STATE OF NEW YORK

8858

IN ASSEMBLY

January 18, 2024

Introduced by M. of A. WILLIAMS -- read once and referred to the Committee on Cities

AN ACT to amend the administrative code of the city of New York, in relation to special review procedures for development in marshlands

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

Section 1. The administrative code of the city of New York is amended by adding a new section 25-121 to read as follows:

§ 25-121 Special review procedure in marshland. a. Definitions. As used in this section the following terms shall have the following meanings:

1. "Development" means the construction of a new building or other structure, or the alteration of an existing building or other structure, including demolition and replacement, for the purpose of increasing the number of residential dwelling units within such building or structure or that will require a certificate of occupancy to be issued from the city.

2. "Enlargement" means an addition to the floor area of an existing building, an increase in the size of any other structure, or an expansion of an existing use, including any uses accessory thereto, to an open portion of a zoning lot not previously used for such use.

3. "Marsh" means a wet prairie that has waterlogged soil during the growing season (from last spring frost to first fall frost) and is often covered with shallow water.

4. "Marshland" means any area containing a marsh or that has within one hundred years prior to the effective date of this section contained a marsh located within a watershed for which a watershed protection plan has been established pursuant to section 24-527 of this code.

5. "Project" means any development or enlargement.

6. "Residential dwelling unit" means any building or structure or portion thereof which is legally occupied in whole or in part as the home, residence or sleeping place of one or more human beings.

b. The city planning commission shall not authorize a project on marshland until the requirements of this section have been completed.

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

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c. Except in the case of projects that have been exempted by the city planning commission pursuant to subdivision j of this section from the special review procedure established by this section, no project shall be permitted on a zoning lot in marshland until the owner thereof shall have filed notice of such proposed project with the city planning commission and the community board of the community district in which the project is proposed to be located. Additionally, the owner shall file an application for authorization with the city planning commission that shall include a description of the project, including its location, floor plans, the building footprint on the building parcel and architectural renderings, as well as:

1. a survey map prepared by a registered surveyor showing topography, the location of existing buildings or other structures, patios, decks, swimming pools, walkways, driveways and private roads, including sidewalks and other impervious surfaces; and the location of geologic features, aquatic features and botanic environments;

2. photographs showing the location and condition of such geologic features, aquatic features or botanic environments;

3. a site plan prepared by a registered architect or professional engineer indicating the location of all existing buildings or other structures; the location of all proposed buildings or other structures; the location of existing and proposed patios, decks, swimming pools, walkways, driveways and private roads, including sidewalks and other impervious surfaces;

4. a drainage plan and soil report prepared by a professional engineer. The drainage plan shall describe the temporary (during construction) and permanent measures to collect, direct and discharge stormwater drainage from the site, indicating the direction of drainage flow and providing detailed plans and locations of all surface and subsurface drainage devices, walls, dams, sediment basins, stormwater storage (detention and retention) facilities, and other drainage facilities and protective devices;

5. a landscaping and revegetation plan, prepared by a registered landscape architect, indicating the extent of vegetation and topsoil removal required for site preparation and development and the location and species of all new plantings; and

6. any other information necessary to evaluate the request for authorization.

The commission may only waive or modify any of the requirements set forth in paragraphs one through six of this subdivision, when: (A) such waiver or modification is requested by the applicant in writing and when the commission determines that the requirements are unnecessary for evaluation purposes; (B) the community board of the community district in which the project is proposed to be located has approved the proposed waiver or modification; (C) the borough president who represents the borough or county in which the project is proposed to be located has approved the proposed waiver or modification; (D) the city council member or members in whose district the project is proposed to be located have approved the proposed waiver or modification; and (E) the member or members of assembly and the senator or senators in whose districts the project is proposed to be located shall be notified of such approval in writing and shall have the opportunity to review and make advisory recommendations on the proposed project. The member or members of assembly and the senator or senators in whose district the project is proposed to be located have approved the proposed waiver or modification.

d. Upon receipt of a complete application for authorization, the city planning commission shall require a site-specific environmental review of the project.

