

**PROPOSED LOCAL LAW AMENDING CHAPTERS 250, 219 and 209  
OF THE VILLAGE CODE**

A LOCAL LAW to amend Chapters 250, 219 and 209 of the Code of the Village of Rye Brook regarding Affordable Housing.

**BE IT ENACTED** by the Board of Trustees of the Village of Rye Brook as follows:

**Section 1:** Chapter 250, Section 26.1 of the Code of the Village of Rye Brook is hereby added as follows:

§ 250-26.1 Fair and Affordable Housing District (FAH District)

A. Findings. The Village of Rye Brook finds that,

- (1) The 2009 Stipulation and Order of Settlement and Dismissal (“Stipulation”) in the case of *United States of America ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, New York*, requires Westchester County to implement a plan to provide 750 units of fair and affordable housing in eligible municipalities throughout the County;
- (2) The Village of Rye Brook has been identified as an eligible municipality for the development of fair and affordable housing pursuant to the terms of the Stipulation;
- (3) Pursuant to the Stipulation, Westchester County has developed a Fair and Affordable Housing Implementation Plan which includes Model Ordinance Provisions for consideration by the eligible municipalities in an effort to ensure the provision and promotion of fair and affordable housing development throughout the County;
- (4) The Model Ordinance Provisions, as modified to suit the needs of the Village of Rye Brook, set forth the necessary requirements to encourage the development of fair and affordable housing and ensure such housing remains fair and affordable for at least the 50-year period as required pursuant to the Stipulation;
- (5) Equitable distribution of affordable housing promotes sustainable and integrated residential patterns, increases fair and equal access to economic, educational and other opportunities, and advances the health and welfare of the residents of the Village of Rye Brook;
- (6) A streamlined and flexible land use review process for fair and affordable housing development projects is necessary to promote and encourage the development of such housing within the Village of Rye Brook; and

(7) Development of fair and affordable housing in a way that affirmatively furthers fair housing is a matter of public interest and promotes the general health, safety and welfare of the community.

B. Purpose. The FAH District is a floating zoning district, as hereinafter defined, unmapped at its initial adoption, that may be applied to particular parcels by an amendment to the Zoning Map of the Village of Rye Brook upon the Village of Rye Brook Board of Trustees' own motion or upon an applicant's submission of a Petition, as hereinafter defined, and approval of the Petition by the Board of Trustees. The Board of Trustees finds that the purpose of this district is to provide flexible land use regulations, a streamlined permitting process and incentives to encourage the development of fair and affordable housing within the Village that will remain fair and affordable for at least 50-years as required pursuant to the Stipulation. The FAH District is established in furtherance of the public health, safety and welfare of the Village by encouraging a balanced demographic.

C. Applicability. The provisions herein shall apply to a Petition and Application for Site Plan and/or Subdivision Approval regarding any parcel(s) in any zoning district in the Village of Rye Brook for the construction of affordable housing provided at least 50% of the proposed dwelling units will be AFFH units.

D. Definitions.

AFFORDABLE AFFIRMATIVELY FURTHERING FAIR HOUSING (AFFH) UNIT - A for-purchase housing unit that is affordable to a household whose income does not exceed 80% of the Area Median Income (AMI) for Westchester County as defined annually by the U.S. Department of Housing and Urban Development (HUD) and for which the annual housing cost to a unit including common charges, principal, interest, taxes and insurance (PITI) does not exceed 33% of 80% AMI, adjusted for family size and that is marketed in accordance with the Westchester County Fair & Affordable Housing Affirmative Marketing Plan; or

A rental housing unit that is affordable to a household whose income does not exceed 60% AMI and for which the annual housing costs of the unit, defined as rent plus any tenant paid utilities, does not exceed 30% of 60% AMI, adjusted for family size and that is marketed in accordance with the Westchester County Fair & Affordable Housing Affirmative Marketing Plan.

FIXED IMPROVEMENT – An improvement to real property which has been attached to the property in such a way as to be an integral part of the premises and its removal would do harm to the building or land.

FLOATING ZONING DISTRICT – Zoning district with boundaries which are not fixed by the ordinance which establishes the district and outlines procedures for fixing the boundaries, but which are established by later amendment to the Zoning Map of the Village of Rye Brook.

PETITION – A written petition for an amendment to the Zoning Map of the Village of Rye Brook.

PROGRAM ADMINISTRATOR – A local not-for profit agency designated by the Board of Trustees.

E. Application procedure.

(1) Pre-submission sketch plan conference.

