

Topic: Open Space Preservation; Incentive Zoning
Resource Type: Regulations
State: New York
Jurisdiction Type: Municipal
Municipality: Town of Clifton Park
Year (adopted, written, etc.): 2005
Community Type - applicable to: Suburban; Rural
Title: Town of Clifton Park Open Space Incentive Zoning
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Abstract

This law gives the Town Board to grant incentives to private land developers to advance the town's specific policies in accordance with the Town's GEIS for the western lands of Clifton Park, the 2003 Comprehensive Plan update, the 2003 Open Space Plan, and in coordination with other community planning mechanisms or land use techniques.

Resource

Town of Clifton Park NY Open Space Incentive Zoning
Code of the Town of Clifton Park NY
Chapter 208: Zoning
General Code
ARTICLE VB Open Space Incentive Zoning [Added 5-9-2005 by L.L. No. 5-2005]

§ 208-43.10. Purpose and objectives.

- A. It is the purpose of this article to empower the Town Board to grant incentives to the private sector engaged in the land development process to advance the town's specific policies in accordance with the Town's GEIS for the western lands of Clifton Park, the 2003 Comprehensive Plan update, the 2003 Open Space Plan, and in coordination with other community planning mechanisms or land use techniques.
- B. This authority may be used by the Town Board to assist the following objectives from the Town's GEIS for the western lands, Comprehensive Plan, and Open Space Plan:
 - (1) To protect wildlife nature preserves, watersheds and water quality, highly valued ecological resources and environmentally sensitive areas.

- (2) To protect active farm operations.
- (3) To ensure that all development occurs in an ecologically sound manner.
- (4) To preserve important open spaces; develop a comprehensive trails and pathway system; preserve scenic roads, cultural resources, and historic and archaeological resources.
- (5) To protect wetlands and stream corridors for their benefits to wildlife habitat, flood and stormwater control, groundwater protection, erosion control, and recreation.
- (6) To preserve open space for ecological, aesthetic, and recreational purposes.
- (7) To preserve and enhance the existing diverse residential, rural, and historic character of Clifton Park, and to provide for a diversity of housing.
- (8) To allow for an increase in density on a given site, providing the overall density of the western lands of Clifton Park is balanced.
- (9) To establish permanent easements on Town-identified open space parcels to prevent further development.
- (10) To allow for an increase density of both commercial and residential development within the HM Zone to create a more viable, walkable hamlet community.

§ 208-43.11. Authority.

In accordance with § 261-b of the Town Law of the State of New York, the Town Board is empowered to provide for a system of zoning incentives as the Town Board deems necessary and appropriate, consistent with the purposes and conditions set forth herein.

§ 208-43.12. Applicability.

This article applies only to Western Clifton Park zoning districts: Conservation Residential CR, Hamlet Residential HR, and Hamlet Mixed Use HM Districts in the Town of Clifton Park, as shown on the Town of Clifton Park Zoning Map.

§ 208-43.13. Permitted incentives.

The Town Board may grant the following specific incentives within the procedures set forth in this article:

- A. Incentive A. Single-family residential incentives: increases in single-family dwelling unit density beyond the base density within the HM, HR, or CR Districts.
- B. Incentive B. Commercial, two-family, semidetached, and multifamily residential incentives: increases in commercial uses and two-family dwelling, semidetached dwelling, and multifamily dwelling unit density only in the HM District.

§ 208-43.14. Community benefits or amenities.

- A. The following community benefits or amenities may, at the discretion of the Town Board, be accepted in exchange for an incentive as provided in "Permitted Incentives" above. These community benefits or amenities may be either on or off the site of the subject application and may involve one or more parcels of land. Community benefits or amenities may only be located within the CR District.
 - (1) Permanent conservation easements: agricultural conservation, open space, scenic, ecological, historic or other types of permanent conservation easements would be acceptable, on Town-identified open space parcels within Western Clifton Park. Proof of perpetuity (signed purchase contract or easement title) is required in writing to the Town of Clifton Park Town Board prior to approval of an open space incentive zoning proposal.
 - (2) Permanent protection of land in fee simple for conservation and other community benefit purposes on Town-identified open space parcels within Western Clifton Park. Proof of perpetuity (executed purchase contract or transfer of ownership of title) is required in writing to the Town of Clifton Park Town Board prior to approval of an open space incentive zoning proposal.
 - (3) Cash in accordance with the Special Conditions below, paid to the Town of Clifton Park's dedicated open space fund account for utilization by the Town exclusively for the permanent protection of open space and farmland in Clifton Park. Proposed cash must be placed in an escrow account to be held by the Town and documented in writing to the Town of Clifton Park Town Board prior to approval of an open space incentive zoning proposal.
 - (4) Any combination of the above-listed community benefits or amenities.
- B. These amenities will be in addition to any other mandated requirements pursuant to other provisions of the Town of Clifton Park Code and any other applicable law or

