

Topic: Affordable Housing
Resource Type: Regulation
State: New York
Jurisdiction Type: Municipal
Municipality: Village of Garden City
Year: 2016
Title A Local Law in Connection with the Establishment and Regulation of
Affordable Housing Density Bonus
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Garden City Village enacted an Affordable Housing Density Bonus to promote affordable units within the village. Affordable housing is affordable for those whose income is 80% or less AMI. The density bonus includes a density increase by at least 10% or an increase in floor area ratio, and the additional units created must be dedicated affordable. These bonuses are permitted in any residential or mixed use zones in which five or more residential units are being developed. The ordinance also sets guidelines for permitting, deed, ownership, and conditions for development.

INCORPORATED VILLAGE OF GARDEN CITY
NASSAU COUNTY, NEW YORK
LOCAL LAW NO. 4-2016
A LOCAL LAW IN CONNECTION WITH THE ESTABLISHMENT
AND REGULATION OF AN AFFORDABLE
HOUSING DENSITY BONUS

BE IT ENACTED, by the Board of Trustees of the Village of Garden City, as follows:

Section 1. Purpose.

- A. Pursuant to Judgment issued by the United States District Court for the Eastern District of New York, and to the extent affirmed by the United States Court of Appeals for the Second Circuit, the Village is required to take certain actions in furtherance of development of affordable housing (as defined in that Judgment) within the Village. The Village desires to take additional action in furtherance of the foregoing. Consistent with the Village's adopted policy to foster fair housing, and the terms and provisions of that Judgment, the Village adopts this local law to provide for a system of density bonuses for affordable housing.
- B. This law is intended, and is deemed by the Board of Trustees, to be an addition to the Village's comprehensive plan, and the Affordable Housing Density Bonus authorized and required pursuant to this law is determined to be in conformity with that comprehensive plan.

Section 2. Chapter 200 of the Code of the Village of Garden City is hereby amended, be adding thereto the following Article, to be Article VI.1, to read as follows:

Article VI.1. Affordable Housing Density Bonus.

§200-30.1. Purpose. The purpose of the Affordable Housing Density Bonus is to comply with and codify applicable requirements of federal and State law, and the Judgment of the United States District Court, Eastern District of New York, dated April 22, 2014 under the caption "MHANY Management Inc. and New York Communities for Change, Inc. v. Incorporated Village of Garden City and Garden City Board of Trustees", 05-CV-2301, to the extent affirmed by the United States Court of Appeals for the Second Circuit.

§200-30.2. Definitions. As used in this Article, the following terms shall have the indicated meanings unless the context clearly demonstrates otherwise:

- A. "Affordable Housing" shall mean housing for which a family whose income is 80% or less of the Nassau-Suffolk Metropolitan Statistical Area Median Income (including families defined by the Department of Housing and Urban Development either as "low income," "very low income," or "extremely low income"), whose combined annual rental cost and tenant-paid utilities constitute no more than 30% of its income or for homeowners the annual total of the sum of secured loan principal and interest, private mortgage insurance, property taxes, home insurance, common charges and homeowner-paid utilities does not exceed 30% of said household income.

- B. "Affordable Housing Density Bonus" or "Density Bonus", as used in this Article, shall mean and include an additional density increase equal to at least ten percent of the number of residential units permitted at maximum allowable residential density, or of allowable residential floor area ratio if part of a mixed use development, otherwise permitted for such development pursuant to this Chapter, as determined on the date of submission of a complete application for approval of the first of either a subdivision or site plan. In the event such calculation of additional units shall result in a fractional number of units, the required number of additional units shall be rounded up to the nearest whole number. The additional units or additional residential floor area ratio required by this Article shall be dedicated and occupied for Affordable Housing as provided in this Article. Affordable Housing Density Bonuses may be awarded for developments in any zoning district in the Village in which residential uses, or mixed uses which include residential uses, are permitted.
- C. "Qualified Residential Development" ("QRD") shall mean a development of property in the Village for which a completed zoning amendment, subdivision or site plan application is pending or is submitted on or after the effective date of this Article, and which is proposed to include or allow five (5) or more residential units, including a mixed use development which incorporates five (5) or more residential units.

§200-30.3. Applications for approvals of QRD developments.

