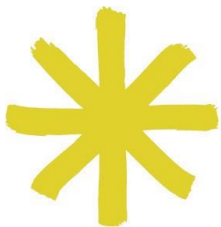




DECEMBER 2018

Land Use and Zoning Law: A Citizen's Guide



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Introduction

Zoning and land use decisions have major impacts on the wellbeing of a community. The purpose of this handbook is to help individuals and groups in Buffalo and Erie County understand land use and zoning law, terminology and procedures so they can more effectively express their concerns about proposed projects or changes in land use laws.

There are more than forty local municipalities – cities, towns, and villages – in Erie County, each with its own zoning code or regulations. While no two communities have identical zoning codes, there are many similarities in land use laws as a result of the common source of a municipality’s authority to establish zoning and planning regulations: “enabling” provisions found in New York State statutes.¹

For practical reasons, this handbook will focus on the City of Buffalo’s zoning and development law, known officially as the “Uniform Development Ordinance” (UDO) and unofficially as the “Buffalo Green Code.” At times, where a major difference exists between the approach found in the Buffalo Green Code and the procedures, powers or duties in the zoning ordinance of Amherst - Erie County’s largest and most populous town - that distinction will be noted.

In theory, zoning laws are designed to promote public health, safety and welfare, and to protect and enhance the physical and visual environment of New York’s cities, villages and towns. Public officials responsible for enacting, enforcing, and changing zoning laws are obligated to exercise their zoning powers *for the benefit of the community as a whole*, not for the benefit of a particular property owner or developer.

This handbook was written by Arthur Giacalone, an attorney with many years’ experience in land use law. It is a basic overview to help the public understand the zoning and land use development process. It should not be considered legal advice and is not meant as a substitute for a thorough review of relevant New York laws or consultation with a lawyer.

¹ A city’s power to enact a zoning ordinance or code is set forth in New York State’s General City Law (GCL) at Sections 20(24) and 20(25), and power to amend its zoning laws at GCL Section 83. A town’s authority to enact a zoning ordinance or code is set forth in New York State’s Town Law at Section 264, and power to amend its zoning laws at Town Law Section 265. A village’s power to enact a zoning ordinance or code is set forth in New York State’s Village Law at Section 7-706, and authority to amend its zoning laws at Village Law Section 7-708.

New York's courts have insisted that zoning decisions should not be based on the whims of an articulate or vocal minority, or even a majority of the community. They are not meant to be popularity contests. Instead, zoning decisions should be consistent with a “comprehensive plan,” and made following a calm and thoughtful consideration of the alternatives. Such an approach helps to ensure that the public good is being served. We now consider some of the key tools for citizens to use in making their voices heard in zoning decisions.

New York's State Environmental Quality Review Act (SEQRA)

One important tool to assist government officials and the public in making informed decisions regarding a proposed project or a change in zoning laws is SEQRA. Its goal is to motivate government decision-makers to give meaningful consideration to environmental factors when undertaking or approving projects, activities, or new policies. With a few exceptions, SEQRA's information-gathering and assessment process is triggered each time a city, village or town receives an application requesting a zoning approval – or when the local municipality seeks on its own initiative to change its zoning or planning rules, or undertake a project.

But, all too often, developers and government agencies see SEQRA as a nuisance to avoid, rather than a mechanism to improve zoning decisions. When advocating for meaningful environmental review under SEQRA, keep the following ten principles in mind:

1. BROAD DEFINITION OF “ENVIRONMENT”

SEQRA defines “environment” broadly to include not only physical conditions, such as land, air, water, plants, animals, and human health, but also agricultural, historic and aesthetic resources, and socio-economic considerations such as the existing character of the community or neighborhood, and patterns of population distribution and growth (which includes, for example, the potential for gentrification).

2. PERFORMING SEQRA REVIEW “AT THE EARLIEST POSSIBLE TIME”

To ensure that consideration of environmental factors are incorporated into the planning and decision-making process at a point when the information will have a real impact, the SEQRA review is intended to take place “at the earliest possible time” in the planning process. Too often, local governments ignore this requirement, voting on a proposed project or new regulation at the same time they complete their environmental review. This approach deprives the public of the vital information SEQRA is meant to provide at the time public hearings are conducted.

3. NO “PHYSICAL ALTERATION” OF THE SITE UNTIL SEQRA IS COMPLIED WITH

A project sponsor may not begin any physical alteration related to a proposed project until the provisions of SEQRA are complied with. “Physical alteration” includes, but is not limited to, vegetation removal, demolition, stockpiling materials, grading and other forms of earthwork, paving, and construction of buildings or facilities. Likewise, an agency may not approve, undertake or fund a project until SEQRA is complied with.