- (a) Prior to submission of a Petition to the Board of Trustees the Applicant shall file with the Building Department a request for a Pre-Submission Sketch Plan Conference. The purpose of the Pre-Submission Sketch Plan Conference is to expedite the development application review process by identifying early-on any issues, concerns, zoning code compliance and coordination matters that may reasonably be expected to arise during the review of the application and to propose strategies to address these matters. A non-binding conceptual timeline for review of the application shall also be established at the Pre-Submission Sketch Plan Conference. The following representatives from the Village of Rye Brook, or their designees, may attend the Pre-Submission Sketch Plan Conference: Mayor, Village Administrator, Building Inspector, Village Engineer, Planning Consultant, and Chairperson of the Planning Board. Comments and suggestions made by Village representatives at the Pre-Submission Sketch Plan Conference shall not be binding upon the Village.
- (b) A request for a Pre-Submission Sketch Plan Conference shall be accompanied by a sketch plan which shall include the following:
  - [1] Approximate location and dimensions of proposed principal and accessory structures;
  - [2] Preliminary identification and calculation of the number of proposed AFFH Units;
  - [3] Map of the area at a convenient scale which clearly shows the location of the site in respect to nearby streets, rights-of-way and adjacent properties; and

[4] Brief written statement describing the proposed development.

In addition, it is recommended that the applicant submit the following prior to a Pre-Submission Sketch Plan Conference:

[5] Survey map accurately reflecting existing conditions and defining precisely the boundaries of the property, setbacks of all structures, location of easements and such other information as required by the Building Inspector or Village Engineer, which may include but is not limited to a topographical survey. Such survey shall be certified by a New York State licensed land surveyor no more than one year prior to the date of the application;

[6] Map of the subject property at a convenient scale which clearly shows easements, wetlands, watercourses, steep slopes and other existing and proposed pertinent features;

[7] Topographic data at a minimum contour interval of two feet, showing existing and proposed contours on the property and a minimum of 25 feet into all adjacent properties;

[8] Zoning Table; and

[9] Such other information as the Building Inspector or Village Engineer may reasonably require.

(2) Submission of a Petition and Application for Site Plan and/or Subdivision Approval. Application to rezone property to FAH in connection with a proposed development containing AFFH Units shall be made in the form of a Petition to the Board of Trustees sufficient to enable the Board of Trustees to evaluate the development proposal and its consistency with the purpose, criteria, minimum standards and general design standards set forth herein. The Petition shall be accompanied by an Application for Site Plan and/or Subdivision approval, where applicable, which shall include the information set forth at Section 209-3(C) and Section 219-30 in addition to a statement setting forth the percentage, type, number of bedrooms and location of AFFH Units.

(a) Waiver. Upon a finding by the Board of Trustees, based upon a recommendation by the Building Inspector or Village Engineer that, due to the particular character or limited nature of development or change in use or to special conditions peculiar to a site, the submission of certain portions of information normally required as part of the site plan or preliminary plat, is inappropriate or

- unnecessary or that strict compliance with said submission requirements will cause extraordinary and unnecessary hardship, the Board of Trustees may waive such submission requirements whenever, in the opinion of the Board of Trustees, such waiver will be consistent with the goal of promoting the public health, safety and general welfare of the community. The findings for granting such waiver shall become a part of the public record.
- (b) Where a subdivision application is submitted with a Petition the applicant shall not be required to obtain preliminary subdivision approval and may proceed directly to review of a final subdivision plat.
  - (c) To the maximum extent practicable, upon submission of a complete application as determined by the Building Inspector, the Board of Trustees and the Planning Board shall give priority to such application by placing it above other public hearings, resolutions, reports and other business items on all meeting and work session calendars and agendas.
- (3) Referral to Planning Board. The Board of Trustees shall refer the Petition and Application for Site Plan and/or Subdivision approval to the Planning Board for report and recommendation. The Planning Board shall make a recommendation on the Petition and Application for Site Plan and/or Subdivision approval and shall report its findings in writing to the Board of Trustees.
- (4) Board of Trustees review.
- (a) Upon receipt of a report and recommendation from the Planning Board, the Board of Trustees shall hold a public hearing on the Petition and the Application for Site Plan and/or Subdivision approval.
  - (b) Following the completion of the public hearing and following review of the application pursuant to the New York State Environmental Quality Review Act, the Board of Trustees may act to approve, approve with modification or conditions, or disapprove the Petition in the exercise of its sole legislative discretion. Within 62 days following the close of the public hearing on the Application for Site Plan and/or Subdivision approval, the Board of Trustees shall act to approve, approve with modification or conditions, or disapprove such application(s).
  - (c) Approval of the Petition shall result in an amendment of the Zoning Map to include the parcel(s) in the FAH District.

