Wellfleet, <http://www.wellfleetma.org>

²⁶ Town of Wellfleet, *Housing Needs Assessment*, 2006, http://www.wellfleetma.org/Public_Documents/WellfleetMA_LocalCompPlan/Appendix8.pdf.

²⁷ See Appendix E.

²⁸ Town of Wellfleet, *Affordable Accessory Dwelling Unit Program*, http://www.wellfleetma.org/Public_Documents/WellfleetMA_WebDocs/AADU.pdf.

²⁹ Keith Schneider, *New Approaches to Shaping Community Futures*, March 1997, Michigan Land Use Institute, <http://www.mlui.org/growthmanagement/fullarticle.asp?fileid=3862>.

Fauquier County recognizes three different types of accessory units: family dwellings, efficiency apartments, and tenant houses.³⁰ Family dwelling units are detached accessory units constructed for use by the homeowner's family member(s); they must be occupied by no more than five people, at least one of them related to the owner. Family dwelling units may be as large as 1,400 square feet in size and are permitted in both rural and many residentially zoned areas. Efficiency apartments are alternatives to family dwelling units and are attached to either the primary residence or to an accessory structure, such as a garage. The size is limited to 600 square feet or 25 percent of the gross floor area of the main dwelling, whichever is greater. Efficiencies may not be occupied by more than two unrelated people and are allowed in rural and residential-zoned areas. Tenant houses are detached dwellings built on the property for the purpose of supporting agricultural land uses. At least one person occupying the tenant house must work on the property. Tenant houses have no size limits. They are allowed only on rurally zoned areas or properties of at least 50 acres, with one tenant house for every 50 acres of a property.

Development of ADUs in Fauquier County depends on the zoning, the size of the property, and availability of septic/sewer and water services. Each of the unit types is approved by the Fauquier Office of Zoning Permitting and Inspections, with a building permit, provided that the units meet zoning requirements. According to the county's zoning office, 155 accessory dwelling units and 37 efficiency apartments were permitted from 1997 to 2007.

Conclusion

At the height of the suburbanization of the United States in the 1950s and 1960s, high-density development became undesirable. Instead, communities favored low-density development defined by large-lot single-family homes. Accessory apartments that were once a common feature in many homes were excluded from zoning ordinances. However, growing demand for affordable housing (coupled with the limited amount of land available for development in many communities) has led to changing attitudes about the use and development of accessory apartments. An

increasing number of communities across the nation are adopting flexible zoning codes within low-density areas in order to increase their affordable housing supply.

Communities find that allowing accessory dwelling units is advantageous in many ways. In addition to providing practical housing options for the elderly, disabled, empty nesters, and young workers, ADUs can provide additional rental income for homeowners. ADUs are smaller in size, do not require the extra expense of purchasing land, can be developed by converting existing structures, and do not require additional infrastructure. They are an inexpensive way for municipalities to increase their housing supply, while also increasing their property tax base. By providing affordable housing options for low- and moderate-income residents, communities can retain population groups that might otherwise be priced out of the housing market.

The examples provided in the previous section involve communities that have to rely on existing housing stock to meet rising demand, either due to lack of developable land or strict growth management regulations. Portland and Fauquier County have adopted ADU ordinances to increase housing supply within their growth boundaries. Communities that are built out or have limited available land benefit from allowing the development of accessory units, as in Lexington and Wellfleet. Barnstable's amnesty program shows how to successfully bring a large number of existing illegal accessory units into compliance. In addition to allowing ADUs in all residential zones, Santa Cruz has attracted interest in ADU development by publishing an ADU Manual and Plan Sets Book with seven prototype designs for accessory units.

A community can tailor ADU ordinances to suit its demographic, geographic, and socioeconomic characteristics. The communities discussed in this case study provide loan programs, tax incentives, streamlined permitting, and reduced development fees as part of their ADU programs. In order for an ADU program to succeed, it has to be flexible, uncomplicated, include fiscal incentives, and be supported by a public education campaign that increases awareness and generates community support.

³⁰ See Appendix F.

