

Topic:	Transfer of Development Rights; Affordable Housing; Workforce Housing Regulations
Resource Type:	
State:	New York
Jurisdiction Type:	Municipal
Municipality:	Town of Brookhaven
Year (adopted, written, etc.):	Unknown
Community Type - applicable to:	Suburban; Rural
Title:	Town of Brookhaven Transfer of Development Rights Ordinance
Document Last Updated in Database:	May 1, 2017

Abstract

The Town of Brookhaven has determined that a transfer of development rights program is necessary to prevent adverse impacts due to inappropriate development, to facilitate the objectives of the Comprehensive Land Use Plan and to provide relief in cases of hardship. This is accomplished through a Transfer of Development Rights Program and Transfer of Development Rights Clearinghouse of which the establishment and implementation of such is given in this local law, including the use of such a program in association with Multiple Family Housing, Planned Retirement Communities and Planned Retirement Congregate Housing Communities.

Resource

Town of Brookhaven NY TDR
Code of the Town of Brookhaven NY
Chapter 85: Zoning
Article XXXVA Transfer of Development Rights (TDR)

§ 85-408. Purpose.

A. Purpose and intent. In order to prevent potentially significant and adverse impacts associated with inappropriate development and to assure the preservation of vital natural resources, open spaces, historically significant properties, and farmland, to provide for the orderly growth and development of the Town and to facilitate development in accordance with the Comprehensive Plan, the Town Board of the Town of Brookhaven has determined that it is necessary and appropriate to establish a transfer of development rights program.

B. Transfer of Development Rights Program. The Town Board recognizes that the goals and objectives of the Open Space and Farmland Preservation Programs and the transfer of development rights initiatives may not be fully achieved absent the establishment of a

Transfer of Development Rights Program. Therefore, this article authorizes the establishment of a Transfer of Development Rights Program in order to facilitate the goals and objectives of said programs as well as those of the Comprehensive Land Use Plan and, further, to provide relief in cases of hardship.

C. The purpose of the Transfer of Development Rights Program shall include, but not be limited to, the following:

(1) To assist in creating and stimulating a market for the acquisition and disposition of development rights.

(2) To provide an available vehicle for the acquisition of development rights of land from property owners as a result of the application of the provisions of this article to their property.

(3) To promote and manage the orderly growth and development of land by the acquisition, holding and disposition of development rights or land.

(4) To facilitate achievement of the comprehensive planning goals of the Town of Brookhaven, including the Town Code and Zoning Ordinance, by the acquisition, holding and disposition of development rights or land.

(5) To facilitate future planning of development and to maintain public land reserve with respect thereto by the acquisition, holding and disposition of development rights or land.

(6) To provide for open spaces and to preserve and protect vital natural resources by the acquisition and holding of development rights or land.

§ 85-408.1. Transfer of Development Rights Clearinghouse.

A. Purpose and intent. The farmland and open space programs are provisions which are necessary in order to achieve the goals of the Comprehensive Plan and to facilitate the orderly growth and development of the Town in addition to promoting the health, safety and welfare of the public. The Town Board recognizes that in some instances such provisions may cause hardship for property owners affected thereby. In order to provide a form of relief in cases of hardship, the Transfer of Development Rights Clearinghouse may also serve to provide an available vehicle for the acquisition of development rights or land from property owners who demonstrate hardship as a result of the application to their property of the provisions of the Chapter 85 of the Code and to provide an available vehicle for the acquisition of development rights or land from property owners who make application pursuant to the provisions contained herein. The Transfer of Development Rights Clearinghouse may also serve to assist in creating and stimulating a market for the acquisition and disposition of development rights located throughout the Town.

B. Acquisition of interests. The acquisition of interests or rights in real property for the purposes of this article and the holding and disposition thereof for and in accordance with

the purposes of this article are hereby declared to be for the public purpose of achieving the land policy and land planning goals and objectives of the Town of Brookhaven, whether or not at the time of acquisition or expenditure of funds for acquisition or maintenance any particular future use, public or private, is contemplated for such real property. Appropriations for, issuance of bonds or notes for and taxation for such acquisition, holding and disposition are hereby declared to be for a valid public purpose. Such acquisition, holding and management and disposition are hereby declared to be for a valid public purpose.

§ 85-408.2. Transfer of Development Rights Clearinghouse establishment.

