

Frequently Asked Questions on the Multiple Dwelling Moratorium

In order to reach out to the public and address public issues and concerns as they relate to the proposed Moratorium on Multiple Dwellings (“MDs”) in the Town of Henrietta, the Town has developed the following FAQ.

1. What is the purpose and effect of the Moratorium?

The purpose of the Moratorium is to temporarily halt the development of Multiple Dwelling projects in the Town in order to allow the Town time to study the broader impacts of Multiple Dwelling projects. The effect of the Moratorium will be to prohibit, for six months, further development of Multiple Dwelling projects within the Town of Henrietta which have not already been applied for or which are not already under construction.

2. How long is the Moratorium and can the length be changed?

The Moratorium is proposed for six months from the date of adoption. Any legislative body in New York which approves a moratorium, such as a town board or village board, also has the authority (subject to certain limitations) to shorten, lengthen or otherwise terminate a moratorium.

3. How will the Town study the potential impacts on Multiple Dwelling Projects?

The Town will form a committee comprised of land owners, Town employees/officials, developers and residents who will be charged with examining the impacts of Multiple Dwellings in the Town.

4. Why is the Town considering a new Multiple Dwelling project at its upcoming meeting(s)?

The Town is considering a new Multiple Dwelling (MD) project that was proposed prior to the implementation of the Moratorium. This project was part of the impetus for the Moratorium. It is important to note that the subject application has been proposed on Industrial lands which have long allowed Multiple Dwellings (with a Special Use Permit). The Town Board feels that this proposal, combined with past recent MD projects, creates a need and an opportunity to temporarily prohibit further MD projects in the Town so that the Town can study the broader impacts of such projects.

5. Why can Multiple Dwellings be constructed on Industrial lands?

Some residents have asked why Multiple Dwellings are allowed on Industrial lands and whether such allowance is appropriate. For many years, the Town Code has provided that Multiple Dwellings are permitted on Industrial lands after obtaining a Special Use Permit per the five criteria in the Town Code. As requested by a number of residents, the Town, by way of the aforementioned committee, will consider whether Multiple Dwellings should continue to be permitted in Industrial lands or whether the longstanding Code provision should be changed so that Multiple Dwellings are no longer allowed in Industrial lands.

6. How does the Moratorium relate to the Southwest Quadrant EIS Study?

The Moratorium and the Environmental Impact Study (EIS) are technically two distinct, but related matters. The purpose of the EIS is to study the impact of potential *Industrial* development in the southwest area of Town. As part of that process, the Town has also had to take into consideration

the fact that, in Industrial Districts in the Town of Henrietta, Multiple Dwellings are allowed per a Special Use Permit. If, as a result of the studies by the Committee, the Town changes where and how *Multiple Dwellings* are permitted (for example, by disallowing MD in Industrial Districts), the Town could take that into consideration in the EIS Study.

7. Why doesn't the Town ban all further proposals for Multiple Dwellings?

A complete ban on MD would raise legal issues concerning unconstitutional exclusionary zoning and thus the Town will likely have to find some manner in allowing Multiple Dwellings in the Town.

8. What is a "Floating Zone," as mentioned at a prior Town Board workshop meeting?

One option that is expected to be considered by the Committee (but may not be implemented) is a "Floating Zone." This may be one of the more restrictive options the Town could implement regarding Multiple Dwellings in Town, without running afoul of the law. It would allow the Town to remove the allowance of MD from the Town Zoning *Map* entirely. Thus, the only way in which an MD project would be allowed would be by requesting a change to the Zoning Map by the Town Board, otherwise known as a "rezone." As it stands currently, MD may be developed on Industrial lands in the Town without the need for a rezone.

9. If the Town allows a "Floating Zone," can't any land then be rezoned to allow a Multiple Dwelling project?

Any land can *now* be rezoned to allow a Multiple Dwelling project, without any changes to the Code. As it stands under the current Code, without any changes (such as a "Floating Zone"), there are generally two ways in which a MD project may move forward – either 1) by applying for an MD project in Industrially zoned lands, or 2) by applying for a rezone to Industrial, and then applying for an MD project. If the Town were to formulate a "Floating Zone," then the only option would be to apply for a rezone to the MD Floating Zone and then apply for an MD project. Thus, the Floating Zone would be *more restrictive* than the current Code as it would eliminate option 1).

10. Can the Town simply stop *all* further development in the Town?

Pursuant to the U.S. Constitution, owners of lands in the Town and across the United States are constitutionally entitled to the use and enjoyment of their lands. Thus, the Town would commit an "unconstitutional taking" of lands and land rights were it simply to prohibit all further development in the Town. However, the Town may enact reasonable regulations on lands, which is precisely what the Town is considering via the EIS Study, the MD Committee and the Farmland Protection Plan. In fact, enacting regulations without such studies and land use planning could undermine such regulations by allowing challenges to new regulations as "arbitrary and capricious" (which is a legal standard by which a Court could overturn Town actions).