Appendix A — Town of Lexington, Massachusetts, Article V, 135-19, Accessory Apartments

§ 135-19. Accessory apartments. [Amended 5-2-1988 ATM by Art. 41; 4-10-1989 ATM by Art. 41; 4-4-1990 ATM by Art. 36; 4-4-2005 ATM by Art. 10]

An accessory apartment is a second dwelling subordinate in size to the principal dwelling unit on an owner-occupied lot, located in either the principal dwelling or an existing accessory structure. The apartment is constructed so as to maintain the appearance and essential character of a one-family dwelling and any existing accessory structures. Three categories of accessory apartments are permitted: by-right accessory apartments, which are permitted as of right, and special permit accessory apartments and accessory structure apartments, which may be allowed by a special permit.

- A. General objectives. The provision of accessory dwelling units in owner-occupied dwellings is intended to:
- (1) Increase the number of small dwelling units available for rent in the Town;
 - (2) Increase the range of choice of housing accommodations;
 - (3) Encourage greater diversity of population with particular attention to young adults and senior citizens;
and
 - (4) Encourage a more economic and energy-efficient use of the Town's housing supply while maintaining the appearance and character of the Town's single-family neighborhoods.
- B. Conditions and requirements applicable to all accessory apartments.
- (1) General.
 - (a) There shall be no more than two dwelling units in a structure, and no more than two dwelling units on a lot.
 - (b) There shall be no boarders or lodgers within either dwelling unit.
 - (c) No structure that is not connected to the public water and sanitary sewer systems shall have an accessory apartment.
 - (d) The owner of the property on which the accessory apartment is to be created shall occupy one or the other of the dwelling units, except for temporary absences as provided in Subsection B (1) (e). For the purposes of this section, the "owner" shall be one or more individuals who constitute a family, who hold title directly or indirectly to the dwelling, and for whom the dwelling is the primary residence...
 - (2) Exterior appearance of a dwelling with an accessory apartment. The accessory apartment shall be designed so that the appearance of the structure maintains that of a one-family dwelling....
 - (3) Off-street parking. There shall be provided at least two off-street parking spaces for the principal dwelling unit and at least one off-street parking space for the accessory apartment....
- C. By-right accessory apartments shall be permitted so long as the requirements set forth in the §135-19B are satisfied and the following criteria in this section are met:

- (1) The lot area shall be at least 10,000 square feet.
 - (2) The apartment shall be located in the principal structure.
 - (3) The maximum gross floor area of the by-right accessory apartment shall not exceed 1,000 square feet.
 - (4) There shall not be more than two bedrooms in a by-right accessory apartment.
 - (5) There shall be no enlargements or extensions of the dwelling in connection with any by-right accessory apartment except for minimal additions necessary to comply with building, safety or health codes, or for enclosure of an entryway, or for enclosure of a stairway to a second or third story.
 - (6) The entire structure containing the by-right accessory apartment must have been in legal existence for a minimum of five years at the time of application for a by-right accessory apartment.
- D. Special permit accessory apartments. If a property owner cannot satisfy the criteria for by-right accessory apartments that are set forth in § 135-19C above, the property owner may apply for a special permit from the Board of Appeals....
- E. Accessory structure apartments. Notwithstanding any provisions of this Zoning By-Law that state an accessory apartment shall be located in a structure constructed as a detached one-family dwelling and the prohibition in § 135-35D against having more than one dwelling on a lot, the Board of Appeals may grant a special permit as provided in § 135-16, Table 1, line 1.22C, to allow the construction of an accessory apartment in an existing accessory structure which is on the same lot in the RS, RT, KO, RM or CN District as an existing one-family dwelling provided:
- (1) Lot area is at least 18,000 square feet if in the RS, RT, or CN District, at least 33,000 square feet if in the RO District, and at least 125,000 square feet if in the RM District;
 - (2) The structure containing the accessory structure apartment was in legal existence for a minimum of five years and had a minimum of 500 square feet of gross floor area as of five years prior to the time of application;
 - (3) The maximum gross floor area of the accessory structure apartment does not exceed 1,000 square feet. An addition to an accessory structure may be permitted, but no addition shall be allowed which increases the gross floor area of the structure to more than 1,000 square feet. The gross floor area for the accessory apartment shall not include floor area used for any other permitted accessory use. The accessory apartment cannot contain floor area that has been designed, intended or used for required off-street parking to serve the principal dwelling;...

