STATE OF NEW YORK

8386

2023-2024 Regular Sessions

IN ASSEMBLY

December 13, 2023

Introduced by M. of A. CUNNINGHAM -- read once and referred to the Committee on Local Governments

AN ACT to amend the general municipal law, in relation to enacting the "faith-based affordable housing act" and residential development on religious land

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

Section 1. Short title. This act shall be known and may be cited as the "faith-based affordable housing act".

§ 2. The general municipal law is amended by adding a new section 96-c to read as follows:

§ 96-c. Residential development on religious land. 1. For the purposes of this section, the following terms shall have the following meanings:

(a) "Covered site" shall mean any parcel of land, or group of one or more contiguous parcels of land, that lies within an urban area as defined by the U.S. Census Bureau but does not lie within a locally designated manufacturing or industrial zoning district, where such parcel or group of one or more contiguous parcels of land is owned solely, directly or indirectly (e.g. via a wholly owned limited liability company) by a religious corporation or corporations as of the effective date of this section.

(b) "Religious corporation" shall have the same meaning as defined in the religious corporations law and shall also include nonprofit corporations that include in their purpose worship or the training or conducting of religious rituals or the reading or study of religious texts incorporated under the not-for-profit corporation law or foreign corporations subject to such law.

(c) "Buildings department" shall mean the city, town, or village department, division, or other agency or office having primary supervision of the construction of buildings and issuance of building permits.

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

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(d) "Commissioner" shall mean the commissioner of the division of housing and community renewal.

(e) "Residential building" shall mean any structure used in part or entirely for full-time, non-transient residential occupation that contains at least four residential units; that is connected to community or public water and sewerage systems, including sewage treatment works, upon date of initial occupancy; and in which no more than thirty-five percent of the floor area is devoted to religious or educational use or charitable or community facility use, provided that any existing religious, educational, charitable, or community facility floor area shall not be counted toward such thirty-five percent in the case that the residential building is an addition or an enlargement of an existing building.

(f) "Affordable unit" shall mean a housing unit affordable to a specific percentage of the applicable area median income, as defined annually by the U.S. Department of Housing and Urban Development. Such units may either be homeownership or rental units.

(g) "Affordability percentage" shall mean the percentage of a residential building's gross floor area required to be set aside as affordable housing.

(h) "Affordable floor area" shall mean the amount of a residential building's floor area to be set aside for affordable units.

2. Notwithstanding the provisions of any local law, ordinance, resolution or regulation, each village, town, and city shall allow the construction and occupation of residential buildings on any covered site up to the specified densities provided in this subdivision. Each village, town, and city shall allow such construction and occupation on an as-of-right, ministerial basis, without site plan review. Additionally, this section shall not reduce or disallow development rights or options provided under local zoning laws.

(a) On any covered site located within a village, town, or city with fewer than fifty thousand inhabitants, residential buildings shall be allowed up to a height of thirty-five feet or the height of the tallest existing building on the covered site, whichever is taller, and up to a density of thirty residential units per acre or such proportion thereof.

(b) On any covered site located within a village, town or city with fifty thousand or more inhabitants but fewer than one million inhabitants, residential buildings shall be allowed up to a height of fifty-five feet or the height of the tallest existing building on the covered site, whichever is taller, and up to a density of fifty residential units per acre, provided, however, that if the covered site is located in a city with fifty thousand or more inhabitants but fewer than one million inhabitants and within eight hundred feet of a zoning district that permits a height or density for residential use greater than what is otherwise provided for in this paragraph, then such city shall allow residential buildings on the covered site up to the maximum height and density permitted in such zoning district, or allow such residential buildings to utilize any other optional rules or regulations regulating residential bulk and height in such zoning district, provided, however the residential building shall not have to comply with any other regulations provided for in such zoning district other than bulk and height regulations.

(c) On any covered site located within a city with one million or more inhabitants, residential buildings shall be allowed up to a height of fifty-five feet or the height of the tallest existing building on the covered site, whichever is taller, and a density of a floor area ratio

of 2.2 square feet, as defined by such city's zoning ordinances, provided, however, that if the covered site is located within eight hundred feet of a zoning district that permits a height or density for residential use greater than what is otherwise provided for in this paragraph, then the city shall allow residential buildings on the covered site up to the maximum height and density permitted in such zoning district, or allow such residential buildings to utilize any other optional rules or regulations regulating residential bulk and height in such zoning district, provided, however the residential building shall not have to comply with any other regulations provided for in such zoning district other than bulk and height regulations.