- (d) Approval of the Petition shall precede an approval of the accompanying Site Plan and/or Subdivision Application.
- (5) Duration of Approval. Notwithstanding any provision to the contrary, any rezoning permitted as a result of the Board of Trustees' approval of a Petition pursuant to this section shall become null and void and the zoning of the parcel shall revert back to its original zoning classification by resolution of the Board of Trustees unless construction pursuant to a valid building permit is commenced within three years of the date of final Site Plan and/or Subdivision approval, whichever approval is later, or such later date as extended by the Board of Trustees. Upon written request of the Applicant, the Board of Trustees may grant an extension of the commencement of construction of up to one year upon good cause shown.
- (6) Amendments. Any amendment to an approved Site Plan and/or Subdivision application shall be submitted to the Board of Trustees for review and approval in accordance with the same procedures required under this section, which may include, if applicable, a Petition.
- (7) Renovations, alterations and additions.
  - (a) Renovations, alterations and additions to a structure approved in accordance with this section on a lot rezoned to the FAH District shall comply with the following:
    - i. The bulk and dimensional requirements of the property's zoning designation existing prior to its rezoning to FAH, including any amendments to such requirements; and
    - ii. Any zoning modifications approved by the Board of Trustees as set forth in the approval resolution.
  - (b) The applicant may request a variance from the applicable zoning requirements. The Board of Trustees shall have final approval authority for any request for a variance from the applicable zoning requirements and shall review such request pursuant to the standard set forth in New York State Village Law § 7-712-b.

F. Review criteria.

- (1) Permitted Principal Uses:
  - (a) Attached or detached one-family dwellings;
  - (b) Attached or detached two-family dwellings;
  - (c) Multifamily dwellings; and
  - (d) Mixed Use (non-residential and residential), provided non-residential uses are permitted in the zoning district applicable to the subject

property immediately prior to its rezoning to FAH.

(2) Required AFFH Unit Component.

- (a) Within all residential developments of 2 or more units created by subdivision or site plan approval, no less than 50% of the total number of units shall be created as AFFH Units.
- (b) No preferences shall be utilized to prioritize the selection of income-eligible tenants or purchasers for AFFH Units created under this subsection, unless otherwise authorized by Westchester County.
- (c) All AFFH Units, whether for purchase or for rent, shall be marketed in accordance with the Westchester County Fair & Affordable Housing Affirmative Marketing Plan.

(3) Dimensional and Bulk Requirements.

- (a) The dimensional and bulk requirements applicable in the FAH district shall be those of the property's existing zoning designation prior to its rezoning to FAH, except as modified or waived by the Board of Trustees.
- (b) The Board of Trustees may permit modification or waiver of the applicable dimensional and bulk requirements as it deems appropriate upon balancing important concerns of the community's health, safety and welfare, including:
  - i. Consistency with the purpose and intent of the Village of Rye Brook Zoning Code and Official Map;
  - ii. Furthering fair and affordable housing within the Village;
  - iii. Harmony with the appropriate and orderly development of the immediate area;
  - iv. Impacts upon the orderly development and quality of life for neighboring areas;
  - v. Advancement of economic development within the Village;
  - vi. The location, nature and height of buildings, location of parking and the nature and extent of landscaping on the site such that the modified dimensional or bulk requirement will not hinder or discourage the appropriate development and use of adjacent land and buildings or substantially impair the value thereof;
  - vii. Adverse environmental impacts; and
  - viii. Whether the requested modification or waiver is the minimum necessary to maintain the economic viability of the development proposal.
- (c) In granting any modification or waiver, the Board of Trustees may attach such conditions as are, in its judgment, necessary to secure substantially the objectives of the standards or requirements so modified or waived.