Appendix B — City of Santa Cruz, California, Title 24, Zoning Ordinance, Chapter 24.16, Part 2: ADU Zoning Regulations

24.16.100 Purpose.

The ordinance codified in this part provides for accessory dwelling units in certain areas and on lots developed or proposed to be developed with single-family dwellings. Such accessory dwellings are allowed because they can contribute needed housing to the community's housing stock. Thus, it is found that accessory units are a residential use which is consistent with the General Plan objectives and zoning regulations and which enhances housing opportunities that are compatible with single-family development...

24.16.120 Locations Permitted.

Accessory dwelling units are permitted in the following zones on lots of 5000 square feet or more...

24.16.130 Permit Procedures.

The following accessory dwelling units shall be principally permitted uses within the zoning districts specified in Section 24.16.120 and subject to the development standards in Section 24.16.160.

1. Any accessory dwelling unit meeting the same development standards as permitted for the main building in the zoning district, whether attached or detached from the main dwelling.
2. Any single story accessory dwelling unit.

Any accessory dwelling unit not meeting the requirements above shall be conditionally permitted uses within the zoning districts specified in Section 24.16.120 and shall be permitted by administrative use permit at a public hearing before the zoning administrator, subject to the findings per Section 24.16.150 and the development standards in Section 24.16.160...

24.16.160 Design and Development Standards.

All accessory dwelling units must conform to the following standards:

1. **Parking.** One parking space shall be provided on-site for each studio and one bedroom accessory unit. Two parking spaces shall be provided on site for each two bedroom accessory unit. Parking for the accessory unit is in addition to the required parking for the primary residence. (See Section 24.16.180 for parking incentives.)
2. **Unit Size.** The floor area for accessory units shall not exceed five hundred square feet for lots between 5000 and 7500 square feet. If a lot exceeds 7500 square feet, an accessory unit may be up to 640 square feet and, for lots in excess of 10,000 square feet, a unit may be up to 800 square feet. In no case may any combination of buildings occupy more than thirty percent of the required rear yard for the district in which it is located, except for units which face an alley, as noted below. Accessory units that utilize alternative green construction methods that cause the exterior wall thickness to be greater than normal shall have the unit square footage size measured similar to the interior square footage of a traditional frame house.
3. **Existing Development on Lot.** A single-family dwelling exists on the lot or will be constructed in conjunction with the accessory unit.
4. **Number of Accessory Units Per Parcel.** Only one accessory dwelling unit shall be allowed for each parcel...

24.16.170 Deed Restrictions.

Before obtaining a building permit for an accessory dwelling unit the property owner shall file with the county recorder a declaration of restrictions containing a reference to the deed under which the property was acquired by the present owner and stating that:

1. The accessory unit shall not be sold separately.
2. The unit is restricted to the approved size.
3. The use permit for the accessory unit shall be in effect only so long as either the main residence, or the accessory unit, is occupied by the owner of record as the principal residence...

26.16.180 Zoning Incentives.

The following incentives are to encourage construction of accessory dwelling units.

1. **Affordability Requirements for Fee Waivers.** Accessory units proposed to be rented at affordable rents as established by the city, may have development fees waived per Part 4 of Chapter 24.16 of the Zoning Ordinance...
2. **Covered Parking.** The covered parking requirement for the primary residence shall not apply if an accessory dwelling unit is provided...

24.16.300 Units Eligible for Fee Waivers.

Developments involving residential units affordable to low or very-low income households may apply for a waiver of the following development fees:

1. Sewer and water connection fees for units affordable to low and very low income households.
2. Planning application and planning plan check fees for projects that are one hundred percent affordable to low and very-low income households.
3. Building permit and plan check fees for units affordable to very-low income households.
4. Park land and open space dedication in-lieu fee for units affordable to very low income households.
5. Parking deficiency fee for units affordable to very-low income households.
6. Fire fees for those units affordable to very-low income households.
(Ord. 93-51 § 6, 1993).

24.16.310 Procedure for Waiver of Fees.

A fee waiver supplemental application shall be submitted at the time an application for a project with affordable units is submitted to the city.