regulation.

§ 208-43.15. Special conditions.

A. All proposed amenities to be provided by the applicant must show a demonstrable benefit to the benefit area.

B. Where Incentive A (increase in single-family residential density) is sought, the Town Board shall only receive amenities per the following conditions:

(1) The incentive granted will be in a one-to-one proportion to the development potential of the unconstrained land, as described in the table below and determined by the Town Board at the time of application.

Determination of Amenity Required for Single-Family Dwelling Unit Incentive

Development	Density Increase	Amenity Required
Single-family residential	1 unit	3 acres unconstrained land

OR

Single-family residential	1 unit	\$30,000
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(2) Residential unit density increases will be granted in increments according to the table above, of double the original base density, or in other words, not to exceed an increase of 100% of the original base density for the incentive site.

C. Where Incentive B (increase in commercial, two-family, semidetached, and/or multifamily residential density) is sought, the Town Board may only receive amenities per the following conditions:

(1) Determination of incentive.

(a) The incentive granted will be in proportion to the development potential of the conservation site provided in terms of unconstrained land, as outlined in the table below and determined by the Town Board at the time of application.

Determination of Amenity Land Required for Commercial, Two-Family, Semidetached, and Multifamily Dwelling Incentives

Development	Density Increase	Amenity Required
Office	1,000 gross square feet	1 acre unconstrained land or \$20,000 (\$20/gross square feet)
Retail	1,000 gross square feet	1.5 acres unconstrained land or \$30,000 (\$30/gross square feet)
Two-family, semidetached, and multifamily apartments or commercial or retail floor space	One over equivalent ground dwelling unit	2 acres unconstrained land or \$20,000

(b) For example, a project that is seeking a density increase of 2,000 square feet of office, 2,000 square feet of retail space, and two residential units beyond the base density would be required to provide nine acres of unconstrained land as a conservation site. Alternatively, \$140,000 could be paid to the Town's open space fund.

(2) Commercial and two-family, semidetached, and multifamily residential density increases will be granted in increments equal to the development potential of the amenity land provided per the above table, of double the original base density, or not to exceed an increase of 100% of the original base density for the incentive site.

§ 208-43.16. Criteria and procedure for approval.

- A. Optional preapplication review. It is recommended that the applicant meet informally with Town planning staff prior to completion of an application for purposes of gathering information for the proposed amenity/incentive exchange. The applicant is advised to review the GEIS, the Comprehensive Plan, the Open Space Plan, and any other materials the Town may have on file regarding the open space incentive zoning program.
- B. Applications requesting incentives in exchange for providing community benefits will be submitted to the Town Board in accordance with adopted procedures for requests to amend this chapter. The application will include the following information:

- (1) The requested incentive.
- (2) The proposed amenity.
 - (a) The location of the proposed conservation site must be demonstrated. The proposed conservation site should be one of the priority open space lands identified in the Land Conservation Plan in the Western Clifton Park GEIS and the Town of Clifton Park Open Space Plan.
 - (b) The site's constrained land and unconstrained land must be mapped, and submitted as part of the application. The proposed unconstrained land area that is the basis for the requested incentive must be specifically identified and highlighted on the map.
 - (c) The base density calculation that is the basis for the proposed exchange for incentives must be provided.
 - (d) The proposed conservation site proposed for permanent protection must include this unconstrained land area and may include constrained land. Any proposed subdivision of land related to the efforts to obtain control of land for the incentive zoning proposal must be approved by the Town as applicable.
- (3) The estimated cash value of the proposed amenity.
- (4) A narrative which demonstrates the following:
 - (a) The benefits to the community, including the benefit area, from the proposed amenity.
 - (b) Consistency with the goals and objectives of the Town's Comprehensive Plan, Open Space Plan, and western lands of Clifton Park GEIS.
 - (c) The relative importance and need for the amenity.
 - (d) That there are 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 may place on these facilities beyond the demand that would be placed on them if the district were developed to its fullest potential.

