STATE OF NEW YORK

3111

2023-2024 Regular Sessions

IN ASSEMBLY

February 2, 2023

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

AN ACT to amend the public housing law, in relation to low or moderate income housing developments

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The public housing law is amended by adding a new section 14-a to read as follows:

§ 14-a. Low or moderate income housing developments. 1. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(a) "Low or moderate income housing development" means any housing, including both housing intended for homeownership and rental, that is subsidized by county, federal or state government under any program to assist the construction of a low or moderate income housing development as defined in the applicable federal or state statute, whether built or operated by any public agency, limited-dividend organization, or other private organization. For a housing development to qualify as a "low or moderate income housing development", such housing development shall: (i) have at least twenty-five percent of such housing development's housing units be affordable, as determined by the division, to households who earn no more than eighty percent of the area median income; (ii) for rental housing developments, have at least twenty percent of such housing development's housing units be affordable, as determined by the division, to households earning below sixty percent of the area median income; or (iii) in the city of New York, be subject to an anticipated regulatory agreement with a city, state, or federal government entity.

(b) "Uneconomic" means any condition brought about by any single factor or combination of factors to the extent that it makes it substantially unlikely for a public agency or nonprofit organization to proceed

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

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in building or operating a low or moderate income housing development without financial loss, or for a limited-dividend organization or other private organization to proceed and still realize a reasonable return in building or operating such housing within the limitations set by the subsidizing agency of government on the size or character of the development or on the amount or nature of the subsidy or on the tenants, rentals and income permissible, and without substantially changing the rent levels and units sizes proposed by the public agency, limited-dividend organization, or other private organization.

(c) "Consistent with regional needs" means reasonable in view of the regional need for low and moderate income housing developments and necessary to protect the health and safety of the occupants of such housing, or of the residents of a city, town, or village. Impacts related to aesthetics or community character, impacts related to school enrollment or the fiscal cost of providing public services, and ordinary impacts on traffic and parking shall not be considered to affect health or safety in assessing consistency with regional needs, except that impacts related to school enrollment may be considered for school districts designated by the comptroller as being under significant or moderate fiscal stress.

(d) "Local board" means any city, town, or village board, commission, officer or other agency or office having supervision of the construction of buildings or the power of enforcing municipal building laws.

(e) "Local zoning board of appeals" means a zoning board of appeals for a city, town, or village operating pursuant to article five-A of the general city law, section two hundred sixty-seven of the town law, or section 7-712 of the village law, or the New York city board of standards and appeals.

(f) "State zoning board of appeals" or "state board" means the state zoning board of appeals established pursuant to subdivision five of this section.

(g) "Limited-dividend organization" means a limited-dividend housing company established under article four of the private housing finance law.

(h) "Public agency" shall mean any county, city, town, village or state government body or subdivision thereof.

(i) "Nonprofit organization" shall mean a corporation having tax exempt status under section 501 (c) (3) of the United States Internal Revenue Code.

(j) "Division" shall mean the division of housing and community renewal.

(k) "Specific, adverse impact" shall mean a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions, which shall be further specified by the division of housing and community renewal via rule and/or regulation, as such standards, policies, or conditions existed on the date the application for a low or moderate income housing development was deemed complete.

(l) "Housing unit" shall mean a dwelling, as such term is defined by section four of the multiple dwelling law, or an individual unit in a multiple dwelling, as such term is defined by section four of the multiple dwelling law, that is maintained as a separate living quarters from any other such units in such multiple dwelling.