(Ord. 93-51 § 6, 1993)

Appendix C — City of Portland, Oregon, Title 33, Chapter 33.205: Accessory Dwelling Units

33.205.010 Purpose

Accessory dwelling units are allowed in certain situations to:

- Create new housing units while respecting the look and scale of single-dwelling development;
- Increase the housing stock of existing neighborhoods in a manner that is less intense than alternatives;
- Allow more efficient use of existing housing stock and infrastructure;
- Provide a mix of housing that responds to changing family needs and smaller households;
- Provide a means for residents, particularly seniors, single parents, and families with grown children, to remain in their homes and neighborhoods, and obtain extra income, security, companionship and services; and
- Provide a broader range of accessible and more affordable housing.

33.205.020 Where These Regulations Apply

An accessory dwelling unit may be added to a house, attached house, or manufactured home in an R zone, except for attached houses in the R20 through R5 zones that were built using the regulations of 33.110.240.E, Duplexes and Attached Houses on Corners.

33.205.030 Design Standards...

C. Requirements for all accessory dwelling units. All accessory dwelling units must meet the following:

1. Creation. An accessory dwelling unit may only be created through the following methods:
 - a. Converting existing living area, attic, basement or garage;
 - b. Adding floor area;
 - c. Constructing a detached accessory dwelling unit on a site with an existing house, attached house, or manufactured home; or
 - d. Constructing a new house, attached house, or manufactured home with an internal or detached accessory dwelling unit.
2. Number of residents. The total number of individuals that reside in both units may not exceed the number that is allowed for a household...
5. Parking. No additional parking is required for the accessory dwelling unit. Existing required parking for the house, attached house, or manufactured home must be maintained or replaced on-site.
6. Maximum size. The size of the accessory dwelling unit may be no more than 33% of the living area of the house, attached house, or manufactured home or 800 square feet, whichever is less...

D. Additional requirements for detached accessory dwelling units. Detached accessory dwelling units must meet the following.

1. Setbacks. The accessory dwelling unit must be at least:

- a. 60 feet from the front lot line; or
 - b. 6 feet behind the house, attached house, or manufactured home.
2. Height. The maximum height allowed for a detached accessory dwelling unit is 18 feet.
 3. Bulk limitation. The building coverage for the detached accessory dwelling unit may not be larger than the building coverage of the house, attached house, or manufactured home. The combined building coverage of all detached accessory structures may not exceed 15 percent of the total area of the site...

33.205.040 Density

In the single-dwelling zones, accessory dwelling units are not included in the minimum or maximum density calculations for a site. In all other zones, accessory dwelling units are included in the minimum density calculations, but are not included in the maximum density calculations.

Appendix D — Town of Barnstable, Massachusetts, Chapter 9, Article II - Accessory Apartments and Apartment Units

§ 9-12. Intent and purpose.

- A. The intent of this article is to provide an opportunity to bring into compliance many of the currently unpermitted accessory apartments and apartment units in the Town of Barnstable, as well as to allow the construction of new dwelling units accessory to existing single-family homes to create additional affordable housing.
- B. This article recognizes that although unpermitted and unlawfully occupied, these dwelling units are filling a market demand for housing at rental costs typically below that of units which are and have been lawfully constructed and occupied.
- C. It is in the public interest and in concert with its obligations under state law, for the Town of Barnstable to offer a means by which so-called unpermitted and illegal dwelling units can achieve lawful status, but only in the manner described below.
- D. It is the position of the Town of Barnstable that the most appropriate mechanism for allowing for the conversion of unlawful dwelling units to lawful units is found in MGL c. 40B, §§ 20 to 23, the so-called "Comprehensive Permit" program. This provision of state law encourages the development of low- and moderate-income rental and owner-occupied housing and provides a means for the Board of Appeals to remove local barriers to the creation of affordable housing units. These barriers include any local regulation such as zoning and general ordinances that may be an impediment to affordable housing development.
- E. The Local Comprehensive Plan states that the Town should commit appropriate resources to support affordable housing initiatives. Under this article, the Town commits the following resources to support this affordable housing initiative:
 - (1) Waiver of fees for the inspection and monitoring of the properties identified under this article;
 - (2) Designation of Town staff to assist the property owner in navigating through the process established under this article;
 - (3) To the extent allowable by law, the negative effect entailed by the deed restriction involved will be reflected in the property tax assessment; and
 - (4) To assist property owners in locating available municipal, state and federal funds for rehabilitating and upgrading the properties identified under this article.
- F. The Local Comprehensive Plan supports, in conjunction with a variety of other strategies, the conversion of existing structures for use as affordable housing...

