

## INCENTIVE ZONING

### **Introductory Local Law #3-2013**

Be it enacted by the Town Board of the Town of Clarkson as follows:

#### **Section 1. Title.**

This Local Law shall be known as Local Law #3 - 2013 "The Incentive Zoning Law of the Town of Clarkson".

#### **Section 2 Purpose.**

This local law is intended to create a system of Incentive Zoning as authorized by Section 261-b of the Town Law of the State of New York.

#### **Section 3. Authority.**

This Local Law is adopted pursuant to Article 16 of the Town Law of the State of New York and the Municipal Home Rule Law of the State of New York.

#### **Section 4. Changes to Code**

**Article VIII, "Zoning, Incentive" is added to Chapter 140 of the Code as follows**

**SEE ATTACHED**

#### **Section 5. Repealer.**

All local laws or parts of local laws inconsistent or in conflict with this local law are hereby repealed to the extent of such conflict or inconsistency.

#### **Section 6. Severability.**

If any clause, sentence, phrase, subdivision, paragraph, section or any part of this section shall for any reason be adjudicated finally by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this section, but shall be confined in its operation to the clause, sentence, subdivision, paragraph, section or part thereof directly involved in the controversy or action in which said judgment shall have been rendered. It is hereby declared to be the legislative intent that the remainder of this section would have been adopted had any such provision been excluded.

#### **Section 7. When effective.**

This Local Law Chapter shall become effective upon its adoption and upon filing with the New York State Secretary of State.

# Chapter 140

## ZONING

### Article VIII

#### ZONING, INCENTIVE

- § 140-89. Title.
- § 140-90. Purpose and intent.
- § 140-91. Legislative authority.
- § 140-92. Applicability.
- § 140-93. Definitions.
- § 140-94. Benefits or amenities.
- § 140-95. Incentives or bonuses.
- § 140-96. Criteria and procedure for approval.
- § 140-97 Expenses of Compliance with SEQRA..

#### § 140-54. Title.

This law shall hereinafter be known and cited as "The Incentive Zoning Law of the Town of Clarkson."

#### § 140-55. Purpose and intent.

The Town Board has determined that it may be appropriate to make adjustments to permissible use, density and area requirements for the specific purpose of encouraging development using principals set forth in the Town of Clarkson's Comprehensive Plan while providing amenities to the Town at a minimum cost to the residents and taxpayers. It is the intent of this chapter to empower the Town Board to grant incentives or bonuses to advance the vision and policies articulated in the Town of Clarkson's Comprehensive Plan and the following objectives:

- A. The preservation and enhancement of natural and cultural features.
- B. The accommodation of land uses and physical site arrangements which are not contemplated under conventional zoning but which would further the land use goals of the Town.
- C. The creation of usable open space and public access to recreation lands and trails.
- D. The orderly development of Parks.

- E. The preservation of scenic viewsheds, water resources, forests, meadows, geologic features, environmentally sensitive areas, significant plant and animal habitats, and important ecological resources.
- F. The provision of a more desirable environment than what would be possible through the strict application of existing zoning regulations.
- G. The promotion of the general health, safety and welfare of the Town.

§ 140-56. Legislative authority.

In accordance with §261-b of the Town Law of the State of New York, the Town Board of the Town of Clarkson is empowered to provide for a system of zoning incentives or bonuses in exchange for specific social, economic, or cultural benefits or amenities as the Town Board deems necessary and appropriate and which are consistent with the intent and purpose set forth in § 140-55.

§ 140-57. Applicability.

This chapter shall apply to all zoning districts in the Town of Clarkson.

§ 140-58. Definitions.

For the purpose of this chapter, the terms used are defined as follows:

**COMMUNITY BENEFITS OR AMENITIES**

Open space, parks, Historical Overlay District enhancements, off street parking and other specific physical, social or cultural amenities, or cash in lieu thereof, of benefit to the residents of the community authorized by the Town Board.

**INCENTIVES OR BONUSES**

Adjustments to the permissible density, area, height, use or other requirements of the Zoning Code for the Town of Clarkson and any amendments thereto in exchange for a specific community benefit or amenity. These adjustments may incorporate two or more noncontiguous parcels of land.