4. “EIS” AS THE “HEART OF SEQRA”

Whenever a proposed project or policy – referred to by SEQRA as an “action” – *may* have the potential for one or more significant adverse environmental impact, the SEQRA “lead agency” is required under SEQRA to require preparation of a draft “Environmental Impact Statement” (EIS). The EIS – considered by NY’s courts as the “heart of SEQRA” – is a document which provides government agencies, the project sponsor, and the public a means to systematically consider potential environmental impacts, alternatives to the proposed action, and appropriate mitigation measures to eliminate or substantially reduce adverse impacts. Be sure to look carefully at the evidence – or lack of evidence – the developer offers in its EIS and to offer a careful critique.



Figure 1. 250 Delaware Avenue Construction.

5. SEGMENTATION

Particularly with large and multi-phased projects, the developer may seek to “segment” it into different “actions” for purposes of SEQRA. Segmentation is strongly disfavored by the law, because by dividing up a project the developer may make the environmental impacts seem less significant than they really are and make it hard to see the cumulative effects. Advocates should be prepared to argue strongly against segmentation where it is not appropriate.

6. “POSITIVE DECLARATION” VS. “NEGATIVE DECLARATION”

The most important decision the SEQRA “lead agency” must make is called a “Determination of Significance” – that is, a decision whether or not a proposed action may result in a significant adverse environmental impact, and, for that reason, require preparation of a draft EIS. If a proposed action *may* have the potential for at least one significant environmental impact, the lead agency must issue a “Positive Declaration” and begin the draft EIS process. If the lead agency concludes either that there will be no adverse impacts, or that the identified adverse impacts will not be significant, a Negative Declaration” is issued and the SEQRA review process ends.

Unfortunately, it is very rare for lead agencies to make positive declarations, and sometimes the most an advocate can hope for is that the agency will place conditions on its negative declaration (i.e., the proposed action will not have a significant environmental impact if steps A, B, and C are taken). Note that actions affecting a National Register or locally designated historic site or district should result in an automatic positive declaration.

7. SCOPING

If the lead agency issues a “Positive Declaration” and requires the project sponsor to prepare a draft EIS, the lead agency must initiate “scoping” to “focus the EIS on potentially significant adverse impacts and to eliminate consideration of those impacts that are irrelevant or not significant.” Scoping must include an opportunity for public participation.

8. THE PUBLIC’S ROLE IN SEQRA

If scoping is not used, the first opportunity for the public to formally become involved in the SEQRA review process is when the lead agency determines that the draft EIS prepared by the project sponsor or the lead agency itself is complete and adequate for public review. The public must then be given a *minimum 30-day period to comment* – in writing and/or, if a public hearing is held, at the public hearing – on the draft EIS.



Figure 2. WatchOne Village

February 2018

Source: Buffalo News

9. LEAD AGENCY’S FINAL EIS RESPONSIBILITIES

Following a draft EIS, “the lead agency is responsible for the adequacy and accuracy of the final EIS.” Importantly, the final EIS must include “the lead agency’s responses to all substantive comments” concerning the draft EIS.

10. ACCESS TO SEQRA DOCUMENTS

All SEQRA documents and notices “must be maintained in files that are readily accessible to the public and made available on request.”

Keys to Effective Advocacy

There are five common types of zoning decisions: zoning amendments, variances, special use permits, site plan reviews, and subdivision reviews. Although – as addressed in subsequent chapters – the criteria and standards for the decision-makers to consider differ with each category, there are common challenges and strategies that the public should keep in mind to effectively impact the outcome of a zoning determination.

SHORT NOTICE PERIODS LEAVE LITTLE TIME TO WAIT

The time and place for a member of the public to express opposition or support for a proposed zoning request is at the official “public hearing” scheduled by the local municipality for the specific proposal. The city, town or village is required to give the public “notice” of the public hearing – that is – information regarding the type of zoning application under consideration, a brief description of the approval under consideration, and the time and place the public can offer comments and evidence on the application.

Depending on the type of zoning request, the official “notice” may be in the form of a “published notice” in a newspaper (Buffalo’s notices are published in the *Buffalo News*, Amherst’s in the *Amherst Bee*), a “mailed notice” (Buffalo’s are mailed to property owners within 400 feet of the subject property, and Amherst’s to property owners within 600 feet of the parcel under consideration), or a “posted notice” in the form of a sign erected at the affected property facing the street. *Note:* Mailed notices in Buffalo and Amherst are sent to owners, but not renters.