2. Applying to local zoning boards of appeals. (a) Subject to the provisions of this section, a public agency, limited-dividend organization, or other private organization proposing to build a low or moderate

income housing development may submit to the applicable local zoning board of appeals, a single application to build such housing development in lieu of separate applications to the applicable local boards. The local zoning board of appeals shall without delay notify each such local board, as applicable, of the filing of such application by sending a copy of such application to such local boards for their recommendations and shall, within thirty days of the receipt of such application, hold a public hearing on the same. The local zoning board of appeals shall request the appearance at such hearing of such representatives of such local boards as it shall deem necessary or helpful in making its decision upon such application and shall have the same power to issue permits or approvals as any local board or official who would otherwise act with respect to such application, including but not limited to the power to attach to such permit or approval conditions and requirements with respect to height, site plan, size or shape, or building materials as are consistent with the terms of this section. The local zoning board of appeals, in making its decision on such application, shall take into consideration the recommendations of the local boards and shall have the authority to use the testimony of consultants. The local zoning board of appeals shall approve such application unless:

(i) written findings supported by a preponderance of the evidence on the record demonstrate that both of the following conditions exist:

(A) the proposed low or moderate income housing development would have a specific, adverse impact upon public health and/or safety; and

(B) there is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to clause (A) of this subparagraph, other than denial of the application for such proposed low or moderate income housing development or the imposition of the conditions imposed by the local zoning board of appeals; or

(ii) an application is not permitted under paragraph (b) of this subdivision.

(b) An application shall not be eligible for submission to a local zoning board of appeals under paragraph (a) of this subdivision where such application is for a low or moderate income housing development to be built:

(i) in a city, town, or village having a total number of housing units that are determined by the division to be income-restricted at eighty percent of the area median income, or lower, regardless of the type of housing program or subsidy involved, not including market rate housing units existing in the same building as any such income-restricted housing units:

(A) exceeding fifteen percent of the housing units reported in the latest federal decennial census of such city, town, or village; or

(B) in the case of the city of New York, exceeding fifteen percent of the housing units in the area covered by the applicable community board; or

(ii) in the city of New York, where the area covered by the applicable community board has a median income that is equal to or below one hundred percent the area median income, as determined by the division.

(c) The local zoning board of appeals shall render a decision, based upon a majority vote of such board, within forty days after the termination of the public hearing held pursuant to this subdivision and, if favorable to the applicant, shall without delay issue a comprehensive permit or approval. If such decision results in a denial of the application for a low or moderate income housing development, or results in the attachment of conditions and/or requirements to a permit or

approval, a written decision including specific findings based in evidence shall be delivered to the applicant. If a public hearing is not convened or a decision is not rendered within the time allowed, unless the time has been extended by mutual agreement between the local zoning board of appeals and the applicant, the application shall be deemed to have been allowed and the comprehensive permit or approval shall be issued. Any person aggrieved by the issuance of a comprehensive permit or approval may appeal to the court as provided in article seventy-eight of the civil practice law and rules.

(d) A local zoning board of appeals shall not require any traffic studies to be conducted in its consideration of an applicant's application under this section, and shall not delay its consideration of such application due to any traffic study conducted by any other state or local entity.

(e) The local zoning board of appeals shall adopt rules, not inconsistent with the purposes of this section, for the conduct of its business pursuant to this section and shall file a copy of such rules with the city, town, or village clerk.

3. Right to appeal to the state board. Whenever an application filed under subdivision two of this section is denied, or is granted with such conditions and requirements as to make the building or operation of such housing uneconomic, the applicant shall have the right to appeal to the state board for a review of the same. Such appeal shall be taken within twenty days after the date of the notice of the decision by the local zoning board of appeals by filing with the state board a statement of the prior proceedings and the reasons upon which such appeal is based. The state board shall notify the appropriate local zoning board of appeals of the filing of such petition for review and such local zoning board of appeals shall, within ten days of the receipt of such notice, transmit a copy of its decision and the reasons therefor to the state board. Such appeal shall be heard by the state board within twenty days after receipt of the applicant's statement. A stenographic record of the proceedings shall be kept and the state board shall render a written decision, based upon a majority vote, stating its findings of fact, its conclusions and the reasons therefor within thirty days after the termination of the hearing, unless such time shall have been extended by mutual agreement between the state board and the applicant. Such decision may be reviewed by the supreme court in accordance with the provisions of the state administrative procedure act. The state board shall deny an appeal of an application to build a low or moderate income housing development under this subdivision if the city, town, or village where such low or moderate income housing development would be built has otherwise increased its proportion of overall housing that is affordable to households earning below fifty percent of the area's median income by two percent or more in the previous year.

