STATE OF NEW YORK

S. 8006 A. 9006

SENATE - ASSEMBLY
January 19, 2022

PART AA

Section 1. Short title. This act shall be known and may be cited as the "accessory dwelling unit act of 2022".

§ 2. The real property law is amended by adding a new article 16 to read as follows:

ARTICLE 16
ACCESSORY DWELLING UNITS

§ 480. Definitions.

As used in this article, unless the context otherwise requires, the following terms shall have the following meanings:

1. "Accessory dwelling unit" shall mean an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons, which is located on the same lot as a single-family or multi-family dwelling proposed or existing as a primary residence, and such unit shall include permanent provisions for living, sleeping, eating, cooking, bathing and washing, and sanitation on the same lot as such primary residence.

2. "Local government" shall mean a city, town or village.

3. "Low-income homeowners" shall mean homeowners with an income, adjusted for family size, not exceeding eighty percent of the area median income.

4. "Moderate-income homeowners" shall mean homeowners with an income, adjusted for family size, not exceeding one hundred twenty percent of the area median income as defined by the division.

5. "Nonconforming zoning condition" shall mean a physical improvement on a property that does not conform with current zoning standards.

6. "Proposed dwelling" shall mean a dwelling that is the subject of a permit application and that meets the requirements for permitting.

7. "Division" shall mean the New York state division of homes and community renewal.

8. "Regulation" shall mean any ordinance, local law, resolution, rule, policy, or regulation adopted or enacted pursuant to the authority of a general, special, charter or other law unless the context suggests a different meaning.

9. "Rented" shall mean to lease, let, or hire out an accessory dwell- ing unit, a residence, or any portion of such unit or residence, to be occupied or that is occupied for living purposes.

§ 481. Accessory dwelling unit regulations and local laws.

1. Notwithstanding any general, special, charter, local or other law, rule, policy, or regulation to the contrary, including any law authorizing the adoption of planning, zoning, or other land use regulation, a local government shall, by local law, provide for the creation of accessory dwelling units. Such local law shall:

(a) Designate areas within the jurisdiction of the local government where accessory dwelling units shall be permitted. Designated areas shall include all areas zoned for single-family or multifamily residential use, and all lots with an existing residential use.

(b) Authorize the creation of at least one accessory dwelling unit per lot.

(c) Provide reasonable standards for accessory dwelling units that may include, but are not limited to, height, landscape, architectural review and maximum size of a unit. In no case shall such standards unreasonably restrict the creation of accessory dwelling units.

(d) Require accessory dwelling units to comply with the following:

(i) Such unit may be rented separate from the primary residence, but shall not be sold or otherwise conveyed separate from the primary residence;

(ii) Such unit shall be located on a lot that includes a proposed or existing residential dwelling;

(iii) Such unit shall not be rented for a term less than thirty days; and

(iv) If there is an existing primary residence, the total floor area of an accessory dwelling unit shall not exceed fifty percent of the existing primary residence, unless such limit would prevent the creation of an accessory dwelling unit that is no greater than six hundred square feet.

2. A local government shall not establish by any regulation any of the following:

(a) In a local government having a population of one million or more, a minimum square footage requirement for an accessory dwelling unit greater than two hundred square feet, or in a local government having a population of less than one million, a minimum square footage requirement for an accessory dwelling unit that is greater than five hundred fifty square feet;

(b) A maximum square footage requirement for an accessory dwelling unit that is less than fifteen hundred square feet;

(c) Any other minimum or maximum size for an accessory dwelling unit, including those based upon a percentage of the proposed or existing primary residence, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for a dwelling that does not permit at least an eight hundred square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with other local standards. Notwithstanding any other provision of this section to the contrary, a local government may provide, where a lot contains an existing residence, that an accessory dwelling unit located within and/or attached to the primary residence shall not exceed the buildable envelope for the existing residence, and that an accessory dwelling unit that is detached from an existing residence shall be constructed in the same location and to the same dimensions as an existing structure, if such structure exists.