AN INFORMED RESIDENT IS AN EFFECTIVE ADVOCATE The notice of a zoning-related public hearing should include contact information – often a phone number or email address – of the city, town or village official who can provide additional information and access to relevant papers and documents. Use it! The more you know about the specific proposal under review, the better position you will be in to raise legitimate issues at the public hearing, and effectively assert your position.

The City of Buffalo uses a “meeting portal,” <http://buffalony.iqm2.com/Citizens/Default.aspx>, to provide internet access to material related to items on a board’s agenda, although the documents supporting a zoning application may not all be available in advance of the scheduled public meeting. A visit to city hall a day or two before the public hearing is often the best way to assure that you can review – and obtain copies of – the entire set of papers being considered.

DON’T ASSUME OFFICIALS ARE FULLY INFORMED

In a perfect world, all local officials reviewing zoning applications would be fully informed, objective, and striving to comply with the letter and spirit of land use and environmental laws. The world is not

perfect. Residents may find themselves addressing planning staff and board members who – consciously or unconsciously – accept what developers claim as true and discount information presented by the public. The most effective way to counter such attitudes is to avoid hyperbole and exaggeration, and to make certain that your statements are as accurate and fact-based as possible.

Residents should also not assume that officials – or the municipality’s attorneys - fully know and apply the applicable zoning and development laws. If it appears that procedures are not being followed, or relevant requirements are being ignored, raise your concerns in writing and on the record at public meetings and public hearings.

REMEMBER THAT SEQRA EXPANDS THE ISSUES THAT MUST BE CLOSELY EXAMINED WHEN DEVELOPMENT PROJECTS OR POLICY CHANGES ARE PROPOSED

SEQRA – the State Environmental Quality Review Act – not only protects the physical aspects of the natural and man-made environment, such as land, air, water, plants, and animals. It also makes historic and aesthetic resources, and socio-economic factors, such as existing community or neighborhood character, and patterns of population distribution and growth, relevant to virtually every zoning request.

Insist that the decision-makers with primary responsibility for approving or denying a proposed project or zoning change take a “hard look” at every meaningful aspect of the environment that might be significantly impacted by a proposed action. Ask that they use SEQRA’s “scoping” process to fully identify potential areas of environmental concern. And demand that a Draft Environmental Impact Statement (DEIS) be prepared if there is a potential significant adverse impact to one or more elements of the environment, including existing neighborhood character.

OPPONENTS TO A PROPOSAL MUST GO BEYOND GENERAL COMPLAINTS, AND PROVIDE TANGIBLE PROFF TO SUPPORT THEIR CLAIMS

Courts have consistently ruled that general complaints, unsupported by tangible proof, are not sufficient to justify denial of an owner’s or developer’s zoning request. Residents who oppose a proposed development or policy must provide the decision-makers with evidence, on the record, to support their position. If feasible, reports or testimony by an expert refuting the applicant’s claims are the most effective form of evidence – such as traffic and noise experts, engineers, academics with expertise in historic preservation, ecology, etc. When time or resources make the hiring of an expert impossible, residents and advocacy groups must find creative but realistic ways to tangibly support their contentions – using photos, graphs, fact-based narratives, etc. – focusing on the standards and criteria set forth in the zoning laws and SEQRA issues.

ADVOCATE EFFECTIVELY WITH ELECTED OFFICIALS

Elected officials play an important role in development decisions. For example, in Buffalo the Common Council makes the ultimate decision on zoning amendments, special use permits, and preservation designations. Even on issues where they do not enjoy formal power, such as variance requests, their opinions may carry great weight. In Buffalo the Council has a strong tradition of deferring to the Councilmember in whose district the development is proposed, so that Councilmember will be a crucial person to talk with – early and often. Naturally, Councilmembers care the most about the views of their own constituents, but be sure to research them and find out about other groups and people whose opinions they value. For tips on working with elected officials, visit the [Action](#) section of the Partnership for the Public Good website.



Figure 3. Buffalo Common Council March 2017 public hearing on inclusionary zoning. Source: Spectrum News Buffalo

ANALYZE ALL FORMS OF PUBLIC INVOLVEMENT IN THE PROJECT

Many development projects involve multiple sources of public approvals, tax incentives, or other support. In addition to your city or town, there may be actions required by the county, state, or a public authority, which may give you additional sources of leverage to oppose or modify a project. Here are a few examples:

- Is the project seeking tax incentives from an industrial development authority (IDA) or a low cost power allocation from the New York Power Authority (NYPA)? If so, you may wish to oppose the incentive unless certain conditions are met.
- Does the project require approval from a county planning board or agency under New York State General Municipal Law 239-m? Many projects do – particularly if they are close to a municipal boundary line or to county-owned buildings, property, or rights of way. If the county finds against the project, it will require a supermajority rather than a simple majority of the town board or city council to approve the project.