4. State board hearings. (a) A hearing by the state board under subdivision three of this section shall be limited to the issue of whether, in the case of the denial of an application, the decision of the local zoning board of appeals was consistent with regional needs, or whether such application was improperly denied by such local zoning board of appeals pursuant to paragraph (b) of subdivision two of this section; and, in the case of an approval of an application with conditions and requirements imposed, whether such conditions and requirements make the construction or operation of such housing uneconomic and whether they are consistent with regional needs. The burden of proof in such state board hearings shall be upon the respondent to demonstrate that

the decision of the local zoning board of appeals was permissible pursuant to this section. If the state board finds, in the case of a denial, that the decision of the local zoning board of appeals was not consistent with regional needs, it shall vacate such decision and shall direct such local zoning board of appeals to issue a comprehensive permit or approval to the applicant. If the state board finds, in the case of an approval with conditions and requirements imposed, that the decision of the local zoning board of appeals makes the building or operation of such housing uneconomic and is not consistent with regional needs, it shall order such local zoning board of appeals to modify or remove any such condition or requirement so as to make the proposal no longer uneconomic and to issue any necessary permit or approval; provided, however, that the state board shall not issue any order that would permit the building or operation of such housing in accordance with standards less safe than the applicable building and site plan requirements of the federal housing administration or any applicable state requirements, whichever agency is financially assisting such housing. Decisions or conditions and requirements imposed by a local zoning board of appeals that are consistent with regional needs shall not be vacated, modified or removed by the state board notwithstanding that such decisions or conditions and requirements have the effect of making the applicant's proposal uneconomic.

(b) The state board or the petitioner shall have the power to enforce the orders of the state board at law or in equity in court. The local zoning board of appeals shall carry out the order of the state board within thirty days of its entry and, upon failure to do so, the order of the state board shall, for all purposes, be deemed to be the action of such local zoning board of appeals, unless the petitioner consents to a different decision or order by such local zoning board of appeals.

(c) If a municipality appeals a decision of the state board to the court under article seventy-eight of the civil practice law and rules, and the court rules in favor of the applicant for a low or moderate income housing development in such proceeding, such municipality shall be required to pay for any legal costs incurred by such applicant as a result of such appeal.

5. State zoning board of appeals established. (a) There is hereby established, within the division, a state zoning board of appeals, to effectuate the provisions of this section.

(b) The state board shall consist of three members, one of whom shall be the commissioner of the division or such commissioner's designee, one of whom shall be appointed by the governor and who shall have expertise in fair housing, and one of whom shall be appointed by the governor and who shall have experience in local government with demonstrated success in developing affordable housing.

(c) The state board shall have the power and duties to conduct hearings, issue orders, and otherwise perform any function necessary to operate in conformity with the provisions of this section. In addition to the functions or duties specifically directed or authorized pursuant to this section, the state board shall have any powers or duties directed or authorized by the division.

6. Rules, regulations, and administration. (a) The division shall be authorized to promulgate any rules and/or regulations necessary for the implementation of the provisions of this section.

(b) Notwithstanding any other provision of law, the department of environmental conservation shall promulgate regulations deeming develop-

ment pursuant to this section to be an action under article eight of the environmental conservation law.

(c) The division shall provide any administrative support to the state board necessary for the effective implementation of the provisions of this section.

§ 2. The division shall conduct a study regarding the qualified allocation plan for low income housing tax credits developed pursuant to section 42 of the Internal Revenue Code. Such study shall consider whether and how to revise the qualified allocation plan in light of the processes for building low or moderate income housing under section 14-a of the public housing law, such that the state's policies for funding and permitting low and moderate income housing can best be aligned to most effectively produce affordable housing. Such study shall also consider whether such an alignment can support the state's fair housing goals. The commissioner shall submit a report of the division's findings of such study and any recommendations to the governor, the speaker of the assembly and the temporary president of the senate on or before one year after the effective date of this act.

§ 3. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such date.