3. If a religious corporation disposes of land via sale or lease for development of a residential building pursuant to this section, an officer or key person, as defined in section one hundred two of the not-for-profit corporation law, of such religious corporation who will be involved in such sale or lease on behalf of the religious corporation must have attended and received a certificate of completion of a training course on real estate development and affordable housing. Such training course must include content regarding the development process, timeline and funding sources for affordable and mixed-income housing, the types and selection of vendors and consultants related to such development, a review of the statutory requirements for such sale or lease by a religious corporation and other information relevant to housing development as determined by the commissioner. Pursuant to the process required by section twelve of the religious corporations law and/or section five hundred ten of the not-for-profit corporation law, as applicable, the religious corporation shall submit to the court or to the attorney general a copy of such certificate of completion for such training as a condition of a sale or lease of land for housing development pursuant to this section. Such training may be conducted by any governmental entity, religious corporation, or nonprofit, or any number or combination of the foregoing, approved by the commissioner.

4. For buildings constructed pursuant to this section, a village, town, or city may regulate the following, provided the regulation is reasonable and applied equally to all residential developments and shall not impede the full development of the floor area and height provided in subdivision two of this section:

(a) the construction of sidewalks up to five feet in width and up to five feet of street lawn or road verge along the parcel's street frontage, including up to one street tree per twenty-five feet of frontage, with standards to conform to the standard specifications for construction and materials promulgated by the department of transportation;

(b) up to twenty feet of rear yard and up to ten feet of side yards at the boundaries of the covered site; and

(c) appropriate placement of curb cuts for accessory parking or loading that ensure public safety while also allowing reasonable access to the parcel and the residential building.

5. For residential buildings constructed pursuant to this section, a village, town, or city shall not require any development standards or conditions of approval, other than state law, building, and fire codes, or in the case of a city with one million or more inhabitants, local fire and building codes. No village, town, or city shall require the following and any such requirements shall be void:

(a) the provision of accessory off-street parking;

(b) minimum, maximum, or average unit sizes;

(c) the regulation of the number of allowable housing units based on lot size or any other criteria, other than the densities prescribed in subdivision two of this section;

(d) the prioritization of housing units to residents of certain neighborhoods or jurisdictions;

(e) the prioritization of housing units for any age group;

(f) the imposition of any mandatory affordability requirements or minimum income or asset standards other than what is otherwise provided for in subdivision six of this section;

(g) minimum purchase price for any homeownership units;

(h) the adherence to any local building or fire code beyond the standards specified by the New York State Uniform Fire Prevention and Building Code Act, except in a city with one million or more inhabitants; and

(i) any other requirement that is determined by a court, pursuant to proceedings brought under subdivision nine of this section, to impede the full development of permissible residential buildings on a covered site.

6. (a) Notwithstanding the provisions of any local law, ordinance, resolution or regulation, the building department shall ministerially and without discretionary review or a hearing approve an application for a building permit within sixty days of receipt of an application pursuant to this section.

(b) A village, town, or city shall not impose any substantial burden on buildings constructed pursuant to this section, as compared with new single-family residential buildings, including the provision of municipal services and utility access.

(c) Nothing in this section shall be construed to restrict the use or size of buildings permitted by local laws, regulations, or resolutions.

(d) The approval by the building department shall only take into consideration conformance with this section and applicable state laws and state building, fire, and energy codes. No other local law, policy, regulation, or resolution shall be the basis for the denial of a permit, except in a city of one million or more inhabitants, where adherence to local building and fire codes may be required.

(e) No payment greater than one quarter dollar per square foot of floor area shall be required in total for building and other permits issued for residential developments constructed pursuant to this section. A town, village, or city shall not charge impact fees, recreation fees, or any other fees beyond the amount provided in this paragraph.

(f) Notwithstanding article eight of the environmental conservation law and its implementing regulations, no review or study of the environmental impact of the residential building shall be required if it conforms to the provisions of this section, provided the following studies and certifications are completed and submitted to the building department and any state or local agencies as designated by the commissioner: a Phase I Environmental Site Assessment (ESA) pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Chapter 103); soil and water testing consistent with standards promulgated by the commissioner of environmental conservation; and a certification from a qualified environmental professional, where such term shall be defined by the commissioner of environmental conservation pursuant to regulation, that such action, as proposed, will not violate any state wetland laws or drinking water laws under article eleven of the public health law, or any rules or regulations promulgated thereto.

(g) For the purposes of fees and building permits, for buildings constructed pursuant to this section, a village, town, or city shall not discriminate between rental units and condominium or cooperative units. No permit or additional fee shall be required as a condition for use as a rental apartment building.

7. (a) All residential buildings constructed pursuant to this section in a town, village, or city with fewer than one million inhabitants shall set aside twenty percent of the residential floor area for households earning an average of eighty percent of the area median income. In a city with one million or more inhabitants, a residential building shall provide affordable housing by complying with one of the following options:

(i) the residential building shall set aside twenty-five percent of its residential floor area for households earning an average of sixty percent of the area median income provided that a minimum of five percent of units are affordable to households at forty percent of the area median income;

(ii) the residential building shall set aside thirty percent of its residential floor area for households earning an average of eighty percent of the area median income; or

(iii) the residential building shall set aside twenty percent of its residential floor area for households earning an average of forty percent of the area median income.