IF YOU LOSE, THE TIME TO BRING A COURT CHALLENGE IS EXTREMELY SHORT

A court challenge to an unfavorable decision on a proposed variance, special use permit, site plan review, or subdivision review – known as an “Article 78 proceeding” – must be brought within 30 days of the determination. A challenge to a rezoning or zoning text amendment for violating SEQRA must be brought within four months of the decision.

Amendments to Zoning Map and Zoning Text

The legislative body in each municipality – that is, a City Common Council, a Town Board, or a Village Board of Trustees – has the power under state law to amend the text of its zoning law and to alter the zoning map and change the zoning classification of one or more parcels of land (commonly known as a “rezoning”). When exercising this legislative authority, the Common Council, Town Board or Village Board has broad discretion to approve or deny the change, and its decision carries with it a presumption that it is constitutional.

Proposed rezonings and text amendments are intended, at times, to correct errors or omissions, or to clarify existing requirements. They also are used by a municipality to reflect a change in policy. Often, however, they are proposed for the benefit of current or prospective property owners who wish to develop land in a manner not allowed under the existing zoning laws. No matter who proposes the change, amendments to the zoning map or text must be made for the benefit of the community as a whole, not for an individual property owner or developer.

When a city, town or village is considering whether to rezone property or change the zoning text, State law requires a public hearing with notice to give the public an opportunity to be heard. The municipality’s legislative body— and, you as a member of the public - should thoughtfully and objectively consider a variety of factors, including the following:

- Is the proposed rezoning or text amendment consistent with the spirit and intent of the existing zoning law and the municipality’s Comprehensive Plan?
- Does the proposed rezoning or text amendment promote the public health, safety, and welfare?
- Is the proposed change in the zoning map or zones compatible with the nearby uses, buildings and properties, and with the character of the existing neighborhood? Will the proposed change meet a specific demand in the neighborhood or community, and will it tend to improve or worsen the balance of uses?
- How suitable is the subject property of a proposed rezoning permitted by the current zoning district versus the proposed district?
- Are there/will there be adequate services and utilities available given the type and scale of development permitted under the proposed change?

No matter who proposes the change, amendments to the zoning map or text must be made for the benefit of the community as a whole, not for an individual property owner or developer.

It generally takes only a simple majority vote of a board or council to approve the zoning requests discussed in this handbook. There is one major exception: proposed amendments to a zoning map or zoning district require a “supermajority” vote, which means approval by at least three-fourths of the members of the Common Council, Town Board or Village Board in the event the proposed amendment is the subject of a written protest, presented to the legislative body and signed by: (a) the owners of 20% or more of the area of land included in such proposed change; or (b) the owners of 20% or more of the area of land immediately adjacent to that land included in such proposed change, extending 100 feet therefrom; or (c) the owners of 20% or more of the area of land directly opposite thereto, extending 100 feet from the street frontage of such opposite land.

“Variances” from the Zoning Regulations

Rezoning is not the only tool available to a property owner or developer who wishes to use land in a way that is not permitted under a municipality’s zoning law. A city, town or village’s Zoning Board of Appeals (ZBA) has the power to grant a “variance” – that is, relief from requirements of the zoning regulations - allowing property to be used in a way that is contrary to the usual zoning rules.

State law mandates that each municipality that chooses to have a zoning ordinance or code must have a ZBA, and grants the ZBA the authority to approve variances. ZBA members are appointed by a *city’s* mayor, a *town’s* board, or a *village’s* mayor subject to the approval of the board of trustees.

A request for a variance is, in effect, an appeal to the ZBA from an unfavorable decision by the municipality’s zoning administrator or building commissioner’s office. There are two types of variance: “use” and “area.” Under state law, the standards for approving “use variances” are more stringent than for “area variances.”

There are two types of variance: “use” and “area.” A ZBA must grant the minimum variance necessary, and it has the authority to impose reasonable conditions to minimize any negative impact of the variance on the community.