1. When applying for authorization for a project an applicant shall notify the city planning commission in writing as to whether it will exercise its option to prepare or cause to be prepared a site-specific environmental review, and as to whom it has designated to prepare the site-specific environmental review, provided that no person so designated shall have an investment or employment interest in the ultimate realization of the proposed project.

2. If an applicant declines responsibility for a site-specific environmental review, the city planning commission may prepare or cause to be prepared a site-specific environmental review for the project. In such event, the applicant shall provide, upon request, an environmental report to assist the city planning commission in preparing or causing to be prepared the site-specific environmental review and such other information as may be necessary. All agencies shall fully cooperate with the city planning commission in all matters relating to the preparation of the site-specific environmental review.

3. If the applicant does not exercise its option to prepare or cause to be prepared a site-specific environmental review, and the city planning commission does not prepare or cause to be prepared such review, then the application for authorization of the proposed project shall be denied.

e. Once a site-specific environmental review is complete, the city planning commission shall forward a copy of the findings of the review to the community board or boards for the community district or districts in which the proposed project is located along with a copy of the application for authorization of the project. The city planning commission shall also make a copy of the findings of the site-specific environmental review and application for authorization available to the public on the commission's website.

f. Not less than forty-five days nor more than ninety days after a site-specific environmental review is completed, the city planning commission shall hold a public community forum for the purpose of obtaining meaningful public and community board input concerning the anticipated impact of the proposed project upon the community. The city planning commission shall afford community members, representatives of the local community board, local businesses and residents a reasonable opportunity to speak about relevant matters at such community forum, including comments on any aspect of the application or site-specific environmental review for the proposed project. Every such forum shall be held upon not less than twenty days notice to the affected community and the local community board.

g. The city planning commission shall, prior to establishing the date, time and location of the public community forum, consult with and obtain the advice and consent of the appropriate community board as to establishing a convenient date, time and location to conduct the forum for the locally impacted community. Such forum location shall be within reasonable proximity of the proposed project and in suitable facilities that provide adequate room and access to hear public comments presented.

h. Not less than sixty days, nor more than ninety days, after holding a community forum the city planning commission shall, after due consideration of the comments at such forum, either approve, approve subject to modifications, or deny the application for authorization of the project. In making its decision, the commission shall, in addition to

the site-specific environmental review findings, evaluate the project's potential to cause an adverse environmental impact on the marshland and surrounding community. When determining the potential for an adverse impact the commission shall consider the effect of any project on the total ecological process of the marshland and surrounding natural environment including the effect of such project on the existing topography, soil conditions, erosion, natural flow of water and drainage, water quality, and animal, plant and marine life. A project found to be deficient with respect to any of these considerations may be required to be modified as a condition of final approval. The city planning commission shall deny authorization for any project found to have an adverse impact on the marshland or surrounding community.

i. Prior to the issuance by the department of buildings of any permit for any project within a marshland, the city planning commission shall certify to the department of buildings that the project is authorized pursuant to this section. Neither the department of buildings or any other city or state agency shall issue a permit for the development or enlargement until the city planning commission has so certified.

j. The city planning commission shall promulgate rules and regulations necessary to implement the provisions of this section including rules delineating the locations of marshland within the city and describing the types of projects therein, if any, which shall be exempt from the provisions of this section. Prior to the promulgation of such rules, the city planning commission shall consult with the community board of any community district containing areas the commission may delineate as marshland regarding the types of projects to be exempt from the provisions of this section and in what areas of the community district. Such consultation shall include a notice and comment period of forty-five days. The city planning commission may exempt types of projects from the provisions of this section upon receipt of a resolution of a community board requesting such types of projects to be exempted.

§ 2. This act shall take effect on the ninetieth 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 effective date.