- (d) Minimum floor area. The minimum gross floor area per AFFH Unit shall not be less than 80% of the average floor area of non-restricted housing units in the development, if any, and no less than the gross floor area set forth below, except where a greater gross floor area is required pursuant to the New York State Uniform Fire Protection and Building Code in which case such requirement shall apply. *Gross floor area shall be measured from the exterior wall surfaces and/or centerline of common wall(s) separating adjacent common space and/or dwelling units.*

<u>Dwelling Unit</u>	<u>Minimum Gross Floor Area</u>
<u>Efficiency</u>	<u>450 square feet</u>
<u>1 bedroom</u>	<u>675 square feet</u>
<u>2 bedroom</u>	<u>750 square feet</u>
<u>3 bedroom</u>	<u>1,000 square feet (including at least 1.5 baths)</u>
<u>4 bedroom</u>	<u>1,200 square feet (including at least 1.5 baths)</u>

- (e) Occupancy standards. For the sale or rental of AFFH Units, the following occupancy schedule shall apply, except where a lesser occupancy is required pursuant to the New York State Uniform Fire Protection and Building Code in which case such requirement shall apply:

<u>Number of Bedrooms</u>	<u>Number of Persons</u>
<u>Efficiency</u>	<u>Minimum:1, Maximum:1</u>
<u>1 bedroom</u>	<u>Minimum:1, Maximum:3</u>
<u>2 bedroom</u>	<u>Minimum:2, Maximum:5</u>
<u>3 bedroom</u>	<u>Minimum:3, Maximum:7</u>
<u>4 bedroom</u>	<u>Minimum:4, Maximum:9</u>

- (4) Unit Appearance and Integration in new developments and existing neighborhoods.

- (a) Within new one- or two-family developments and existing one- or two-family zoning districts, the AFFH Units may be one-, two- or multi-family homes. All such units shall be indistinguishable in



appearance, siting and exterior design from the market-rate one-family homes in the development or the one- or two-family homes in the existing neighborhood, to the greatest degree possible. Interior finishes and furnishings may differ in quality from those of the market-rate units.

- (b) Within new multi-family developments of four or more families in all other zoning districts, the AFFH Units shall be physically integrated into the design of the development and shall be distributed among the various housing unit sizes (efficiency, one-, two-, three- and four-bedroom units) in the same proportion as market-rate units in the development. The AFFH Units shall not be distinguishable from the market rate units from the outside or building exteriors. Interior finishes and furnishings may differ in quality from those of the market-rate units.

G. Maximum Rent and Sales Price.

The maximum monthly rent for an AFFH Unit and the maximum gross sales price for an AFFH Unit shall be as set forth in the current edition of the Westchester County Area Median Income (AMI) Sales & Rent Limits available from the County of Westchester.

H. Duration of Affordability.

Units designated as AFFH Units shall remain affordable for a minimum of 50 years from the date of the issuance of the initial certificate of occupancy for rental properties and from the date of the original sale for ownership units.

I. Property Restrictions.

- (1) A declaration of restrictive covenants shall be submitted to the Program Administrator for its approval in recordable form acceptable to the Village Attorney for any property containing an AFFH Unit, whether for rent or for purchase, which shall ensure that the AFFH Units shall remain subject to affordable housing regulations for the minimum 50 year period set forth at § 250-26.1(H) of this chapter.
- (2) The declaration of restrictive covenants shall state that the AFFH Unit shall be the primary residence of the resident household selected to occupy the unit.
- (3) Upon approval by the Program Administrator the declaration of restrictive covenant shall be recorded in the Land Records Division of the Office of the Clerk of the County of Westchester prior to the issuance of a certificate of occupancy for any AFFH Unit.

J. Affirmative Marketing.

The AFFH Units created under the provisions of this section shall be sold or rented, and resold and re-rented during the period of affordability established by the Board of Trustees during a time period of not less than 50 years, only to qualifying income-eligible households. Such income-eligible households shall be solicited in accordance with the requirements, policies and protocols established in the Westchester County Fair & Affordable Housing Affirmative Marketing Plan, for so long as the Westchester County Fair & Affordable Housing Affirmative Marketing Plan remains in effect, so as to ensure outreach to racially and ethnically diverse households.

K. Resale Requirements.

- (1) The owner of an AFFH Unit shall be responsible for such unit's resale in conformance with the provisions of this chapter, procedures of the Program Administrator and any applicable federal, state or local requirements. The owner shall provide the Program Administrator with a notice of intent to sell or otherwise transfer title prior to entering into any contract for sale or transfer of the units. The Program Administrator will inform the owner in writing of the applicable income eligibility and maximum resale price, as determined by the Program Administrator. Prior to closing, the owner shall submit to the Program Administrator sufficient information to demonstrate compliance under this chapter, the procedures of the Program Administrator and any federal, state or local requirements, to the satisfaction of the Program Administrator.
- (2) Title to property containing an AFFH Unit shall be restricted so that in the event of any transfer of title, including resale, by the home buyer or any successor, the resale price shall not exceed the then-maximum sales price for said unit, as determined in accordance with § 250-26.1(G) of this chapter, or the sum of the following, whichever is greater:
  - (a) The actual purchase price of the unit by the home buyer;
  - (b) The value of any Fixed Improvements made by the home buyer, as determined by the Program Administrator; and
  - (c) Reasonable and necessary expenses incidental to the resale.

