

Local Law W of 2022

A Local Law amending Chapter 140 of the Code of the Town of Rochester

§ 140-26. Multifamily residential uses.

Section 1. Chapter 140 Amendment

Chapter 140 of the Code of the Town of Rochester **§ 140-26. Multifamily residential uses.** shall be amended as follows.

§ 140-26. Multifamily residential uses.

- A. Multifamily dwelling projects shall be allowed in the ~~AR-3~~, AB-3, R-1, R-2, H, and B Zoning Districts. Such projects shall be considered major subdivisions and require both special use and subdivision approval; however, the application fee for subdivision review shall be waived. This "major subdivision" classification shall apply to all subdivisions of property in connection with the development, regardless of whether or not the same are connected with building development, and the approvals required shall be requested and acted upon concurrently as one subdivision.

- B. Density requirements.
 - (1) Multifamily dwelling density in the B, H, and R-1 Zoning Districts shall not exceed twice the number of dwelling units per acre permitted under the Schedule of District Regulations.
 - (2) Multifamily density in the ~~AR-3~~, AB-3, and R-2 Zoning Districts shall not exceed the number of dwelling units per acre permitted under the Schedule of District Regulations.

- C. Application for preliminary approval of multifamily dwelling projects, accordingly, will be made to the Town in the manner provided under the Town Land Subdivision Law. The subdivider shall also submit all information required by such regulations plus the following additional data:
 - (1) An application for approval on a form to be supplied by the Town or, in the absence of such form, by a letter or brief from the developer or his or her representative indicating how the development will specifically comply with or meet the criteria set forth herein.
 - (2) A proposed plot plan showing the approximate (generally within five feet) locations of all buildings and improvements including parking areas, planting strips (if any), signs, storm drainage facilities, water supply, sewage treatment and collection systems and the specific areas provided as open space in connection with the requirements of this chapter. Building layouts, floor plans and profiles shall also be provided indicating building dimensions, numbers, and sizes of units, common ownership or use areas (apart from the open space referenced below), lighting and such other information as shall be required to determine compliance with the design standards contained herein and any other building standards which may be applicable in Town of Rochester. Setbacks from property lines, improvements and other buildings shall also be indicated.

- (3) A schedule or plan and proposed agreement(s) either with the Town or a property owners' association for the purpose of dedicating, in perpetuity, the use and/or ownership of the recreation area and open space required by this chapter to the prospective dwelling owners or occupants. Such agreement may be incorporated in the applicant's proposed declaration of covenants and restrictions for filing in the County Clerk's office, but shall, in any event, provide to the satisfaction of the Town that maintenance and use of the property, regardless of ownership, be restricted to either (1) activities intended for the sole benefit of the occupants of the particular project proposed, or (2) permanent open space as hereinafter provided.
- D. The Planning Board shall act on the preliminary development plan and special use application concurrently provided an environmental assessment is also conducted pursuant to the New York State Environmental Quality Review Act. No building permit shall be issued to the applicant, however, until all conditions attached to the approval of any preliminary development plan shall have been satisfied, and nothing herein shall be construed as permitting the issuance of a building permit prior to preliminary approval. This requirement notwithstanding, the building permit application shall be made with the preliminary development plan and shall, if granted, be valid for a period equal to that for preliminary development plan approval. If the preliminary development plan shall be rejected, no building permit shall be granted.
- E. The developer shall provide for the installation of required or proposed improvements including but not limited to streets, parking areas, storm drainage facilities, recreational facilities and lighting. No certificate of occupancy (where the same is required) shall be issued until such time as (1) final development plan approval shall have been granted in accordance with the procedures and requirements of this chapter and (2) buildings have been completed and inspected by the Town Building Inspector.
- F. Complete final building plans shall also be submitted as part of the final development plan application.
- G. No person shall sell, transfer, lease or agree or enter into an agreement to sell or lease any land and/or buildings or interests in the individual dwelling units to be created, or erect any building thereon except in accord with the provisions of this chapter, unless and until final development plan approval shall have been granted (unless the improvements shall have been guaranteed), and the plan has been recorded in the Office of the Ulster County Clerk.
- H. All areas of a multifamily development not conveyed to individual owners, and not occupied by building and required or proposed improvements, shall remain as permanent open space or be dedicated to recreation area to be used for the benefit and enjoyment of the residents of the particular units being proposed. No less than 50% of the tract shall be used for this purpose and fees in lieu of dedication may not be substituted for such space. Such open space shall be subject to the following regulations:
- (1) No less than 50% of the open space to be provided (25% of the total tract) shall be dedicated to recreational area for the benefit and enjoyment of the residents of the particular units proposed. Recreation areas (as distinct from other open space) shall be immediately adjacent (part of the same parcel and contiguous) to the proposed units and freely and safely accessible to all residents of the development. They shall not be used to fulfill open space requirements or provide recreational areas for residents of other units, excepting as provided for in Subsection H(2) below. They shall be usable for active recreational activities and shall not include wetlands, quarries, slopes over 15% in grade, water bodies or acreage used for improvements such as storm drainage facilities or sewage effluent disposal areas.