State law requires a public hearing with notice prior to a ZBA’s ruling on a requested variance. New York’s zoning laws also include two provisions meant to protect a neighborhood or community from the adverse impacts of a ZBA’s grant of use and area variances: First, the ZBA must grant the *minimum variance* that it deems necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community. And, second, the ZBA is granted the authority to impose *reasonable conditions and restrictions* directly related to the proposed use of the property for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

Use Variance	Area Variance
<p>Is needed when a current or prospective property owner wishes to use the land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.</p>	<p>Is required when a proposed use of land is prohibited by the dimensional or physical requirements of the applicable zoning regulations.</p>
Requirements	Requirements
<p>No use variance may be granted by a ZBA without a showing by the applicant that applicable zoning regulations and restrictions have caused <i>unnecessary hardship</i>. In order to prove such unnecessary hardship, the applicant is required to demonstrate to the ZBA that for each and every permitted use under the zoning regulations for the particular district where the property is located:</p> <ul style="list-style-type: none"> • the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; • the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; • the requested use variance, if granted, will not alter the essential character of the neighborhood; and • the alleged hardship has not been self-created. 	<p>In making its determination regarding an area variance request, the ZBA must take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant (a so-called “balancing test”). In making its determination, the ZBA must also consider:</p> <ul style="list-style-type: none"> • whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; • whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance; • whether the requested area variance is substantial; • whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and • whether the alleged difficulty was self-created, which consideration is relevant to the decision of the ZBA of appeals, but does not necessarily preclude the granting of the area variance

Note: New York’s appellate courts have ruled that a hardship is “self-created” (for either a use or area variance) if the restriction from which relief is sought was in existence at the time the applicant acquired its ownership interest in the property.

Note: A property owner may seek a rezoning from the municipality’s legislative body, and, if the rezoning is denied, then ask for a use variance from the ZBA.

Special Use Permits

Zoning regulations identify the types of uses and activities allowed in each zone or zoning district within the city, town, or village. There is a presumption that a use permitted within a zone or zoning district is compatible with other allowed uses in that district. Where there is an increased potential that a particular use may not be compatible or in harmony with adjacent uses or the surrounding neighborhood, a zoning ordinance or code may include the requirement that the property owner obtain a “Special Use Permit” prior to engaging in that activity.

The Buffalo Green Code makes extensive use of the special use permit requirement, giving the City Common Council the authority to approve requests for a special use permit. Many communities, including the Town of Amherst, give the ZBA the power to determine special use permit requests, while others place the decision in the hands of the local Planning Board. No matter which body makes the decision to approve or deny the requested special use permit, State law requires a public hearing with notice so that the public has the opportunity to be heard.

The criteria to be considered when an applicant seeks a special use permit can vary significantly from municipality to municipality – so it is important to find out what your city, town, or village’s zoning regulations provide. There may be specific standards for each zoning district, or for particular types of activities (for example, a gas station, car wash, restaurant or tavern).

The Buffalo Green Code requires the City Planning Board – as advisors to the Common Council – to make findings on, and the Common Council’s decision to consider, the following criteria:

1. The proposed use is consistent with the spirit and intent of this Ordinance and the Comprehensive Plan.
2. The proposed use will be established, maintained, and operated so as to not endanger the public health, safety, or welfare.
3. The proposed use will be established, maintained, and operated so as to be harmonious with the surrounding area and will not impede the development, use, and enjoyment of adjacent property in any foreseeable manner.
4. The proposed use will be of a character that does not produce noise, odors, glare, and/or vibration that adversely affects the surrounding area.
5. The proposed use will not place an excessive burden on public improvements, facilities, services, or utilities.
6. The proposed use will not result in the destruction, loss, or damage of any feature determined to be of significant natural, scenic, or historic importance.



Figure 4. Meeting of the City of Buffalo Planning Board

Amherst's Zoning Ordinance requires the ZBA, when rendering its decision regarding a requested special use permit, to consider and make findings that the proposed use:

1. Will be generally consistent with the policies of the Comprehensive Plan.
2. Meets any specific criteria set forth in the Amherst Zoning Ordinance.
3. Will be compatible with existing uses adjacent to and near the property.
4. Will be in harmony with the general purpose of this Ordinance.
5. Will not tend to depreciate the value of adjacent property.
6. Will not create a hazard to health, safety or the general welfare.
7. Will not alter the essential character of the neighborhood nor be detrimental to the neighborhood residents.
8. Will not otherwise be detrimental to the public convenience and welfare

Site Plan Review

The layout and design of proposed projects are considered in site plan and subdivision reviews. Site plan reviews involve a single parcel of land, while subdivision review addresses the arrangement of proposed development on multiple lots or sites. Neither review provides the public with an opportunity to directly challenge the use or activities proposed for the project.