**INCENTIVE ZONING**

The system by which specific incentives or bonuses are granted, pursuant to § 261-b of New York State Town Law, on condition that specific social, economic, or cultural benefits or amenities are provided to the community.

§ 140-94. Benefits or amenities.

A. The following benefits or amenities may be either on or off the site of the subject application:

- (1) Preservation of open space.
- (2) Construction, improvement and enhancement to Town buildings and grounds including parks.
- (3) Preservation of cultural or historic facilities in excess of those required to mitigate proposed development impacts.
- (4) Enhancement and preservation of the Clarkson Historical Overlay District.
- (5) Other facilities or benefits to the residents of the community which are consistent with the purpose and intent of this chapter, as determined by the Town Board.
- (6) If the Town Board finds that a community benefit is not suitable on site or cannot be reasonably provided, the Town Board may require a cash payment in lieu of the provision of the amenity or bonus. These funds shall be placed in a trust fund to be used by the Town Board exclusively for amenities specified in these provisions.
- (7) Any combination of above-listed amenities and/or cash in lieu of any amenity(s) for specific purposes identified.
- (8) Prior to the issuance of any permit, stripping of any ground cover, site grading, or any other site improvements or construction activities:
  - (a) Any property transfers shall have been made;
  - (b) Cash in lieu of amenities shall be made;
  - (c) If the amenities include construction by the developer, the Letter of Credit posted by the developer shall include provisions for such work.

B. These amenities shall be in addition to any mandated requirements pursuant to other provisions in the Code of the Town of Clarkson.

§ 140-59. Incentives or bonuses.

The following incentives may be granted by the Town Board to an application on a specific site:

- A. Increases in residential or nonresidential unit density.
- B. Changes in use.
- C. Increases in lot coverage.
- D. Changes in setbacks or height.
- E. Increases in floor area.
- F. Reduction of required buffer area.
- G. Modification of parking requirements.

§ 140-60. Criteria and procedure for approval.

- A. A preapplication conference is required prior to the submission of an application for incentive zoning. The purpose of a preapplication conference is to inform the applicant of applicable procedures, submission requirements, development standards and other pertinent matters before the applicant finalizes the incentive zoning proposal.
  - (1) The preapplication conference will be coordinated through the Building Department and will normally be attended by the Supervisor, the Chairperson of the Planning Board (or designee), the Chairperson of the Zoning Board of Appeals (or designee), the Chairperson of the Conservation Board (or designee), the engineer representing the Town, the Highway Superintendent, the Building Inspector, the Town Attorney and other interested parties who may be designated by the Town Supervisor or Planning Board Chairperson. If the proposal impacts the Historical Overlay District, the Chairperson of the Architectural Review Board (or designee) shall be included.
  - (2) The applicant requesting consideration for incentive zoning is required to attend the preapplication conference and is encouraged to bring the project's design professional(s).
  - (3) Upon the request for the preapplication conference, the applicant shall pay a fee in an amount determined by the Town Board by resolution and as set forth in the Fee Schedule. This fee shall be non-refundable.

(4) Opinions presented during a preapplication conference are advisory in nature and do not represent a commitment on behalf of the Town Board or represented agency regarding the acceptability of the incentive zoning proposal.

B. An application for incentive zoning will consist of a letter of intent accompanied by the following information:

(1) One concept plan showing the site developed to its fullest extent under the zoning regulations in this Chapter of the Town Code, and one concept plan showing the site developed in a manner that incorporates the desired incentive and amenity to be provided. These plans shall show the following information:

(a) Location and extent of all proposed land uses, including development areas and open spaces, with areas shown in acres.

(b) All interior streets, roads, access easements and their planned private or public ownership, as well as all points of access and egress from existing public rights-of-way.

(c) An area map showing adjacent parcels; that portion of the applicant's property under consideration; all properties, zoning districts, subdivisions, streets, access, easements, watercourses, drainage facilities, buildings, structures and other significant natural and built features within 300 feet of the applicant's property, and all uses of abutting lands.

(2) A written description of the proposed amenity.

(3) The cash value of the proposed amenity.

(4) A narrative which:

(a) Describes the benefits to be provided to the community by the proposed amenity.