- (2) Land designated as open space shall be permanently maintained as such and not be separately sold, used to meet open space or recreation area requirements for other developments, subdivided or developed excepting that a holding zone may be reserved for future development pursuant to density and other zoning requirements as they presently exist, provided such lands are specifically defined and indicated as "reserved for future development" on all development plans. Such lands shall not be included in calculating permitted density for the proposed development. These provisions, however shall not be construed as granting or reserving to the developer any rights or privileges to develop on the basis of a preapproved plan if density or other zoning requirements shall have been modified to preclude such development.
 - (3) Open space areas shall be permanently maintained so that their use and enjoyment as open space are not diminished or destroyed. Such areas may be owned, preserved and maintained by dedication to a property owners' association which assumes full responsibility for maintenance of the open space and/or deed-restricted private ownership which shall prevent development of the open space, provide for its maintenance and protect the rights of owners or occupants of dwelling units to use and enjoy, in perpetuity, such portion of the open space as shall have been dedicated to recreation area for the project. This is intended to allow the owner/ developer to retain ownership and use of a portion of the property (for hunting, fishing, etc.) provided the permanence of the open space is guaranteed.
 - (4) Whichever maintenance mechanism(s) is used, the developer shall provide, to the satisfaction of the Town Attorney and prior to the granting of any final development plan approval, for the perpetual maintenance of the open space and also the use and enjoyment of the recreation area by residents of the units being approved. No lots shall be sold nor shall any building be occupied until and unless such arrangements or agreements have been finalized and recorded.
 - (5) Developments of ~~25 50~~ units or more shall provide 1/2 acre of playground area per ~~25 50~~ units unless restricted to adult occupancy only, plus such other recreation area as may be required by the Town Subdivision Law. **Playground area acreage shall be included in recreational acreage calculation**
- I. All multifamily developments shall be served with community wastewater facilities and water supplies. Effluent disposal areas shall also be subject to the setback requirements applicable to other multifamily buildings and structures as a minimum.
 - J. The following design criteria shall apply to multifamily developments:
 - (1) Yard **setback** requirements for the district shall apply to the development as a whole and not individual units.
 - (2) Access roads through the development shall comply with minor street requirements as specified in this chapter and no parking space shall be designed such that a vehicle would be backing or driving out onto a through road. Parallel parking may be permitted
 - (3) A multifamily development of ~~25-50~~ or more units shall be served by a minimum of two accesses.
 - (4) Parking spaces of two per unit shall be provided, plus for every two units intended for rental or other transient occupancy, one additional space to accommodate parking needs during sales and other peak visitation periods.
 - (5) No structure shall be erected within a distance equal to its own height of any other structure.
 - (6) All electrical and other utilities shall be placed underground and buried to a depth determined by the Town Engineer as sufficient for safety purposes.
 - (7) All multifamily projects shall comply with building design, landscaping, parking, lighting, stormwater and general design guidelines as set forth in this Code.

- K. Maintenance of a multifamily project shall be vested in (1) an association or other legal entity organized prior to the offering of the first unit for occupancy, or (2) a manager, who may be the developer, or a person designated by the developer before the developer offers a unit for occupancy, or (3) the owners or occupants of units themselves if the total number of owners or occupants within the development is not more than five.
- L. The association or manager, as the case may be, shall be responsible for maintenance, repair and replacement of the common areas of the development including buildings and, if applicable, the furniture, fixtures and equipment within the units.
- M. The developer shall, in filing a preliminary development plan, provide a narrative description of how responsibility for maintenance and care of the units and common areas will be assured and a pro forma operating budget for the maintenance organization including a breakdown of the common expense to be borne by the maintenance organization and a separation of long-term maintenance costs from ongoing routine maintenance costs. There shall also be provided a narrative description of how the developer proposes to assure maintenance of the units and common facilities during any sales program. The Planning Board may require additional temporary facilities to accommodate service demands. Copies of all applicable instruments shall be provided, for purposes of determining that long-term arrangements for maintenance of common facilities have, in fact, been made by the developer.
- N. Any developer who proposes to construct multifamily dwellings and convey the common elements of said multifamily dwelling project, including recreation areas, to an association of purchasers of units therein shall submit a maintenance bond or other performance guarantee acceptable to the Town Board and Town Attorney ensuring long-term maintenance and repair of said common elements.
- O. If the development shall be subject to the New York State statutes governing the sale of real property used for multifamily occupancy, the developer shall certify as to his or her compliance with said statutes. To the extent the provisions of such statutes conflict with this subsection, such certification shall suffice as to conformance with these requirements.

Section 2. Severability

If any part or provision of this local law is judged invalid by any court of competent jurisdiction, such judgment shall be confined in application to the part or provision directly on which judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Law or the application thereof to other persons or circumstances. The Town hereby declares that it would have enacted the remainder of this Law even without such part or provision or application.

Section 3. Effective Date

This local law shall become effective immediately upon the filing in the office of the New York Secretary of State pursuant to Section 27 of the Municipal Home Rule Law.