



# TOWN OF NEW CASTLE

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May 2, 2013

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Re: *U.S Ex. Rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, New York*, United States District Court, SDNY, Case No. 06 Civ. 2860 (DLC); Your Letter of March 21, 2013

Dear Mr. Johnson:

The analysis of New Castle's zoning ordinances in the "report card findings" included in your letter of March 21, 2013, errs at several significant points. I will provide corrections in reference to the report card's headings and text. Report card text is in *italic* typeface and the Town's response is in regular typeface

## Opening

*Report Card: Although New Castle has adopted the model affordable housing zoning ordinance, the requirements of the ordinance only apply to one zoning district . . .*

Town Response: New Castle adopted Affordable AFFH model ordinance provisions by Local Law No. 10-2011 enacted August 9, 2011. They apply in every mapped zoning district in Town except for the Business-Retail Parking District (our train station parking lot), the Research and Office Business 20 Acre District (Chappaqua Crossing), and the Industrial-General District (two small areas in Chappaqua and Millwood). See, New Castle Town Code §60-210, Town Code §60-220, Town Code §60-410A, Schedule of regulations for residence districts, Use Regulations – Part 2, Use No. 23, Town Code §60-410A, Schedule of regulations for residence districts, Lot and Bulk Regulations, Note 5, Town

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Code §60-410B, Schedule of Regulations for business and industrial districts, Use Regulations – Part 4, Use No. 12, Town Code §60-410H(2)(a)[3]), and Town Code §113-23. See also, Town Code §60-410H(2)(a)[2][a], Town Code §60-440A(6), and Town Code §113-10.

We assume that your Pratt Institute experts who reviewed our zoning provisions simply overlooked Town Code §60-410A, Schedule of Regulations for residence districts, Use Regulations - Part 2, Use No. 23 which specifically lists “Two-family Model Ordinance Provisions Affordable AFFH Units” as “Principal Permitted Uses” in all of the single family residential districts in Town (that is, the One-Family Residence District 2 Acres, One-Family Residence District 1 Acre, One-Family Residence District ½ Acre, and One-Family Residence District ¼ Acre), Town Code §113-10 that provides expedited procedures for subdivision applications that include Model Ordinance Provisions Affordable AFFH Units, and Town Code §113-23 that requires Model Ordinance Provisions Affordable AFFH Units be included in any subdivision of 8 or more lots. Likewise, we assume that your Pratt Institute experts saw Town Code §60-410H(2)(a)[2][a] and Town Code §60-410H(2)(a)[3] which allow a density bonus for Model Ordinance Provisions Affordable AFFH Units and require that 10% of any new units must be Model Ordinance Provisions Affordable AFFH Units in the Multifamily Residence-Chappaqua District, but the Pratt Institute experts obviously missed the point that the other two mapped multifamily districts in Town (the Multi-Family Residence-Millwood and the Multi-Family Planned Development District) both incorporate the Multifamily Residence-Chappaqua standards at Town Code §60-410H(3) and Town Code §60-410H(4)(b).

More particularly, too, the Chappaqua Crossing site has been recently rezoned to provide for a Multi-Family Planned Development District as well as a Research and Office Business 20 Acre District, and as part of that rezoning the developer is required to include 20 Affordable AFFH Units as part of its 111 unit development, or close to 20%, well over the 10% required by the Model Ordinance.

*Report Card: Several districts do provide opportunities for new multifamily development, though these sites could accommodate only 32 multifamily units . . . .*

Town Response: The analysis does not identify the sites that could provide these 32 units, but 20 units already have been approved at Chappaqua Crossing, and as you know, the Town Board is considering a development of 28 Affordable AFFH Units in its Workforce Housing Overlay District. Also, Affordable AFFH Units can be built over all the retail buildings in the Chappaqua and Millwood hamlets, on several

underutilized sites which have been identified, and on several undeveloped sites. Although the Town has not determined the number of potential units that could be built on these sites or in other areas of Town that have not been identified, the number currently approved or under review exceeds your Pratt Institute experts' estimate.

Also, any residential lot in Town can be developed or redeveloped as a two family residence if it is an Affordable AFFH Unit, but again, the Town has not determined the number of potential units that could be constructed under this provision.

*Report Card: Additional actions will be needed for the Town to make meaningful progress towards meeting its affordable housing obligation under the Settlement.*

**Town Response:** The Town of New Castle was not a party in *U.S Ex. Rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, New York*, United States District Court, SDNY, Case No. 06 Civ. 2860 (DLC), and is not a party to the Settlement. In and of itself, the Settlement does not impose any obligation on the Town.