(b) The amount of affordable floor area shall be calculated by multiplying gross residential floor area by the percentage of the floor area that must be affordable pursuant to this paragraph. The resulting floor area must be devoted to affordable housing, less the applicable proportion of the building devoted to residential circulation and common space, not to exceed twenty-five percent of the affordable floor area. The number of required affordable units shall be the affordability percentage multiplied by the total number of residential units in the development, with the product rounded to the nearest whole number. To achieve the affordability levels specified in this paragraph, buildings may contain units affordable to a variety of incomes, provided that on average the affordability levels meet the requirements of this paragraph and no affordable unit shall be rented to any household with an income greater than one hundred percent of the area median income.

(c) A property containing any affordable units must be restricted using a mechanism such as a declaration of restrictive covenants or a regulatory agreement with a local or state agency that shall ensure that the affordable units shall remain subject to affordable regulations for the life of the building. Such covenants shall require that the unit be the primary residence of the household selected to occupy the unit. Upon approval, such declaration or regulatory agreement shall be recorded against the property containing the affordable unit prior to the issuance of a certificate of occupancy for the development.

(d) The affordable units shall be physically integrated into the design of the development and shall be distributed among various sizes (efficiency, one-, two-, three- and four-bedroom units) in the same proportion as all other units in the development. The minimum gross floor area per affordable unit shall not be less than ninety percent of the average floor area of non-restricted housing units of equivalent size (efficiency, one-, two-, three- and four-bedroom units) in the development. Affordable units shall be distributed evenly among floors.

(e) The affordable units shall not be distinguishable from other units from the outside or building exteriors. Interior finishes and

furnishings shall be indistinguishable from the other units in the building. Affordable units shall not have a separate entrance or differing access to common amenities. Buildings constructed pursuant to this section may not charge residents of affordable units additional fees for access to common amenities, if such charges would mean that total housing costs for such units would exceed thirty percent of the specified percentage of the area median income.

(f) For affordable homeownership units, the title to said property shall be restricted so that in the event of any resale by the home buyer or any successor, the resale price shall not exceed an amount affordable to a household at the specified percentage of the area median income.

8. Nothing in this section shall be interpreted to override the New York State Uniform Fire Prevention and Building Code Act, the Freshwater Wetlands Act, the public health law, or regulations promulgated in accordance with any such act or law, nor require the alteration or demolition of buildings designated as historical sites or landmarks as of the effective date of this section pursuant to the New York State Historic Preservation Act of 1980, as amended, or the National Historic Preservation Act of 1966, as amended, or the New York City Landmarks Law of 1965, as amended.

9. (a) Upon a failure of a local government to timely act upon an application to construct or occupy residences in accordance with this section, or denial of such application in violation of this section, any party aggrieved by any such failure or denial may commence a special proceeding against the subject local government and the officer pursuant to article seventy-eight of the civil practice law and rules, in the supreme court within the judicial district in which the local government or the greater portion of the territory is located, to compel compliance with the provisions of this section.

(b) If, upon commencement of such proceeding, it shall appear to the court that testimony is necessary for the proper disposition of the matter, the court may take evidence and determine the matter. Alternatively, the court may appoint a hearing officer pursuant to article forty-three of the civil practice law and rules to take such evidence as it may direct and report the same to the court with the hearing officer's findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify any decision brought to the court for review.

(c) Attorneys' fees and costs shall be allowed against the local government whose failure or refusal gave rise to the special proceeding in cases in which the denial of building permits is overturned by the court.

10. Notwithstanding the provisions of subdivision five of this section, a city, state, or federal housing agency may regulate the design, construction, occupancy, marketing, and leasing of affordable housing developed pursuant to this section when such agency is subsidizing the operations, development, or preservation of the housing and entering into a regulatory agreement with the owner thereof.

11. The division of housing and community renewal, the attorney general, and the department of environmental conservation shall have the authority to promulgate any rules and regulations necessary to implement the provisions of this section. No later than one year from the effective date of this section, the division of housing and community renewal shall promulgate rules and regulations including but not limited to the following:

(a) the percentage of a household's income that may be devoted to housing costs when initially occupying an affordable unit and which expenses shall be included in the calculation of housing costs;

(b) occupancy standards for affordable units;

(c) enforcement mechanisms to ensure permanent affordability of affordable units developed pursuant to this section;

(d) marketing standards for affordable units constructed pursuant to this section, however, notwithstanding the provisions of this section, a city of one million of more inhabitants may regulate the marketing and leasing of such affordable units according to the standard marketing guidelines promulgated by such city's department of housing preservation and development; and

(e) the content of training that must be received by the religious corporation as a condition of the sale or lease of land for the development of a residential building pursuant to this section.

12. The division of housing and community renewal shall provide technical assistance to municipal governments to aid in the adherence to the provisions of this section and with the applicable revisions to local land use regulations and plans.

§ 3. This act shall take effect immediately.