State law defines a "site plan" as "a rendering, drawing, or sketch prepared to specifications and containing necessary elements, as set forth in the applicable ordinance or local law, which shows the arrangement, layout and design of the proposed use of *a single parcel of land* as shown on said plan."

The City of Buffalo and the Town of Amherst distinguish between “*major site plan review*” – involving proposed development projects which, due to their magnitude, are more likely to have significant impacts on their surroundings – and “*minor site plan review*.” Major site plan review and decisions are conducted by the municipality’s Planning Board, and must include a public hearing preceded by published, mailed and posted notices.

A *minor site plan review* is performed administratively by the Zoning Administrator in Buffalo, and the Planning Director in Amherst. No public hearing is held for a minor site plan review in either municipality. In Buffalo, the only notice given to the public of a minor site plan application is a posted sign in front of the involved property. Amherst provides no public notice regarding minor site plan review.

Buffalo’s Green Code requires minor site plan review for six kinds of action, including the new construction of one- and two-family dwellings – no matter how large – and for non-residential structures not exceeding 5,000 square feet of gross floor area (GFA). Major site plan review is required for ten kinds of action, including new construction of a residential building with three or more units and at least 5,000 square feet of GFA, or a non-residential primary building of at least 5,000 square feet of GFA.

In Amherst, site plan review is generally not required for one- and two-family lots except in a “New Community District” (NCD). Proposed construction of 3 or 4 residential units undergo minor site plan review by the Amherst Planning Director, while the addition of 5 or more residential units not on an individual lot, or more than 4,000 square feet of non-residential buildings, is reviewed by the Planning Board as a major site plan.

A party aggrieved by the minor site plan decision of Buffalo’s Zoning Administrator or Amherst’s Planning Director has 60 days to file an appeal to the municipality’s ZBA. Move as quickly as possible to file the appeal if the developer starts physical alteration of the site.

Buffalo and Amherst’s criteria for considering a minor site plan application are limited to findings that the project complies with applicable zoning standards and is consistent with the policies of the municipality’s Comprehensive Plan, and that the project is sufficiently served by services, utilities and infrastructure.

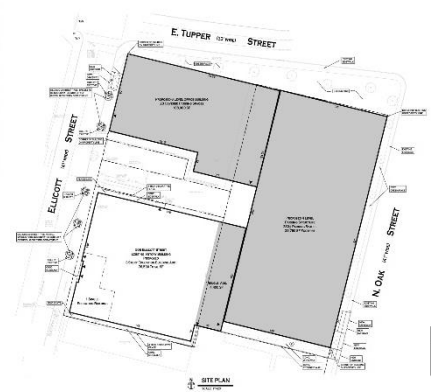


Figure 5. An example of a proposed mixed-use site plan.

But for a major site plan, Buffalo's Green Code mandates that the City Planning Board make written findings of fact on a variety of criteria, including the following:

- The project will be sited and designed so as to be harmonious with the surrounding area and not interfere with the development, use, and enjoyment of adjacent property.
- The project will ensure safe and efficient access for all site users, including pedestrians, cyclists, transit passengers, the mobility impaired, and motor vehicles, as applicable.
- The project will provide for the adequate protection of significant natural, cultural, heritage, and scenic assets on or near the site.
- The project builds in the City's fair housing, inclusionary, and equal opportunity initiatives to promote access to community assets such as quality education, employment, and transportation for all.

Note: Buffalo's Green Code includes the following "Elmwood Village Standards" intended to protect the character of the Elmwood Village, which is defined as the area north of North Street, south of Forest Avenue, east of Richmond Avenue, and west of Delaware Avenue (excluding any parcel that abuts Delaware Avenue or Gates Circle):

- In all principal buildings designed to accommodate one or more commercial establishment, a commercial establishment may have a gross floor area of no more than 3,500 square feet on the ground floor and 7,000 square feet overall, and at least one main entrance must be provided for each 30 feet of front façade width.
- No more than two lots in the Elmwood Village, existing at the time of the January 3, 2017 adoption of the Green Code/UDO, may be combined for the purposes of new construction in an N-2C (Mixed-Use Center) or N-2E (Mixed-Use Edge) zone.



Figure 6. Residential and commercial rental buildings at the corner of Forest and Elmwood Avenue, demolished in 2017.