§ 9-14. Amnesty program.

Recognizing that the success of this article depends, in part, on the admission by real property owners that their property may be in violation of the Zoning Ordinances of the Town, Editor's Note: See Ch. 240, Zoning. the Town hereby establishes the following amnesty program:

- A. The threshold criteria for units being considered as units potentially eligible for the amnesty program are:
 - (1) Real property containing a dwelling unit or dwelling units for which there does not exist a validly issued variance, special permit or building permit, does not qualify as a lawful, nonconforming use or structure, for any or all the units, and that was in existence on a lot of record within the Town as of January 1, 2000; or

(2) Real property containing a dwelling unit or dwelling units which were in existence as of January 1, 2000, and which have been cited by the Building Department as being in violation of the Zoning Ordinance; and...

B. The procedure for qualifying units that meet the threshold criteria for the amnesty program is as follows:

(1) The unit or units must either be a single unit accessory to an owner occupied single-family dwelling or one or more units in a multifamily dwelling where there exists a legal multifamily use but one or more units are currently unpermitted;

(2) The unit(s) must receive a site approval letter under the Town's local Chapter 40B program;

(3) The property owner must agree that if s/he receives a comprehensive permit, the unit or units for which amnesty is sought will be rented to a person or family whose income is 80% or less of the area median income (AMI) of Barnstable-Yarmouth Metropolitan Statistical Area (MSA) and shall further agree that rent (including utilities) shall not exceed the rents established by the Department of Housing and Urban Development (HUD) for a household whose income is 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area. In the event that utilities are separately metered, the utility allowance established by the Barnstable Housing Authority shall be deducted from HUD's rent level.

(4) The property owner must agree, that if s/he receives a comprehensive permit, that s/he will execute a deed restriction for the unit or units for which amnesty is sought, prepared by the Town of Barnstable, which runs with the property so as to be binding on and enforceable against any person claiming an interest in the property and which restricts the use of one or more units as rental units to a person or family whose income is 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area (MSA)...

§ 9-15. New units accessory to single-family owner-occupied dwellings.

For a proposed new unit to be eligible for consideration under the local chapter 40B program, it must be a single unit, accessory to an owner-occupied single-family dwelling, to be located within or attached to an existing residential structure or within an existing building located on the same lot as said residential structure and comply with the following:

A. The unit(s) must receive a site approval letter under the Town's local Chapter 40B program;

B. The property owner must agree that if s/he receives a comprehensive permit, the accessory dwelling unit will be rented to a person or family whose income is 80% or less of the area median income (AMI) of Barnstable-Yarmouth Metropolitan Statistical Area (MSA) and shall further agrees that rent (including utilities) shall not exceed the rents established by the Department of Housing and Urban Development (HUD) for a household whose income is 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area. In the event that utilities are separately metered, the utility allowance established by the Barnstable Housing Authority shall be deducted from HUD's rent level.

C. The property owner must agree, that if s/he receives a comprehensive permit, that s/he will execute a deed restriction for the unit, prepared by the Town of Barnstable, which runs with the property so as to be binding on and enforceable against any person claiming an interest in the property and which restricts the use of the one unit as a rental unit to a person or family whose income is 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area (MSA)...

Appendix E — Town of Wellfleet, Massachusetts, 6.21 Affordable Accessory Dwelling Units

Purpose: For the purpose of promoting the development of affordable rental housing in Wellfleet for year-round residents, a maximum of three affordable accessory dwelling units per lot may be allowed subject to the requirements, standards and conditions listed below:

6.21.1 Up to three affordable accessory dwelling units per lot may be allowed in any district by Special Permit from the Zoning Board of Appeals.