(d) A ceiling height requirement greater than seven feet, unless the local government can demonstrate that such a requirement is necessary for the preservation of health and safety;

(e) If an accessory dwelling unit or a portion thereof is below curb level, a requirement that more than two feet of such unit's height be above curb level, unless the local government can demonstrate that such a requirement is necessary for the preservation of health and safety;

(f) Any requirement that a pathway exist or be constructed in conjunction

with the creation of an accessory dwelling unit, unless the local government can demonstrate that such requirement is necessary for the preservation of health and safety;

(g) Any setback for an existing dwelling or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, or any setback of more than four feet from the side and rear lot lines for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure; or

(h) Any health or safety requirements on accessory dwelling units that are not necessary to protect the health and safety of the occupants of such a dwelling. Nothing in this provision shall be construed to prevent a local government from requiring that accessory dwelling units are, where applicable, supported by septic capacity necessary to meet state health, safety, and sanitary standards, that the creation of such units comports with flood resiliency policies or efforts, and that such units are consistent with the protection of wetlands and watersheds.

3. No local law for the creation of accessory dwelling units pursuant to subdivision one of this section shall be considered in the applica- tion of any local regulation policy, or program to limit residential growth.

4. No parking requirement shall be imposed on an accessory dwelling unit; except where no immediately adjacent public street permits year- round on-street parking and the accessory dwelling unit is greater than one-half mile from access to public transportation a local government may require up to one off-street parking space per accessory unit.

5. A local government shall not require that off-street parking spaces be replaced if a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit.

6. Notwithstanding any regulation to the contrary, a permit application to create an accessory dwelling unit in conformance with the local law enacted under this section shall be considered ministerial without discretionary review or a hearing. If there is an existing single-family or multi-family dwelling on the lot, the local agency with reviewing authority under this section shall issue a determination on the completed application to create an accessory dwelling unit within ninety days from the date the local agency receives such completed application or, in a local government having a population of one million or more, within sixty days. If the permit application to create an accessory dwelling unit is submitted

with a permit application to create a new residential dwelling on the lot, the permitting local government may delay acting on the permit application for the accessory dwelling unit until the permitting local government acts on the permit application to create the new dwelling, but the application to create the accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the time period for review shall be tolled for the period of the delay. Such review shall include all necessary permits and approvals including, without limitation, those related to health and safety. A local government shall not require an additional or amended certificate of occupancy in connection with an accessory dwelling unit. A local government may charge a fee not to exceed one thousand dollars per application for the reimbursement of the actual costs such local agency incurs pursuant to this subdivision.

7. Local governments shall establish an administrative appeal process for an applicant to appeal the denial of a permit for accessory dwelling units. When a permit to create an accessory dwelling unit pursuant to a local law adopted pursuant to this section is denied, the local government agency that denied the permit shall issue a notice of denial which shall contain the reason or reasons such permit application was denied and instructions on how the applicant may appeal such denial.

8. No policy or regulation other than the local law authorized under this section shall be the basis for the denial of a building permit or other permission to develop in accordance with this section except to the extent necessary to protect the health and safety of the occupants of an accessory dwelling unit the primary residence to such dwelling unit, and provided such policy or regulation is consistent with the requirements of this section.

9. If a local government has an existing accessory dwelling unit regulation that fails to meet the requirements of this section, the sections of such regulation that conflicts with this section shall be null and void. Such local government shall thereafter apply the standards established in this section for the approval of an accessory dwelling unit until such local government adopts a local law that complies with this section.

10. The local government shall ensure that accessory dwelling units are not counted toward the allowable residential density, or any requirement respecting lot coverage or open space, for the lot upon which the accessory dwelling unit is located under the existing zoning designation for such lot. The accessory dwelling unit shall not be considered in the application of any regulation, policy, or program to limit residential growth.

11. In a city with a population greater than one million, the local government shall create a program to address accessory dwelling units that were created prior to the

effective date of this article. Such program may provide amnesty to owners of buildings that contain such accessory dwelling units. Such city shall waive portions of the multiple dwelling law and relevant regulations, other than the local law adopted pursuant to this section, as necessary to administer such program. Such waiver or waivers shall not require additional regulations or zoning or other land use amendments.