- A. Each application for approval of a zoning change, subdivision and/or site plan for a QRD shall include a yield map showing the maximum number of residential units, or residential floor area ratio for mixed use development, which would otherwise be permitted (a) pursuant to zoning regulations applicable to the subject property at the time of the complete application, and (b) any amended or other zoning regulations requested to be made applicable to the subject property. Each such yield map shall include any Density Bonus applicable pursuant to this Article.
- B. Each application for approval of a zoning change, subdivision and/or site plan for a QRD shall identify the Affordable Housing Density Bonus required by this Article. The number of units, or the residential floor area required in a mixed use development, of Affordable Housing shall be specified and included in the conditions of approval given to the QRD applicant by the first applicable Board, and shall be provided by the owner, developer or operator of the QRD pursuant to this Article.
- C. Each approval of an application for a zoning change, subdivision and/or site plan for a QRD given by any Village Board or agency shall include, at a minimum, the conditions of approval required by this Article, and may include such other or further provisions, not inconsistent with this Article, as may be deemed reasonable, necessary or appropriate by such Board or agency.
- D. In granting approval for a zoning change, subdivision and/or site plan in relation to a QRD, the Board of Trustees or other Village Board having authority to grant such approval shall have authority to grant waivers of the otherwise applicable dimensional, bulk or parking

requirements where the same are determined to be necessary in order to achieve the Affordable Housing Density Bonus. Except as otherwise authorized by other law, no such waiver shall be granted except where the applicant demonstrates that it would be unreasonably difficult or burdensome to provide the Affordable Housing without such relief, provided, however, that in no event shall any such waiver authorize a total overall site density, or floor area ratio, greater than that otherwise permitted for the site (i.e., the number of units or amount of floor area ratio otherwise permitted in compliance with the applicable zoning regulations prior to consideration of the Density Bonus) plus the additional units or floor area ratio required by this Article).

§200-30.4. Conditions of Approval of Density Bonus Development.

- A. Except as otherwise provided in this Article, each QRD shall conform to all other applicable provisions of this Chapter. The provisions of this Article shall not otherwise restrict owners' rights relative to development or use of property consistent with the regulations of the zoning district in which the property is located. Except for the Affordable Housing units or residential floor area ratio required pursuant to this Article, the provisions of this Article shall not be deemed or construed to permit any use or development of a site other than as otherwise permitted by the regulations for the zoning district in which the property is located.
- B. Each approval of a QRD application shall include a requirement that prior to the issuance of any building or other permits for the construction or improvement of the site, the property owner and the Village shall enter into a written agreement in a form approved by the Village Attorney prior to execution, and record the same in the office of the Nassau County Clerk at the owner's expense, which agreement shall contain at least the following provisions and conditions, in addition to such other provisions or conditions as required by the QRD approval.

(1) Such provisions and conditions shall include, at a minimum, the requirements that (a) at least ten (10) percent of the residential units, or floor area of a mixed use development, shall be dedicated to the provision of Affordable Housing, or (b) the owner and/or applicant shall provide at least the same number of units or quantity of floor area of Affordable Housing required by the QRD approval and not provided on the site to be provided and constructed at another site in the Village at or about the same time or prior to the development of the market rate units. The provisions and conditions shall further require that to the extent feasible the required Affordable Housing units be made available equally among "low income," "very low income," or "extremely low income" families as defined by the Department of Housing and Urban Development annually for Nassau County. The Affordable Housing units shall be integrated and indistinguishable from the market rate units; the minimum floor area of the Affordable Housing units shall not be less than 80% of the market rate units, and any single family Affordable Housing units on individual lots shall not be on lots less than 75% of any market rate lot in the QRD.

(2) Such provisions and conditions shall include the requirement that the owner, developer or operator of the property shall institute and conduct an application process for sale or rental

of all Affordable Housing to be provided pursuant to the QRD proposal which shall assure a fair, open, and random selection process for the purchases or rental of all such Affordable Housing, and a requirement that the owner, developer or operator of such property annually provide to the Village a written report as to the current nature and status of such process, and of all Affordable Housing sold or rented during the period of time covered by such annual report. The Affordable Housing Units shall be marketed in a manner that is consistent with HUD's Fair Housing Marketing Guidelines

(3) The provisions and conditions in subparagraphs 1 and 2 of this paragraph (B) shall remain binding and in effect for a period of 50 years and during such time shall not be cancelled, terminated or amended except with the express approval of the Village Board or agency which approved the QRD application and then only upon a showing of hardship.