Subdivision Review

While a site plan deals with one parcel of land, a *subdivision*, as defined by State law, means “the division of any parcel of land into a number of lots, blocks or sites as specified in a law, rule or regulation, with or without streets or highways, for the purpose of sale, transfer of ownership, or development.” The term “subdivision” may also include any alteration of lot lines or dimensions of any lots or sites in a previously approved subdivision. Municipalities are allowed to distinguish between “major” and “minor” subdivisions, and use different review procedures and criteria for each. It is important to note that rules for combining lots in the City of Buffalo fall into the subdivision category.

The comprehensive procedures for subdivision review are found in Buffalo’s Green Code. Amherst’s subdivision regulations are set forth, not in its zoning ordinance, but in Chapter 204 of the Amherst Town Code.

In general, a proposed subdivision in Buffalo is a “major subdivision” if it contains more than two acres of land in “Neighborhood zones” or five acres or more in any other zone. A minor subdivision in Buffalo involves between one-half and two acres of land in “Neighborhood zones” or between two and five acres in any other zone. In Amherst, a proposed subdivision involving more than ten (10) lots is classified a major subdivision, and a proposed subdivision with between 5 and 9 lots is generally treated as a minor subdivision.

The drawing used in reviewing and approving a subdivision is called a “*plat*.” There are both “*preliminary plats*” and “*final plats*.” The City of Buffalo’s Planning Board conducts a public hearing when reviewing the preliminary plat for both a minor and major subdivision. Notice of the public hearing is published for minor and major subdivisions, but a posted notice is only required for a major subdivision. Buffalo does not require that mailed notices be sent to nearby property owners for minor or major subdivisions.

No public hearing is held in Amherst for a minor subdivision. Amherst does provide a public hearing, preceded by a published notice, when reviewing a major subdivision’s preliminary plat.

According to State law, a Planning Board must require that the land shown on a plat be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood, drainage or other menace to neighboring properties or the public health, safety and welfare.

In approving, approving with modifications, or disapproving a proposed subdivision, Buffalo’s Planning Board must make written findings of fact, including the following:

- The subdivision will ensure the accurate and easy description of land, orderly growth and development, efficient use of land, and proper use of natural resources; and
- The subdivision is consistent with the spirit and intent of the Green Code and Comprehensive Plan.

Historic Preservation

Preservation laws furnish an important layer of protection for historic buildings, sites, and districts. This section explains some of the City of Buffalo's preservation laws. Buffalo has a Preservation Board with eleven members: six chosen by the Mayor and three by the Common Council President, joined by the designees of the Buffalo History Museum and Preservation Buffalo Niagara.

Any person or group may request designation of a landmark, landmark site, or historic district by filing an application with the Preservation Board. The Board will have a public hearing within 60 days and make a recommendation to the Common Council within 90 days. The recommendation will be presented to the Council at its next meeting and then referred to its Legislation Committee, which will hold another public hearing within 60 days. Within 30 days of the hearing, the Legislation Committee will forward its decision to the full Common Council for a final determination; the Council must set forth its specific reasons for approval or disapproval. It costs \$500 to file the application, but if you can get the Preservation Board themselves to file the application, they can waive the fee.

The City's law lists nine criteria for designation. A structure, property, or area must meet one or more of the criteria and also have "sufficient integrity of location, design, materials and workmanship to make it worthy of preservation or restoration." Once an application is filed for a district, the Preservation Board, in consultation with the City's Permits and Inspections Department, can ask for a moratorium on demolition and new construction during the period of time when the application is being considered but has not yet been approved. If you are advocating for a moratorium, you will want the aid of the Councilmember for that district.

A structure, property, or area must meet one or more of the criteria and also have "sufficient integrity of location, design, materials and workmanship to make it worthy of preservation or restoration."

Once a designation is made, it becomes illegal to construct, alter, remove, or demolish any improvement or structure which is a landmark, part of a landmark site, or located in a historic district if the action will affect the exterior of the property, unless you first obtain a certificate of *appropriateness*, *no effect*, or *exception* from the City.

If such a certificate is required, the Department of Public Works will refer the building or demolition application to the Preservation Board within seven days. However, the majority of applications, and all of those for repairing in kind (such as replacing an asphalt shingle roof with an asphalt shingle roof) do not go to the Board itself, but are approved by the Preservation Board staff person on the same day as

requested. If the issue is a major alteration or change, it will get sent to the Preservation Board for review. The Board will consider the application at its next meeting and approve or deny it as soon as possible but within 45 days.

In considering applications, the Board will be guided by the Secretary of the Interior's Standards for the Rehabilitation and Guidelines for Rehabilitating Historic Buildings as general criteria, plus any additional design guidelines that it has adopted.