(e) That all conditions and other applicable requirements of the law are met.

(5) Any other information or support materials as needed or requested by the Town Board.

C. Review by Town Board. Within 45 days of submission of an application, pursuant to Subsection B herein, the Town Board will prepare a brief response to the proposal, outlining in writing the Town Board's determination on whether the proposal is worthy of further consideration and the basis for that determination. The Town Board may engage a consultant to assist in review of the application, the cost of which will be borne by the applicant. Suggested modifications to the proposal may also be provided by the Town Board to the applicant. At this point, the Town Board reserves the right to deny the project. However, with a supporting determination, the proposed application will be transferred to the Planning Board for review.

D. Advisory referral to Planning Board.

(1) The application will be submitted to the Planning Board for its nonbinding advisory opinion to the Town Board. The review at this stage is intended to obtain the input of the Planning Board for the subject land use decision. It is not intended to serve as a site or subdivision review, which would only occur after a decision by the Town Board on the incentive zoning request.

(2) The Planning Board will schedule a public workshop on the application, which may be conducted as part of its regularly scheduled meeting. The intent of the workshop is to share information between the applicant, the Planning Board and interested members of the public. The workshop will not supplant the formal hearing, which will be conducted by the Town Board later in the review process.

(3) Within 45 days of receipt of the application from the Town Board, the Planning Board will prepare an advisory report to the applicant and the Town Board. The Planning Board's report will describe the beneficial aspects of the proposal and make recommendations for the amelioration of any adverse aspects of the proposal. The Planning Board's report and the application will then be transferred back to the Town Board for its final decision on the application. The Planning Board reserves the right to deny the project, and describe why in its findings back to the Town Board.

E. Compliance with SEQRA.

(1) Every decision by the Town Board concerning an application for use of incentive

zoning on a particular project will fully comply with the provisions of SEQRA.

- (2) The applicant will submit a long form environmental assessment, Part 1, to the Town Board after the referral by the Planning Board.
- (3) The Town Board will establish itself as SEQRA lead agency for all applications submitted pursuant to this article.

F. Public hearing by Town Board. Prior to its final decision and in conjunction with its SEQRA review, the Town Board will conduct a public hearing in accordance with the standard procedures for adoption of an amendment to the zoning ordinance or local law. At least five days' notice (14 days if a draft environmental impact statement or supplemental environmental impact statement was required) of the time and place of the hearing will be published in the official newspaper of the Town.

G. Findings and final decision.

- (1) Following the public hearing and completion of the SEQRA process, the Town Board will approve, approve with modifications or conditions or deny the proposed incentive zoning application. A written statement of the findings will be prepared by the Town Board documenting the basis of its decision. The findings will include, but not be limited to, the following:
 - (a) SEQRA: that all requirements of SEQRA have been met, including the required findings under that law.
 - (b) Development capacity: that the proposed project, including the incentive, can be adequately supported by the public facilities available or provided as a result of the project, including but not limited to sewer, water, transportation, waste disposal and fire protection, without reducing the availability of such facilities for projects permitted as of right under the Town of Clifton Park Code.
 - (c) Public benefit: that the public benefit realized by the amenity provided by the applicant is commensurate with the incentive granted by the Town Board, and that there is specifically a demonstrable benefit to the incentive area.
 - (d) Project quality: that the project is in harmony with the purpose and intent of this article and with the stated objectives and will promote the purposes herein, that the project is sufficiently advantageous to render it appropriate for grant of an incentive and that the project will add to the long-term assets

of the Town of Clifton Park.

(e) Comprehensive plan: that the use of incentive zoning for the particular project is consistent with the GEIS, Comprehensive Plan, and Open Space Plan.

(2) The Town Board may impose conditions on a project to ensure that the above findings are ensured through the subsequent plan review and construction phases of the project.

H. Plan review. Following the receipt of a favorable decision by the Town Board, an application for approval may be submitted pursuant to the applicable provisions of the Town of Clifton Park Code.