- C. Notwithstanding the provisions of this Article, or any other law, no applicant for QRD development or owner of land which is the subject of a QRD development, may satisfy the Affordable Housing requirements of this Article by opting to construct less than the maximum permitted density or providing less than the maximum permitted residential floor area ratio otherwise authorized by this Chapter for development of the property which is the subject of the QRD. The number of required Affordable Housing units, or the amount of Affordable Housing floor area, shall be calculated based on the maximum permitted development on the site, regardless if the project proposed for the site is for a density or residential floor area less than the maximum permitted.
- D. Except as specifically provided in this Article, and notwithstanding the provisions of any other law, no applicant for QRD development, or owner of land which is the subject of a QRD development, may satisfy the Affordable Housing requirements of this Article by making any payment of money or other thing of value to any person or entity.
- E. The written agreement required for any QRD development also shall include deed restrictions to assure that the development shall continue to include, on the site or at another site within the Village, at least the number of Affordable Housing Units required by this Article, and which require that occupancy, sale or resale of any Affordable Unit shall be restricted only to persons or families with incomes meeting the criteria set forth in this Article.
 - (1) Such deed restrictions also shall include the requirement that the owner or operator of residential property which is the subject of a QRD shall take such actions as may be required to assure compliance with the requirements of this Article with respect to Affordable Housing Units and the occupancy thereof, and shall provide to the Village upon request any and all information relevant to such compliance and/or reasonable necessary to permit the Village to monitor the same.
 - (2) Such deed restrictions also shall include requirements that leases for Affordable Housing units have a term of not more than two (2) years, and shall assure on an annual basis that in the event residents of Affordable Housing units required by this Article cease to meet the

income or other eligibility criteria specified in this Article, such residents shall be required by the owner, developer or operator of the property to vacate their respective Affordable Housing at the QRD premises no later than one year after a determination of a loss of eligibility unless the owner, developer or operator of any property on which such Affordable Housing is located provides an equal number of equivalent Affordable Housing Units or residential floor area elsewhere on the QRD site or at another location in the Village.

(3) With respect to any Affordable Housing unit the title to which is owned in fee ownership, condominium ownership or cooperative ownership, no such unit may be resold at a sales price which exceeds the original purchase price paid by the selling owner, plus an additional amount based on increases in the Consumer Price Index for Urban Wage Earners, plus the non-depreciated value of any capital improvements made by the selling owner.

- F. The listing of conditions of approval contained in this section shall not be deemed exclusive and nothing herein shall prevent or restrict the inclusion of other reasonable conditions in any approval of a QRD, provided that such other conditions shall not be inconsistent with, contrary to or in conflict with the provisions of this Article. Compliance with this requirement shall be monitored by the Superintendent of Building Department, or other Village official designated by the Board of Trustees.

§200-30.5. Long Island Workforce Housing Act.

- A. The provisions of this Article shall be construed and applied together and consistent with the provisions of the Long Island Workforce Housing Act (LIWHA) to the extent the LIWHA may be applicable to any QRD, but this Article shall not be construed to require the provision of units required by this Article in addition to units required by the LIWHA. To the extent the LIWHA requires the provision of housing units, and one or more units of Affordable Housing provided pursuant to this Article also satisfy the requirements of the LIWHA, such units shall be included in the calculation of the number of Affordable Housing units required to be provided in the Village pursuant to this Article.
- B. Notwithstanding the provisions of the LIWHA, and except as otherwise specifically permitted in this Article, no applicant, owner or developer of a QRD shall be permitted to avoid the requirement to provide units of Affordable Housing by providing such housing, or by payment of a fee or other thing of value to any person or entity, to provide such housing, on any site outside the Village.

§200-30.6. State Environmental Quality Review Act). The agency or agencies determined to be the Lead Agency shall review each QRD project pursuant to the State Environmental Quality Review Act and its implementing regulations (collectively referred to herein as "SEQRA"), and shall classify such action, comply with the provisions and requirements of SEQRA for the process of environmental impact review, and make such findings or other determinations with respect to environmental impact as provided in SEQRA. Notwithstanding the foregoing, pursuant to 6 NYCRR Part 617.5(b), the Board of Trustees hereby determines that the portion of any such QRD application as may include the Affordable Housing Density Bonus and any related waivers or

variances of dimensional or parking requirements as provided in this Article are deemed and classified to be a Type II Action, and such portion of any QRD application shall be subject to review pursuant to SEQRA only as provided therein with respect to Type II Actions."

Section 3. Any local law or provision of the Code of the Village of Garden City in conflict with this local law is hereby repealed to the extent of such conflict, except that such repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of such local law, ordinance or resolution prior to the effective date of this local law.

Section 4. If any clause, sentence, paragraph, section, Article, or part of this local law shall be adjudged to be invalid by any court of competent jurisdiction, such judgment shall not affect, impair or invalidate any other part of this local law, or the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, Article, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Section 5. This local law shall take effect immediately upon adoption and filing pursuant to the Municipal Home Rule Law.