Establishment of Transfer of Development Rights (TDR) Clearinghouse. There is hereby created a Town of Brookhaven Transfer of Development Rights Clearinghouse to be used by the Town exclusively for the acquisition, holding and management and disposition of interests or rights in real property pursuant to this article. The Town Board of the Town of Brookhaven may from time to time make appropriations for said clearinghouse, provide moneys for said Clearinghouse by borrowing pursuant to the Local Finance Law and receive moneys for said clearinghouse from any other lawful source, including receipts resulting from management and disposition of such interests or rights in real property, all in accordance with applicable law. The Town Supervisor may invest moneys received for said clearinghouse in accordance with and as permitted by law.

§ 85-408.3. Implementation of TDR Program and TDR Clearinghouse.

A. The Town Board of the Town of Brookhaven is authorized to take any actions that it deems necessary and appropriate to implement and achieve the purposes of this article, including but not limited to the following:

(1) Acquire by purchase, condemnation, exchange, gift, grant, devise, lease or otherwise interests or rights in real property situate in the Town for the purposes of this article. Such interest or rights in real property may consist of the fee or any lesser interest, development right, partial development right, easement, conservation easement, covenant or other contractual right necessary or desirable to achieve the purposes of this article.

(2) Hold and manage such interests or rights in real property for and in accordance with the purposes of this article. The Town Board may enter into a lease or other agreement for the purpose of maintaining such interests or rights and making appropriate use of such interests or rights while such interests or rights are held in a public land reserve or otherwise, provided that such lease or other agreement is consistent with the purpose of this article.

(3) Establish monetary value of the transfer credits, may apply for and obtain grants and may dispose of such interests or rights in real property for and in accordance with the purposes of this article.

(4) In conjunction with the Planning Board, the Town Board of the Town of Brookhaven may facilitate the implementation of overall development concepts, programs for development and development sections pursuant to this article.

(5) Assemble building sites or other land areas suitable for use under the provisions of said article and then hold, sell, lease or otherwise make such sites or areas available for such appropriate use.

(6) Appropriate restrictions on properties, which it proposes to dispose of as a condition of sale, lease or other agreement.

(7) Adopt and amend rules and regulations with respect to procedures and policies to be utilized in implementing this article.

B. Planning Board authority.

(1) The Planning Board is hereby authorized and, at the direction of the Town Board, may from time to time make investigations, maps, reports and recommendations with respect to the acquisition, holding and management and disposition of interests or rights in real property pursuant to this article. The Planning Board shall maintain records of such investigations, maps, reports and recommendations. The Planning Board may also make recommendations with respect to procedures and policies to be utilized in implementing this article.

§ 85-408.4. Multiple Family Housing (ME), Planned Retirement Community (PRC) and Planned Retirement Congregate Housing Community (PRCHC) transfer of development rights.

The following guidelines shall govern the transfer of development rights associated with MF, PRC and PRCHC:

A. The Town of Brookhaven recognized, in the adoption of the 1996 Land Use Plan that retail development, or more accurately over development, has resulted in the proliferation of strip commercial zoning patterns in excess of population needs along many of the Town's commercial corridors. The transfer of commercial development rights in order to better meet the future housing needs of Brookhaven residents should be encouraged both through the adaptive reuse of abandoned and under-performing centers and through the transfer of development rights from abandoned and underutilized centers to appropriately situated housing developments. Therefore, one additional unit may be considered in connection with the elimination of each 1,000 square feet of gross retail space located on federal, state, county or Town arterial highways or connector roadways.

B. Residential development rights shall not be transferred out of the school district in which they are located without the review and approval of a super-majority of the Town Board.

C. Development rights may only be transferred in accordance with the provisions contained herein.

D. Fractional development rights may be combined in order to create a full development right.

E. There shall be no TDR mandate associated with the adaptive reuse of commercial centers or for the development of housing projects where 100% of all units are maintained as workforce housing or affordable housing units in accordance with Town of Brookhaven standards.

F. The purchase and use of development credits shall only be authorized in accordance with an identified development application. The acquisition of credits from the clearinghouse unrelated to an identified development application shall be prohibited.

G. The Town of Brookhaven may permit a payment in lieu of the transfer of development credits required pursuant to Article IX and Article XI pertaining to MF and PRC Residence Districts. Said payment shall represent all associated costs to the Town of Brookhaven for the acquisition of an identical number of development credits required in connection with the subject application.

H. The proposed application using transfer of development rights shall otherwise comply with all provisions contained within the Multiple Family (ME), Planned Retirement Community (PRC) and Planned Retirement Congregate Housing Community (PRCHC) Districts.

§ 85-408.5. General severability.

If any clause, sentence, paragraph, section or item of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not impair nor invalidate the remainder hereof, but such adjudication shall be confined in its operation to the clause, sentence, paragraph, section or item directly involved in the controversy in which such judgment shall have been rendered.