6.21.2 Affordable accessory dwelling units created under this by-law shall be occupied exclusively by income-eligible households, as defined by the guidelines in numbers 6.21.4 and 6.21.5 below. The affordability requirements of this by-law shall be imposed through conditions attached to the Special Permit issued by the Zoning Board of Appeals. No accessory apartment shall be constructed or occupied until proof of recording is provided to the Inspector of Buildings.

6.21.3 Requirements and Standards

- A. Affordable accessory dwelling units may be located within or attached to a principal dwelling, principal structure, a garage or constructed as a detached unit.
- B. Affordable accessory dwelling units shall not be larger than one thousand two hundred (1,200) square feet of Livable Floor Area as that term is defined in Section II of this Zoning By-law.
- C. Affordable accessory dwelling units within or attached to a principal dwelling, principal structure or garage that is pre-existing nonconforming shall not increase the nonconforming nature of that structure, except that any pre-existing accessory building may be eligible for conversion to an affordable accessory dwelling unit.
- D. Newly constructed detached accessory units shall comply with all applicable provisions of the Zoning By-law unless they are specifically waived by this by-law. Newly constructed detached accessory units shall comply with all setback requirements listed in Sections 5.4.2 of this Zoning By-law.
- E. Owners of residential property may occupy as a primary residence either the principal or accessory dwelling. For the purposes of this section, the "owner" shall mean one who holds legal or beneficial title.
- F. Septic systems are required to meet current Title 5 standards and shall be reviewed and approved by the Health Agent.
- G. The Inspector of Buildings and Health Agent shall inspect the premises for compliance with public safety and public health codes.
- H. No affordable accessory dwelling unit shall be separated by ownership from the principal dwelling unit or principal structure. Any lot containing an affordable accessory dwelling unit shall be subject to a recorded restriction that shall restrict the lot owner's ability to convey interest in the affordable accessory dwelling unit, except leasehold estates, for the term of the restriction.

6.21.4 All occupants of the affordable accessory dwelling unit shall upon initial application and annually thereafter on the first of September, submit to the Town or its agent necessary documentation to confirm their eligibility for the dwelling unit. Specifically, all dwelling units must be rented to those meeting the guidelines for a low or moderate-income

family. For the purpose of this section, low income families shall have an income less than eighty (80) percent of the Town of Wellfleet median family income, and moderate income families shall have an income between eighty (80) and one hundred twenty (120) percent of the Town of Wellfleet median family income, as determined by the United States Department of Housing and Urban Development (HUD) Published Income Guidelines, and as may from time to time be amended.

6.21.5 Maximum rents shall be established in accordance with HUD published Fair Market Rental Guidelines. Property owners are required to submit to the Town or its agent information on the rents to be charged. Each year thereafter on the first of September, they shall submit information on annual rents charged to the Town or its agent. Forms for this purpose shall be provided. Rents may be adjusted annually in accordance with amendments to the Fair Market Rental Guidelines.

6.21.6 Procedure

- A. The property owner shall complete and submit an application for a Special Permit to the Zoning Board of Appeals in accordance with the Wellfleet Zoning Board of Appeals Rules and Procedures.
- B. The Zoning Board of Appeals shall hold a public hearing in accordance with the procedures and requirements set forth in Section 9 of Massachusetts General Law, Chapter 40A and the Wellfleet Zoning By-law, Section 8.4.2 .
- C. Appeal under this section shall be taken in accordance with Section 17 of Massachusetts General Law, Chapter 40A.
- D. The property owner shall complete and submit to the Inspector of Buildings an application for a Building Permit to allow a change in use.
- E. The property owner shall obtain a Certificate of Occupancy from the Inspector of Buildings prior to the affordable accessory dwelling unit being occupied.

Penalty – Failure to comply with any provision of this section may result in fines established in Section 8.3 of the Wellfleet Zoning By-laws.