L. Lease Renewal Requirements.

- (1) Renters of AFFH Units shall sign leases for a term of no more than two years. As long as a resident remains eligible and has complied with the terms of the lease, the resident shall be offered renewal leases for a term of no more than two years each. Prior to execution of a renewal lease, the owner shall submit sufficient information to the Program Administrator for the Program Administrator's verification of the proposed renter's income eligibility.
- (2) Renewal of a lease shall be subject to the conditions of federal, state or county provisions that may be imposed by the terms of the original

development funding agreements for the development to which the AFFH Unit is a part or to the provisions of other applicable local law. If no such provisions are applicable and if a resident's annual gross income should subsequently exceed the maximum then allowable, then said resident shall pay the greater of (a) the rent amount payable under the provisions of this ordinance or (b) 30% of the resident's monthly adjusted household income, provided that the increased rent may not exceed the market rent in that development for units within the same number of bedrooms for a term of not more than one year.

M. Administration and Monitoring.

- (1) The Board of Trustees shall, by resolution, designate a local not-for-profit agency to serve as Program Administrator.
- (2) The Program Administrator shall be responsible for administering the requirements of Sections 250-26.1(J), (K) and (L) of this chapter by monitoring the AFFH Units during their periods of affordability and by monitoring compliance with the affirmative marketing responsibilities of the developers of the AFFH Units.

**Section 2:** Chapter 219, Section 219-27.1 of the Code of the Village of Rye Brook is hereby added as follows:

§219-27.1 Required Affordable Housing Component.

- (1) AFFH Units, as defined in Section 250-26.1(D), shall be provided as set forth in the table below when a subdivision of a minimum of 11 lots is proposed.

<u>Number of Proposed Lots</u>	<u>Required AFFH Units</u>
<u>11-20</u>	<u>1</u>
<u>21-30</u>	<u>2</u>
<u>31-40</u>	<u>3</u>
<u>41-50</u>	<u>4</u>
<u>Continuing in like increments</u>	<u>1 additional AFFH Unit shall be required for each additional increment of 10 lots or part thereof</u>

- (2) The requirement to provide AFFH Units, as set forth above, shall not apply to the following:
  - a. Subdivision applications submitted prior to the effective date of this provision;
  - b. Subdivisions approved prior to the effective date of this provision, including any amendments to an approved subdivision, whether such amendments are submitted prior to or after the effective date of this provision.

- c. Subdivisions proposed in the following districts: OB-1, OB-2, OB-3, OB-S, C1-P, C-1 and H-1.
- (3) The requirements set forth at Sections 250-26.1(F)(3)(d) through and including 250-26.1(M) shall apply to any subdivision with AFFH Units.

**Section 3:** Chapter 209, Section 209-3 of the Code of the Village of Rye Brook is hereby amended to add as follows:

§ 209-3 Preliminary Site Plan.

...

F. Required Affordable Housing Component.

- (1) AFFH Units, as defined in Section 250-26.1(D), shall be provided as set forth in the table below when the new construction of a minimum of 11 dwelling units is proposed in a site development plan application.

<u>Number of Proposed Dwelling Units</u>	<u>Required AFFH Units</u>
<u>11-20</u>	<u>1</u>
<u>21-30</u>	<u>2</u>
<u>31-40</u>	<u>3</u>
<u>41-50</u>	<u>4</u>
<u>Continuing in like increments</u>	<u>1 additional AFFH Unit shall be required for each additional increment of 10 dwelling units or part thereof</u>

- (2) The requirement to provide AFFH Units, as set forth above, shall not apply to the following:
  - a. Site development plan applications submitted prior to the effective date of this provision;
  - b. Site development plans approved prior to the effective date of this provision, including any amendments to the approved site development plan, whether such amendments are submitted prior to or after the effective date of this provision.
  - c. Site development plans proposed in the following districts: OB-1, OB-2, OB-3, OB-S, C1-P, C-1 and H-1.
- (3) The requirements set forth at Sections 250-26.1(F)(3)(d) through and including 250-26.1(M) shall apply to any site development plan with AFFH Units.

**Section 4:** This Local Law shall take effect immediately upon the filing with the Office of the Secretary of State.