

TOWN OF BRUNSWICK

LOCAL LAW NO. 2 OF 2021

A LOCAL LAW ESTABLISHING A MORATORIUM ON THE FILING, ACCEPTANCE, REVIEW, OR DETERMINATION OF ANY LAND USE APPLICATION PERTAINING TO TWO-FAMILY DWELLINGS AND MULTIFAMILY DWELLINGS IN THE TOWN OF BRUNSWICK

Section 1. Purpose and Authority.

The purpose of this local law is to establish a six (6) month moratorium on the filing, acceptance, review, or determination of any land use application pertaining to two-family dwellings and multifamily dwellings in the Town of Brunswick, and to maintain the status quo of two-family dwelling and multifamily dwelling development in the Town so that the Town Board may review and examine its existing Zoning Law insofar as it regulates two-family dwellings and multifamily dwellings. The Town Board is desirous of investigating whether the existing Zoning Law sufficiently regulates two-family dwellings and multifamily dwellings in a manner that advances overall public health, safety, and welfare and preserves community character. It is deemed necessary to enact this moratorium in order to permit the Town Board adequate time in which to consider such issues and to draft suitable legislation, if deemed necessary and appropriate. This local law is enacted by the Town Board pursuant to its authority under the New York Municipal Home Rule Law.

Section 2. Legislative Findings.

The Town Board enacted Local Law No.1 of 2017, a local law which adopted the Town of Brunswick Zoning Law. The Town Board acknowledges that the 2017 Zoning Law established two-family dwellings and multifamily dwellings as allowable uses in certain identified zoning districts in the Town, subject to special use permit review and site plan review before the Town of Brunswick Planning Board.

It is further acknowledged that a significant number of multifamily dwellings have been constructed in the Town of Brunswick, including townhomes and apartments, some of which are intended for conversion to condominium-type ownership. It is further acknowledged that the Town of Brunswick has approved a significant number of additional multifamily dwelling units for which building permit applications have not yet been submitted, and consequently, there remains a significant number of approved multifamily dwelling units not yet constructed. The Town Board also acknowledges that applications for additional two-family dwellings and multifamily dwellings have been submitted to the Town of Brunswick following the adoption of the Brunswick Zoning Law in 2017.

The Town of Brunswick Planning Board has repeatedly notified the Town Board in the past regarding its concern over the number of multifamily dwelling units in the Town, and whether the Town of Brunswick is at or near the saturation point for multifamily dwelling units in terms of balanced land use planning in the Town.

The Town Board is also mindful of the potential issues arising from additional two-family dwelling and multifamily dwelling projects in the Town, including but not limited to population density, strain on public water and sewer infrastructure, and increased traffic and transportation infrastructure impairment.

The Town Board further notes that the prior Brunswick Zoning Ordinance provided for a density limitation on “multiple dwellings”, requiring a lot area of 9000 square feet per dwelling unit.

In light of these circumstances, and with the intent to maintain a well-ordered and balanced plan for future land use development in the Town of Brunswick, the Town Board hereby finds that further analysis and consideration is warranted with respect to two-family dwellings and multifamily dwellings in the Town of Brunswick. Due consideration must be given to existing two-family and multifamily residential units in the Town, both constructed as well as approved and to be constructed, and also appropriate locations and districts in the Town for two-family dwellings and multifamily dwellings. The Town Board considers the following issues as important for the overall health, safety, and welfare of the inhabitants of the Town of Brunswick, and require adequate time for appropriate review and consideration: housing and population density; existing and potential public infrastructure availability; and the preservation, maintenance, and enhancement of the quality of life of residents and property owners in the Town of Brunswick.

Section 3. Definitions.

DWELLING – Any building or portion thereof designed or used primarily as the residence or sleeping place of one or more persons. A dwelling shall include group homes but not a hotel, motel, hospital, nursing home, dormitory, fraternity or sorority house, or other similar structure.

DWELLING UNIT – Any single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

DWELLING, MULTIFAMILY – A structure, or group of structures, each containing three or more dwelling units and occupied or designed for occupancy by three or more families living independently of each other. May include apartments, condominiums, townhouses, and cooperatives.