Appendix F — Fauquier County, Virginia Zoning Ordinance

ARTICLE 5 — ADMINISTRATIVE PERMITS, SPECIAL PERMITS AND SPECIAL EXCEPTIONS

5-104 Standards for an administrative permit for an Efficiency Apartment

1. Such a unit shall not be occupied by more than two persons.
2. Not more than one such unit shall be located on a lot.
3. Such a unit shall contain no more than 600 square feet of gross floor area or 25% of the total gross floor of the dwelling, whichever is greater.
4. Such a unit shall be located only on the same lot as the residence of the owner of the lot.
5. Architectural features of such a unit shall conform with the single family character of the neighborhood (e.g., no additional front doors).

5-105 Standards for an administrative permit for a Family Dwelling Unit

1. Such a unit shall not be occupied by more than five (5) persons, at least one of whom must be the natural or adopted parent, grandparent, child, grandchild, brother or sister of the owner and occupant of the single family residence on the same lot. Or, the lot owner may live in the family dwelling unit and allow such family members to reside in the main house. In either case, the lot owner must reside on the property.
2. Such a unit may be 1,400 square feet of gross floor area.
3. No dwelling units other than the principal structure (a single family dwelling) and one such family dwelling unit shall be located on one lot..

ARTICLE 6 - ACCESSORY USES, ACCESSORY SERVICE USES AND HOME OCCUPATIONS

6-102 Permitted Accessory Uses

Accessory uses and structures shall include, but are not limited to, the following uses and structures, provided that such uses or structure shall be in accordance with the definition of Accessory Use contained in Article 15...

9. Guest house or rooms for guests in an accessory structure, but only on lots of at least two (2) acres and provided such house is without kitchen facilities, is used for the occasional housing of guests of the occupants of the principal structure and not as rental units or for permanent occupancy as housekeeping units...
14. Quarters of a caretaker, watchman or tenant farmer, and his family, but only in the Rural Districts at a density not to exceed one (1) unit per fifty (50) acres...
31. The letting for hire of not more than two rooms to not more than two persons for periods no shorter than one month...

Maintenance and property value.

With the choice of renting out a unit for extra income, it's easier for homeowners to ensure that their homes are well maintained, keeping property values up. Having potential rental income associated with a property also increases its value.

How to Make Accessory Apartments Work in Your Community

Thousands of communities have had success with accessory apartments. Some affluent communities consider accessory apartments so crucial to their affordable housing strategy that they offer incentives to homeowners to build accessory units. Or a town may choose to make accessory units a regular, unregulated use, or a regulated variance or special use. Princeton Township, New Jersey has successfully had accessory apartments for decades without any ordinance; the only requirement is self reporting that an accessory apartment is part of an owner-occupied dwelling.

Some residents are concerned that the new accessory apartment units will not fit aesthetically with the neighborhood, or that the neighborhood will become more transient, or that there will be more traffic. Communities may choose to limit the number of occupants, or set parking requirements and design standards.

Falmouth, Maine recently began allowing accessory dwelling units, contingent on site plan approval. Falmouth's ordinance requires a house with an accessory apartment to have only one main entrance; the accessory apartment entrance must be secondary to (i.e. not confused with) the main entrance. It also allows accessory units in a new or existing structure such as a barn or garage. Falmouth's minimum size for an accessory dwelling unit is 350 square feet. A well-designed and livable studio apartment consisting of one room with kitchenette, closets and a small bathroom can be as small as 250 square feet - perfect for a graduate student or retired person. (See additional resources for how to view the Falmouth ordinance in detail.)

Community Strategy and Partnerships

Towns that want to actively encourage the addition of accessory units may be more successful if they publicize their strategy. A public process also plants the idea in the minds of middle-aged people who may be thinking of their own retirement or that of their aging parents.

Partnering with community organizations helps to educate the public and facilitate the process of finding people who would benefit from adding an accessory unit to their home. A community network can provide information and referrals for trustworthy contractors, and help provide matching services between homeowners and renters. Neighborhood associations, churches, agencies on aging and housing, and transportation providers would all make good partners in this process.

Accessory apartments can provide a reasonable, workable, smart approach to creating affordable housing options - good for homeowners and their community.

ADDITIONAL RESOURCES

Falmouth Zoning Ordinance

www.town.falmouth.me.us under "jump to section": select Ordinances, then Zoning and Site Plan Review Ordinance, section 5.22.1.

