



New Castle County, Delaware, Workforce Housing Ordinance: Development Incentives Worth a Look

By J. Breck Smith

On February 26, 2008, New Castle County, Delaware, in an attempt to address a perceived lack of new construction of low or moderately priced housing within the County, enacted Ordinance No. 07-150. Known as the “Workforce Housing Ordinance,” this Ordinance amended Articles 7 and 33 of New Castle County’s Unified Development Code (UDC) in order to provide incentives to developers to increase the supply of homes for purchase and for rent by low and moderate income households.

According to the 2007 New Castle County Comprehensive Plan, between 2000 and 2005 housing prices in the County rose 53 percent while incomes increased by only six percent during the same period. In 2007, the median sales price for existing homes within the County was \$224,000 and the median sales price for new homes was \$400,000.

The Program

The Workforce Housing Ordinance establishes a voluntary mechanism pursuant to which a developer may opt to set aside 20 percent of a project’s dwelling units for workforce housing as part of its residential or mixed-use land development plan submittal. The workforce dwelling units that are set aside are to be priced for low-income and/or moderate-income households. The Ordinance defines “low-income household” as a household income that is 50-80 percent of the median income within the New Castle County area, and defines “moderate-income household” as a household earning 80-120 percent of the County median. Based upon HUD figures that are published annually, in the first quarter of 2008 in New Castle County, a family of four low-income household earned between \$37,150 and \$59,450, and a family of four moderate-income household earned between \$59,451 and \$89,160.

A workforce development project must be located on land served by a public sewer consistent with the County’s 2007 Comprehensive Plan. The Ordinance provides that the workforce dwelling units should be located throughout the development according to type and should not appear as noticeably segregated from the market rate dwelling units. The exterior appearance of the workforce dwelling units is to be similar to the market rate units by providing similar architectural style and similar exterior finishes, building materials and construction quality. Any plan submitted pursuant to the Ordinance shall be considered vested at the time of application. Existing record plans may be resubmitted for consideration and approval under the Ordinance. The developer of a workforce housing project shall be required to make a financial contribution to the County Housing Trust Fund in the amount of \$12 per \$1,000 of permit construction valuation relative to each market rate dwelling payable at the time of issuance of a Certificate of Occupancy for each such dwelling unit.

The Development Incentives

Density Bonuses

Workforce development projects are entitled to a 100 percent residential density bonus if at least 20 percent of the project's dwelling units are set aside for workforce housing and at least half of such units are priced affordable to low-income households. A workforce development is entitled to a 50 percent residential density bonus if at least 20 percent of the dwelling units are set aside and less than half of such units are priced affordable to low-income households.

Site Development Incentives

Workforce development projects are entitled to the following by-right site development incentives in order to accommodate the additional units resulting from the density bonus:

- a 30 percent reduction in the required open space, a 30 percent increase in floor area ratio and elimination of the minimum site acreage requirement
- a credit of acreage on a one-to-one basis for open space if acreage is dedicated to a community facility such as a school, library, park, or a public safety or public health care building
- a 25 percent reduction in required setbacks and lot sizes and a 25 percent increase in height limits
- a 20 percent reduction in landscaping and bufferyard opacity
- the transfer of protection for water resource protection areas is permitted
- alternative dwelling unit types may be used

Expedited Reviews

Development applications (including applications for rezoning, land development or subdivision plan approval, and variances) respecting workforce development projects are to be provided expedited and streamlined consideration by the Department of Land Use and all other applicable County agencies. Whenever a response or decision is required from Land Use, it shall be issued in writing within 10 days of receipt of a complete submission, as opposed to the normal review time of 20 days.

Fee Waivers

- All land development application fees are waived if the project is 100 percent workforce development
- A graduated waiver of building permit fees

Traffic Analysis

An operational analysis may be required for major plans. A traffic impact study will only be required if requested by DelDOT. Proposed developments are subject to DelDOT transportation impact standards, and DelDOT can require transportation improvements as a condition to its letter of no objection. However, up to 50 workforce dwelling units may be excluded from any required traffic impact study.

Affordability Controls

Prior to record plan approval, a workforce project developer is required to execute a master workforce housing agreement in favor of the County which, along with restrictive covenants or other appropriate documents approved by the County Law Department, shall be recorded in the Office of the Recorder of Deeds. If a workforce housing unit sold originally to a qualified homebuyer is sold during the 15-year affordability period, such unit must be resold to a qualified homebuyer at a price affordable to the new homebuyer. In workforce development projects that contain workforce rental units, such rental units shall remain affordable for low-income or moderate-income households for a period of no less than 25 years from the date of initial occupancy. Eligibility for purchase or rental of

workforce units is based on household size and income. Households must complete a lender certification process or a developer process that has been approved by the Department of Community Services. At the time of purchase, the household must submit an owner-occupancy declaration to Community Services declaring that it is income eligible and that the unit is its only residence. Community Services shall issue a “Certificate of Qualification” to qualified households.

At the time of this writing, New Castle County was considering one or more material amendments to this Ordinance.

For more information about New Castle County’s workforce housing initiative, contact Breck Smith at 302.622.4208 or jsmith@foxrothschild.com, or Bernard Conaway at 302.622.4209 or bconaway@foxrothschild.com.



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