S T A T E O F N E W Y O R K

888

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. McDONOUGH, ERRIGO -- read once and referred to the Committee on Housing

AN ACT to amend the private housing finance law, in relation to zoning for second residential units

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative findings and declarations. The legislature finds and declares that there is a tremendous unmet need for new housing to shelter New York's population. The unmet housing needs will be further aggravated by the cutbacks in federal housing programs. The legislature further finds and declares that New York's existing housing resources are vastly underutilized due in large part to the changes in social patterns. The improved utilization of this state's existing housing resources offers an innovative and cost-effective solution to New York's housing crisis. The legislature finds and declares that the state has a role in increasing the utilization of New York's housing resources and in reducing the barriers to the provision of affordable housing. The legislature finds and declares that there are many benefits associated with the creation of second-family residential units on existing single-family lots, which include:

(1) Providing a cost-effective means of serving development through the use of existing infrastructures, as contrasted to requiring the construction of new costly infrastructures to serve development in undeveloped areas.

(2) Providing relatively affordable housing for low and moderate-income households without public subsidy.

(3) Providing a means for purchasers of new or existing homes, or both, to meet payments on high interest loans.

(4) Providing security for homeowners who fear both criminal intrusion and personal accidents while alone.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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S 2. The private housing finance law is amended by adding a new article 18-B to read as follows:

ARTICLE XVIII-B
SECOND RESIDENTIAL UNITS

SECTION 1107. SECOND RESIDENTIAL UNITS.

S 1107. SECOND RESIDENTIAL UNITS. 1. ANY MUNICIPALITY MAY, BY ORDINANCE, PROVIDE FOR THE CREATION OF SECOND UNITS IN SINGLE-FAMILY AND MULTI-FAMILY RESIDENTIAL ZONES CONSISTENT WITH ALL OF THE FOLLOWING PROVISIONS:

(A) AREAS MAY BE DESIGNATED WITHIN THE JURISDICTION OF THE MUNICIPALITY WHERE SECOND UNITS MAY BE PERMITTED.

(B) THE DESIGNATION OF AREAS MAY BE BASED ON CRITERIA, WHICH MAY INCLUDE, BUT ARE NOT LIMITED TO, THE ADEQUACY OF WATER AND SEWER SERVICES AND THE IMPACT OF SECOND UNITS ON TRAFFIC FLOW.

(C) STANDARDS MAY BE IMPOSED ON SECOND UNITS WHICH INCLUDE, BUT ARE NOT LIMITED TO, PARKING, HEIGHT, SETBACK, LOT COVERAGE, ARCHITECTURAL REVIEW, AND MAXIMUM SIZE OF A UNIT.

(D) A MUNICIPALITY MAY FIND THAT SECOND UNITS DO NOT EXCEED THE ALLOWABLE DENSITY FOR THE LOT UPON WHICH THE SECOND UNIT IS LOCATED AND THAT SECOND UNITS ARE A RESIDENTIAL USE THAT IS CONSISTENT WITH THE EXISTING GENERAL PLAN AND ZONING DESIGNATION FOR THE LOT.

(E) A MUNICIPALITY MAY ESTABLISH A PROCESS FOR THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR SECOND UNITS.

2. WHEN A MUNICIPALITY WHICH HAS NOT ADOPTED AN ORDINANCE GOVERNING SECOND UNITS IN ACCORDANCE WITH SUBDIVISION ONE OR THREE OF THIS SECTION RECEIVES ITS FIRST APPLICATION FOR A CONDITIONAL USE PERMIT PURSUANT TO THIS SUBDIVISION, THE MUNICIPALITY SHALL ACCEPT THE APPLICATION AND APPROVE OR DISAPPROVE THE APPLICATION PURSUANT TO THIS SUBDIVISION UNLESS IT ADOPTS AN ORDINANCE IN ACCORDANCE WITH SUBDIVISION ONE OR THREE OF THIS SECTION WITHIN ONE HUNDRED TWENTY DAYS AFTER RECEIVING THE APPLICATION. EVERY MUNICIPALITY SHALL GRANT A SPECIAL USE OR A CONDITIONAL USE PERMIT FOR THE CREATION OF A SECOND UNIT IF THE SECOND UNIT COMPLIES WITH ALL OF THE FOLLOWING:

(A) THE UNIT IS NOT INTENDED FOR SALE AND MAY BE RENTED.

(B) THE LOT IS ZONED FOR SINGLE-FAMILY OR MULTI-FAMILY USE.

(C) THE LOT CONTAINS AN EXISTING SINGLE-FAMILY DWELLING.

(D) THE SECOND UNIT IS EITHER ATTACHED TO THE EXISTING DWELLING AND LOCATED WITHIN THE LIVING AREA OF THE EXISTING DWELLING OR DETACHED FROM THE EXISTING DWELLING AND LOCATED ON THE SAME LOT AS THE EXISTING DWELLING.

(E) ANY INCREASE IN THE FLOOR AREA OF AN ATTACHED SECOND UNIT SHALL NOT EXCEED FIFTEEN PERCENT OF THE EXISTING LIVING AREA.