"Accessory Apartments: Using surplus space in single family houses" American Planning Association. Planning Advisory Service Report (PAS) #365 at <http://www.planning.org/pas/chron.html>

"Community-Based Housing for the Elderly" American Planning Association. Planning Advisory Service Report (PAS) # 420 at <http://www.planning.org/pas/casap.html>

"Frail Elders and the Suburbs" Hare, Patrick, Generations, Spring 1992 Vol. 16 Issue 2, p35.

American Association of Retired Persons (AARP) Housing Program
<http://www.aarp.org/life/housingchoices/Articles/a2004-02-26-homewithinhome.html>

Canada Mortgage and Housing Corporation (CMHC)
<http://www.cmhc-schl.gc.ca/en/mhual/gdlp/afadv/bore/cecesu>

City of Santa Cruz Accessory Dwelling Unit Development Program <http://www.ci.santa-cruz.ca.us/pl/hcd/ADU/adu.html>

Introduction to The Problem

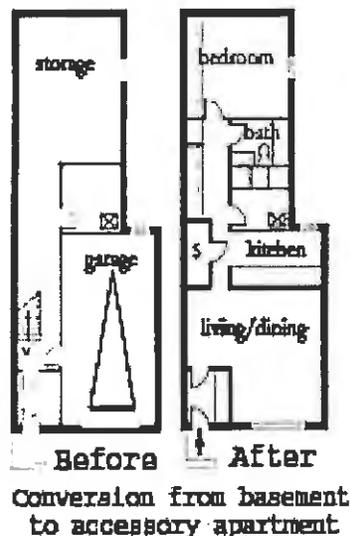
Towns are struggling with ways to provide affordable housing options without converting farms and forestland, or creating apartment complexes that are incongruent with the town's aesthetic. Homeowners and towns struggle under the burden of building infrastructure for new developments. Furthermore, Maine's aging population wants to stay in their homes, but taxes and maintenance costs make this difficult.

The Solution: Accessory Apartments

Allowing accessory apartments can provide a solution to all of these problems. Nationwide, one-third of single family homes have enough surplus space to accommodate an accessory apartment.

An accessory apartment, also known as a "granny flat", "accessory dwelling unit" (ADU, "secondary unit" or single-family conversion" is a self-contained second living unit that is built into or attached to an existing single family dwelling. In some cases, accessory apartments are cottages, guest houses, or a converted garage or barn. It has its own kitchen, bathroom, and private entrance.

In all cases, the accessory apartment or cottage is smaller than the main unit, similar in architectural styling, and meant to look like part of the main house. In some cases, the unit is used for a relative or caretaker who needs more privacy than would be possible in the main house. In other cases, the apartment is rented out to provide additional income to the owner of the house.



Advantages of Accessory Apartments

Provides affordable housing while preserving community character and saving tax dollars.

Accessory dwelling units make good affordable housing. Just one accessory apartment per 20 homes has a modest effect on a neighborhood, but townwide this can provide a significant amount of affordable housing. Affordable apartments dispersed within single family neighborhoods, rather than clustered together in a new complex, helps maintain a family neighborhood culture. In addition, local planning review will ensure that new units will fit with the character of the neighborhood. On the financial side, a town can add new units (and new tax revenue) without having to provide utility infrastructure for a whole new development.

Allows the elderly to live independently.

Renting out a unit to a family member, caretakers, or younger person who can help out with chores can provide the extra income or assistance it takes to allow an aging person to stay in their home. Allowing an aging person to stay in his or her neighborhood can be much less disruptive, and at the same time reduces the cost of caring for them.

Creates neighborhood diversity and stability.

Providing housing options within a neighborhood ensures that people can stay in the neighborhood as they move through different stages in life. A young family can buy a house and rent out the accessory unit to help cover the mortgage. While raising children, they can use the unit for an aging relative, or as an extra room for guests. Later in life, they can rent out the apartment to a tenant or caretaker or move into it themselves. The options help provide diversity and stability.

Makes efficient use of existing housing.

Sprawl in Maine has been more a function of our population spreading out than of growing. Many people moved out to the suburbs to raise a family, but once their children are grown, they end up living in a house with more capacity than they need. Accessory apartments make use of the extra space and share the cost of heat and maintenance while providing private living quarters.