**Model Zoning and County Benchmark:**

*Report Card: The Town has adopted the model affordable housing zoning ordinance but not for the Town as a whole. It is applicable to only one zoning district, the Multifamily Residence – Chappaqua district. . . .*

**Town Response:** The Town's Affordable AFFH model ordinance provisions apply in every mapped zoning district in Town except for the Business-Retail Parking District, the Research and Office Business 20 Acre District, and the Industrial-General District. See, New Castle Town Code §60-210, Town Code §60-220, Town Code §60-410A, Schedule of regulations for residence districts, Use Regulations - Part 2, Use No. 23, Town Code §60-410A, Schedule of regulations for residence districts, Lot and Bulk Regulations, Note 5, Town Code §60-410B, Schedule of Regulations for business and industrial districts, Use Regulations - Part 4, Use No. 12, Town Code §60-410H(2)(a)[3]), and Town Code §113-23. See also, Town Code §60-410H(2)(a)[2][a], Town Code §60-440A(6), and Town Code §113-10.

The Multifamily Residence-Chappaqua District density bonus for Model Ordinance Provisions Affordable AFFH Units and requirement that 10% of any new units in a multifamily development be Model Ordinance Provisions Affordable AFFH Units set forth in Town Code §60-410H(2)(a)[2][a] and Town Code §60-410H(2)(a)[3] are made applicable to the Multi-Family

Residence-Millwood and the Multi-Family Planned Development District as well under Town Code §60-410H(3) and Town Code §60-410H(4)(b).

“Two-family Model Ordinance Provisions Affordable AFFH Units” are specifically listed as “Principal Permitted Uses” in all of the single family residential districts in Town (that is, the One-Family Residence District 2 Acres, One-Family Residence District 1 Acre, One-Family Residence District ½ Acre, and One-Family Residence District ¼ Acre) by Town Code §60-410A, Schedule of Regulations for residence districts, Use Regulations - Part 2, Use No. 23.

Further, Town Code §113-10 that provides expedited procedures for subdivision applications that include Model Ordinance Provisions Affordable AFFH Units, and Town Code §113-23 that requires Model Ordinance Provisions Affordable AFFH Units be included in any subdivision of 8 or more lots.

*Report card*                      *The unadopted Affordable Housing Allocation Plan produced in 2005 by the County’s planning department called for more than 255 affordable units in New Castle, of which only 3 units have been built in the interim, leaving a balance of approximately 252 units.*

Town response:                      As you note, the housing allocation plan was, not adopted. I will not speculate as to why it was never adopted, but I will note that multifamily housing has been constructed in New Castle, and market forces and infrastructure costs are primarily responsible for the lack of affordability of such housing. Leaving aside the apartments above stores, accessory apartments, two shared housing facilities, homeless shelter, and domestic abuse shelter in Town, New castle has 622 multifamily units, and only 52 of them were built as income restricted affordable housing.

### **Zoning Ordinance**

*Report Card:*                      *One of these districts, the MR-C district, contains mandates and incentives for affordable housing in the manner of the model affordable housing ordinance.*

Town Response:                      Under Town Code §60-410H(3) and Town Code §60-410H(4)(b), the Multifamily Residence-Chappaqua District density bonus for Model Ordinance Provisions Affordable AFFH Units and the requirement that 10% of any new units in a multifamily development be Model Ordinance Provisions Affordable AFFH Units set forth in Town Code §60-410H(2)(a)[2][a] and Town Code §60-410H(2)(a)[3] are applied to the Multi-Family Residence-Millwood and the Multi-Family Planned Development District as well.

*Report Card: Two-family dwellings are permitted as of right in five zoning districts, and by special permit in another seven zoning districts.*

“Two-family Model Ordinance Provisions Affordable AFFH Units” are “Principal Permitted Uses” in all of the single family residential districts in Town (that is, the One-Family Residence District 2 Acres, One-Family Residence District 1 Acre, One-Family Residence District ½ Acre, and One-Family Residence District ¼ Acre) under Town Code §60-410A, Schedule of Regulations for residence districts, Use Regulations – Part 2, Use No. 23.

### **Restrictive Practices**

*Report Card: The regulations regarding workforce housing units are mainly a list of restrictions: that they be built on lots within 500 feet of the train station in one zoning district (I-G) and within 1,500 feet of the train station in the other two districts (B-R and B-RP); that no workforce units may be built within a tenth of a mile of five other workforce units; a maximum unit size of two bedrooms; specified minimum lot area; specified minimum and maximum floor area per unit; specified maximum occupancy; and restrictions on parking and utilities.*

**Town Response:** The Workforce Housing Special Permit provisions allow the Town Board to approve income restricted housing in a transit oriented development. It does not limit the use of any parcel in Town for multifamily housing in any way, and it does not limit the number of bedrooms in multifamily housing allowed in any other development or zoning district. It introduced income restricted housing in a way that was not otherwise accommodated under Town Code.

### **Incentives and Mandates**

*Report Card: Affordable housing, defined in the same manner as in the County’s model zoning ordinance, is mandated in the MFR-C district, at a rate of at least one affordable unit for every ten total units.*

**Town Response:** Under Town Code §60-410H(3) and Town Code §60-410H(4)(b), the Multifamily Residence-Chappaqua District requirement that 10% of any new units in a multifamily development be Model Ordinance Provisions Affordable AFFH Units set forth in Town Code §60-410H(2)(a)[3] is made applicable to the Multi-Family Residence-Millwood District and the Multi-Family Planned Development District as well.