(F) THE TOTAL AREA OF FLOOR SPACE FOR A DETACHED SECOND UNIT SHALL NOT EXCEED SIX HUNDRED FORTY SQUARE FEET.

(G) ANY CONSTRUCTION SHALL CONFORM TO HEIGHT, SETBACK, LOT COVERAGE, ARCHITECTURAL REVIEW, SITE PLAN REVIEW, FEES, CHARGES, AND OTHER ZONING REQUIREMENTS GENERALLY APPLICABLE TO RESIDENTIAL CONSTRUCTION IN THE ZONE IN WHICH THE PROPERTY IS LOCATED.

(H) LOCAL BUILDING CODE REQUIREMENTS WHICH APPLY TO DETACHED DWELLINGS, AS APPROPRIATE.

(I) APPROVAL BY THE LOCAL HEALTH OFFICER WHICH A PRIVATE SEWAGE DISPOSAL SYSTEM IS BEING USED, IF REQUIRED.

NO OTHER LOCAL ORDINANCE, POLICY, OR REGULATION SHALL BE THE BASIS FOR THE DENIAL OF A BUILDING PERMIT OR A USE PERMIT UNDER THIS SUBDIVISION.

THIS SUBDIVISION ESTABLISHES THE MAXIMUM STANDARDS THAT MUNICIPALITIES SHALL USE TO EVALUATE PROPOSED SECOND UNITS ON LOTS ZONED FOR RESIDEN-

TIAL USE WHICH CONTAIN AN EXISTING SINGLE-FAMILY DWELLING. A MUNICIPALITY MAY REQUIRE AN APPLICANT FOR A PERMIT ISSUED PURSUANT TO THIS SUBDIVISION TO BE AN OWNER-OCCUPANT OR MAY REQUIRE THAT THE APPLICANT OR TENANT OF THE SECOND UNIT BE A PERSON OF SIXTY-TWO YEARS OF AGE OR OLDER.

THIS SECTION DOES NOT LIMIT THE AUTHORITY OF MUNICIPALITIES TO ADOPT LESS RESTRICTIVE REQUIREMENTS FOR THE CREATION OF SECOND UNITS.

NO CHANGES IN ZONING ORDINANCES OR OTHER ORDINANCES OR ANY CHANGES IN THE GENERAL PLAN SHALL BE REQUIRED TO IMPLEMENT THIS SUBDIVISION. ANY MUNICIPALITY MAY AMEND ITS ZONING ORDINANCE OR GENERAL PLAN TO INCORPORATE THE POLICIES, PROCEDURES, OR OTHER PROVISIONS APPLICABLE TO THE CREATION OF SECOND UNITS IF THESE PROVISIONS ARE CONSISTENT WITH THE LIMITATIONS OF THIS SUBDIVISION.

A SECOND UNIT WHICH CONFORMS TO THE REQUIREMENTS OF THIS SUBDIVISION SHALL NOT BE CONSIDERED TO EXCEED THE ALLOWABLE DENSITY FOR THE LOT UPON WHICH IT IS LOCATED, AND SHALL BE DEEMED TO BE A RESIDENTIAL USE WHICH IS CONSISTENT WITH THE EXISTING GENERAL PLAN AND ZONING DESIGNATIONS FOR THE LOT.

3. NO MUNICIPALITY SHALL ADOPT AN ORDINANCE WHICH TOTALLY PRECLUDES SECOND UNITS WITHIN SINGLE-FAMILY AND MULTI-FAMILY ZONED AREAS UNLESS THE ORDINANCE CONTAINS FINDINGS ACKNOWLEDGING THAT THE ORDINANCE MAY LIMIT HOUSING OPPORTUNITIES OF THE REGION OR CONTAINS FINDINGS THAT SPECIFIC ADVERSE IMPACTS ON THE PUBLIC HEALTH, SAFETY, AND WELFARE THAT WOULD RESULT FROM ALLOWING SECOND UNITS WITHIN SINGLE-FAMILY AND MULTI-FAMILY ZONED AREAS JUSTIFY ADOPTING THE ORDINANCE.

4. MUNICIPALITIES SHALL SUBMIT A COPY OF THE ORDINANCES ADOPTED PURSUANT TO SUBDIVISION ONE OR THREE OF THIS SECTION TO THE DIVISION OF HOUSING AND COMMUNITY RENEWAL WITHIN SIXTY DAYS AFTER ADOPTION.

5. AS USED IN THIS SECTION:

(A) "LIVING AREA," MEANS THE INTERIOR HABITABLE AREA OF A DWELLING UNIT INCLUDING BASEMENTS AND ATTICS BUT DOES NOT INCLUDE A GARAGE OR ANY ACCESSORY STRUCTURE.

(B) "SECOND UNIT," MEANS AN ATTACHED OR A DETACHED RESIDENTIAL DWELLING UNIT WHICH PROVIDES COMPLETE INDEPENDENT LIVING FACILITIES FOR ONE OR MORE PERSONS. IT SHALL INCLUDE PERMANENT PROVISIONS FOR LIVING, SLEEPING, EATING, COOKING, AND SANITATION ON THE SAME PARCEL AS THE SINGLE-FAMILY DWELLING IS SITUATED.

S 3. This act shall take effect immediately.