12. A local government shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit, the correction of nonconforming zoning conditions or minor violations of local law.

13. Where an accessory dwelling unit requires a new or separate utility connection directly between the accessory dwelling unit and the utility, and such connection is provided by a governmental or public authority, the connection may be subject to a connection fee or capacity charge by such governmental or public authority that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures upon the water or sewer system. Such fee or charge shall not exceed the reason able cost of providing such utility connection. A local government shall not impose any other fee in connection with an accessory dwelling unit.

14. A local government may require that a unit in the primary residence be owner-occupied for an accessory dwelling unit to be lawfully rented. In addition, any such local government may require such owner-occupation must continue for at least one year following the first legal occupancy of the accessory dwelling unit.

15. A local government shall not issue a certificate of occupancy or its equivalent for an accessory dwelling unit before the local government issues a certificate of occupancy or its equivalent for the primary residence.

16. A local government shall adopt a local law pursuant to this article within one year of the effective date of this article.

17. A property owner who has been denied a permit by a local government in violation of this article or who lives within the local government that fails to adopt a local law pursuant to this article may apply to the supreme court for review of the local government action by a proceeding under article seventy-eight of the civil practice law and rules. Costs shall not be allowed against a local government or any of its officers unless it shall appear to the court that the local government or the officer or officers acted with gross negligence or in bad faith or with malice.

§ 482. Low and moderate-income homeowners program.

1. Within one hundred eighty days of the effective date of this article, the division

or affiliated authority shall establish a lending program to assist low-income homeowners and moderate-income homeowners in securing financing for the creation of accessory dwelling units, including, without limitation, financing for design and construction, flood prevention, permitting, and septic enhancement.

2. The division or affiliated authority shall promulgate program criteria and guidelines necessary to carry out such program.

3. Such program shall be funded within amounts appropriated or otherwise available therefor.

4. The division shall issue an annual report, on or before July first of each year, that includes an aggregated list of projects financed through the program, including the counties where such projects were financed.

5. Within one hundred eighty days of the effective date of this article, the division or affiliated authorities shall establish a program to provide technical assistance to low-income and moderate-income homeowners seeking to create an accessory dwelling unit. Such program may be contracted out to approved non-governmental entities. Technical assistance shall include, without limitation, guidance on design and construction, flood prevention, permitting, financing, and septic enhancement.

§ 483. Tenant protections.

1. As used in this section, the following terms shall have the following meanings:

(a) "Landlord" shall mean any owner, lessor, sublessor, assignor, or other person receiving or entitled to receive rent for the occupancy of any accessory dwelling unit or an agent of the foregoing.

(b) "Tenant" shall mean a tenant, sub-tenant, lessee, sublessee, or assignee of an accessory dwelling unit.

(c) "Rent" shall mean any consideration, including any bonus, benefit or gratuity demanded or received for or in connection with the possession, use or occupancy of an accessory dwelling unit or the execution or transfer of a lease for such unit.

2. A permit application to create an accessory dwelling unit in conformance with a local law adopted under this article shall be accompanied by a certification identifying whether the unit was rented to a tenant as of the effective date of this article and the rent charged for the unit as of such date, notwithstanding whether the occupancy of such unit was authorized by law. A local government may not use such certification as the basis for an enforcement action against an

applicant concerning the unauthorized habitation of a unit. Where a tenant is evicted or otherwise removed from a unit prior to approval of a permit application to create an accessory dwelling unit under this article, such tenant shall have a right of first refusal to return to the unit asa tenant upon its first lawful occupancy as an accessory dwelling unit, notwithstanding whether such prior occupancy was authorized by law.

3. A tenant unlawfully denied a right of first refusal under this article shall have a cause of action in any court of competent jurisdiction for compensatory and punitive damages and declaratory and injunctive relief and such other relief as the court deems necessary in the interests of justice.

§ 3. This act shall take effect on the one hundred eightieth day after it shall have become a law.