*Report Card: Density bonuses of up to 100 percent beyond the basic permitted density may be awarded in the MFR-C district in exchange*

*for the development of special features or facilities, including affordable FAH units and senior housing*

Town Response: Under Town Code §60-410H(3) and Town Code §60-410H(4)(b), the Multifamily Residence-Chappaqua District density bonus for Model Ordinance Provisions Affordable AFFH Units set forth in Town Code §60-410H(2)(a)[2][a] are made applicable to the Multi-Family Residence-Millwood District and the Multi-Family Planned Development District as well.

### **Zoning Map, Development Pattern and Development Potential**

*Report Card: The 11 areas [zoned for multifamily housing] contain 11 available development sites, averaging half an acre in size. In total, the sites can accommodate 32 housing units.*

Town Response: The analysis does not identify the sites that could provide these 32 units, but 20 units already have been approved at Chappaqua Crossing, and as you know, the Town Board is considering a development of 28 Affordable AFFH Units in its Workforce Housing Overlay District. Also, Affordable AFFH Units can be built over all the retail buildings in the Chappaqua and Millwood hamlets, on several underutilized sites which have been identified, and on several undeveloped sites. Although the Town has not determined the number of potential units that could be built on these sites or in other areas of Town that have not been identified, the number currently approved or under review exceeds your Pratt Institute experts' estimate.

Also, any residential lot in town can be redeveloped as a two family residence if it is an Affordable AFFH Unit, but again, the Town has not determined the number of potential units that could be constructed under that provision.

*Report Card: None of the sites are in the MFR-C district; the only district that mandates affordable housing, and the only district providing incentives for affordable housing.*

Town Response: The analysis does not identify the sites, but the Multifamily Residence-Chappaqua District is not "the only district that mandates affordable housing, and the only district providing incentives for affordable housing." Under Town Code §60-410H(3) and Town Code §60-410H(4)(b), the Multifamily Residence-Chappaqua District density bonus for Model Ordinance Provisions Affordable AFFH Units and the requirement that 10% of any new units in a multifamily development be Model Ordinance Provisions Affordable AFFH Units set forth in Town Code §60-410H(2)(a)[2][a] and Town Code §60-410H(2)(a)[3] are made

applicable to the Multi-Family Residence-Millwood District and the Multi-Family Planned Development District as well.

### **Master Plan**

*Report Card:*            *NOT AVAILABLE*

Town Response:    The Town's Master Plan, formally the Town Development Plan, was adopted in 1986. The Town is currently undertaking an update. A copy of the existing Town Development Plan is included with this response.

### **Implications (From My Point of View)**

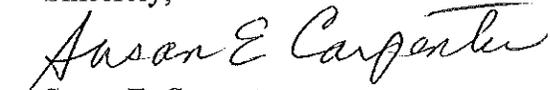
Small municipalities do not have the resources to construct housing or to manage it. The private market must play that role and for profit developers will only do so if it is the most profitable development. Density bonuses, requirements that a percentage of new housing be affordable, both of which our current zoning provide, or subsidies will most likely be required. However, the fact that any residential lot in Town can be developed or redeveloped as a two family residence if it is Affordable AFFH Units may be impractical as long as tax credits are the only significant subsidy available. Small scale development would lend itself more readily to actual grants to smaller developers who could redevelop a single house as a two family residence. A grant program for this purpose would result in the same ultimate cost to the public treasury as a tax credit program, but could be accessed by smaller builders and allow for the integration of affordable housing into existing neighborhoods.

Most still undeveloped larger lots are in areas of the Town without important infrastructure, particularly sewers, and with development constraints, and many are in the New York City watershed where development without sewers is limited. In fact the Chappaqua Crossing project, which is slated to add 20 Affordable AFFH Units, required an extension of the Westchester County Saw Mill Valley Sanitary Sewer District, and the Town has been working with the New York City Department of Environmental Protection to get DEP's agreement to allow new Affordable AFFH Units in Millwood to connect to another sewer extension which will divert effluent from two failing, private sewage treatment plants from the Croton watershed to the County's Yonkers Joint Wastewater Treatment Plant.

In addition, the town of New Castle has already provided you, and will continue to provide any interested developer, with a list of properties that are either undeveloped or underdeveloped. The Town will continue to look for new sites that could be developed with Affordable AFFH Units.

Although the Town of New Castle was not a party to the Settlement or the Settlement litigation and does not have any allocation of affordable housing or obligation under the Settlement, we take the responsibility to facilitate a broad range of housing for all segments of the population very seriously.

Sincerely,

A handwritten signature in cursive script that reads "Susan E. Carpenter". The signature is written in black ink and is positioned above the printed name and title.

Susan E. Carpenter  
Town Supervisor