DWELLING, TWO-FAMILY – A detached or semidetached building where not more than two individual family or dwelling units are entirely separated by vertical walls or horizontal floors that are unpierced except for access to the outside or to a common cellar. Such use shall not include accessory apartments.

PERSON – An individual, proprietorship, partnership, corporation, limited liability company, association, or other legal entity.

Section 4. Moratorium.

- A. For a period of six (6) months following the effective date of this local law, unless earlier repealed by the Town Board, no person shall file, and no Board, body, officer, or employee of the Town of Brunswick shall consider, entertain, or accept for review, continue to review, hold a hearing upon, make any decision or determination upon, or issue any permit or approval upon, any application or proposal for any two-family dwelling or multifamily dwelling. This moratorium shall apply to all such applications or proposals, whether pending or received prior to the effective date of this local law. Any statutory or locally-enacted time periods for processing and making decisions on all aspects of the aforesaid applications are hereby suspended and stayed while this local law is in effect.
- B. This moratorium shall not apply to the issuance of (i) building permits for two-family dwelling or multifamily dwelling projects for which all required municipal approvals have been issued prior to the effective date of this local law, and any Certificate of Occupancy for any and all construction under such building permits; and (ii) any Certificate of Occupancy for any and all construction pursuant to building permits issued prior to the effective date of this local law.

Section 5. Appeal.

The Town Board shall have the power to waive, in whole or in part, or modify the application of any provision of this local law upon a determination, in its absolute legislative discretion, after public hearing and notice, that this local law would impose extraordinary hardship upon the party making such appeal and that a waiver from this local law will not adversely affect the health, safety and general welfare of the Town of Brunswick. Any request for a waiver shall be filed in writing with the Town Board. Upon receipt of any such written request for a waiver, the Town Board shall promptly refer such written request to the Brunswick Planning Board for its recommendation, with such recommendation to be provided by the Planning Board within thirty (30) days of the Planning Board's receipt of such request. The Town Board shall hold a public hearing within thirty (30) days of the receipt of the Planning Board's recommendation, upon five (5) days' notice published in the official newspaper of the Town. At said public hearing, the party requesting the waiver and any other parties wishing to present evidence with regard to the waiver request shall have an opportunity to be heard. The Town Board shall render a decision on such waiver request within sixty (60) days of the close of the public hearing. If the Town Board determines that the party making the waiver request will suffer an unnecessary hardship if this local law is strictly applied to a particular property, then the Town Board shall waive the application of this local law to the minimum extent necessary to provide the requesting party relief from the strict application of this local law.

Section 6. Violations.

Except to the extent that a waiver is granted by the Town Board pursuant to Section 5 hereof, or to the extent of any building permit or Certificate of Occupancy issued pursuant to Section 4(B) hereof, any action while this local law is in effect by any Board, body, official, or employee of the Town of Brunswick to consider, entertain, or accept for review, continue to review, hold a hearing upon, make any decision or determination upon, or issue any permit or approval upon any application or proposal for any two-family dwelling or multifamily dwelling shall constitute a violation of this local law, and such action shall be deemed ultra vires and shall be null and void. This local law may be enforced through an action seeking declaratory, injunctive, and/or equitable relief in a court of competent jurisdiction.

Section 7. Supersession.

To the extent this local law is inconsistent with any state or local statute or regulation, it is the intent of this law to supersede such statutes or regulations, including without limitation the following: (i) Town Law Section 276 with respect to the procedures and timeframes for processing subdivision applications; (ii) Town Law Section 274-a with respect to the procedures and timeframes for processing applications for site plan review; (iii) Town Law Section 274-b with respect to procedures and timeframes for processing applications for special use permits; and (iv) Brunswick Zoning Law procedures and timeframes set forth in Articles 7 (Site Plan Review), 8 (Special Use Permits), 12 (Planned Development Districts), and 17 (Appeals and Variances).

Section 8. Severability.

If any section or subdivision, paragraph, clause, or phrase of this local law shall be adjudged invalid or held unconstitutional by any court of competent jurisdiction, any judgment made thereby shall not affect the validity of this law as a whole or any part thereof other than the part or provision so adjudged to be invalid or unconstitutional.

Section 9. Effective Date.

This local law shall take effect immediately upon filing with the Secretary of State of the State of New York.