(b) Provides a preliminary indication that there is adequate sewer, water, transportation, waste disposal and fire-protection facilities in the zoning district in which the proposal is located to handle the additional demands the incentive and amenity may place on these facilities beyond the demand on them as if the site were developed to its fullest extent under the zoning regulations in this Chapter of the Town Code.

(c) Explains how the amenity helps implement the vision and policies of the Comprehensive Plan and, where appropriate, the Clarkson Historical Overlay

District, and land use goals of the Town as supplemented by the laws and regulations adopted by the Town Board.

(d) Describes in detail the requested incentive(s).

(e) Completed long environmental assessment form, Part I.

(5) Twenty sets of the application shall be provided to the Town for distribution and review. The Town Board, upon receipt of an application, and as part of its review, shall refer the application to the Planning Board for its review and recommendations.

(6) A check to the Town of Clarkson in an amount established by Resolution of the Town Board as set forth in the Fee Schedule. This shall be non-refundable.

(7) In addition to the fee above, the developer shall be responsible for all costs associated with reviewing the application including legal fees and engineering fees. To guarantee the payment of these costs, the developer shall be required to deposit the sum of \$1,500.00 with the Town at the time of application. Any unused portion shall be refunded to the developer upon completion of the project, or withdrawal of the application. The Town may request payment of additional fees as required and such payment shall be due within ten (10) days of request.

C. The Planning Board shall forward a written recommendation to the Town Board indicating whether or not it supports the approval of the incentive and amenity. This recommendation shall consider the following:

(1) The suitability of the site(s) for the type of open space preservation proposed, the physical characteristics of the land and the relation of the proposed development to surrounding existing and probable future development.

(2) The adequacy of major roads, utilities and other facilities and services to serve the development.

(3) That the proposal is conceptually sound, is consistent with the Town Comprehensive Plan, and meets local and area wide needs.

D The application shall be referred to the Monroe County Planning Department for its review. The Town may also refer the application to the Town Engineer, as well as other local and county officials, representatives of federal and state agencies and consultants as deemed appropriate. These agencies may include, but are not limited to, the Monroe County Department of Transportation, the New York State

Department of Transportation and the New York State Department of Environmental Conservation.

- E. Once the application has been determined to be complete, a public hearing will be scheduled before the Town Board. The Town Clerk shall give notice of the hearing in the official newspaper of the Town at least 10 days prior to the date of the hearing.
- F. All applicable requirements of the State Environmental Quality Review (SEQR) Act shall be complied with as part of the review and hearing process. In addition to other information that may be required as part of the environmental assessment of the proposal, the assessment shall include verification that the zoning district in which the proposal is to be located has adequate sewer, water, transportation, waste disposal and fire-protection facilities to:
- (1) First, serve the remaining vacant land on the site as though it were developed to its fullest potential under the zoning regulations in effect at the time of the amenity/incentive proposal; and
  - (2) Then, serve the on-site amenity and incentive, given the development scenario in Subsection F(1) above.
- G. In order to approve an amenity/incentive proposal, the Town Board shall determine that the requirements of SEQR have been met and the proposed amenity provides sufficient public benefit to provide the requested incentive. In order to make this determination, the Town Board may require the completion of an environmental impact statement. Thereafter, the Town Board is authorized to act on an application for approval pursuant to this chapter.
- H. The Town Board may impose conditions on a project to ensure that the above findings are ensured through the subsequent plan review and construction phases of the project.
- I. Upon a favorable decision of the Town Board, an application shall be submitted to the Planning Board for subdivision and/or site plan approval pursuant to the applicable provisions of the Code and Regulations of the Town of Clarkson. Failure to submit the application to the Planning Board within 6 months of approval by the Town Board shall render any incentive zoning granted hereunder null and void unless extended by resolution of the Town Board for a maximum of 6 additional months.

§ 140-61. Expenses of Compliance with SEQRA.

In accordance with section §261-b of the Town Law, any applicant for incentives or bonuses shall pay a proportionate share of the cost of preparing any generic environmental impact statement prepared in conjunction with the project, and that such charge shall be added to any site-specific charge made pursuant to the provisions of §8-0109 of the Environmental Conservation Law.