A certificate of:

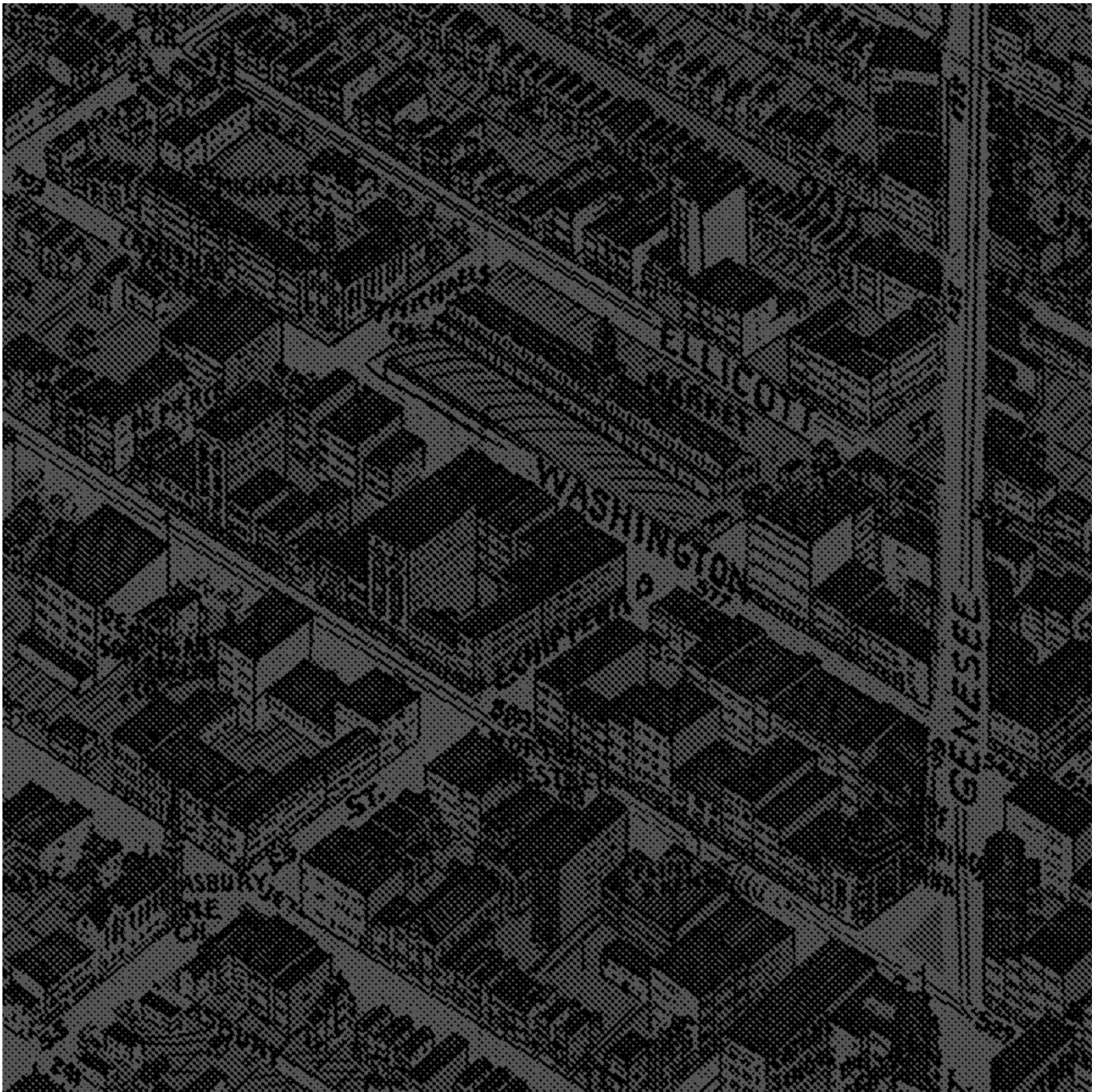
- *no effect* means that the changes will have no effect on the exterior.
- *appropriateness* means the plans conform to the provisions of the City code and design guidelines.
- *exception* means that “by reason of particular site conditions and restraints or unusual circumstances relating solely to a particular applicant,” strict enforcement of the code would lead to “undue hardship” to the applicant. To show undue hardship, an applicant must prove:
 - if it is a commercial or business property, that the exception is necessary to obtain a “reasonable return;”
 - if it is a residential property, that it cannot be put to a “reasonable use” without the exception;
 - if it is charitable, religious, or non-profit property, that the exception is needed to avoid “physically or financially preventing or seriously interfering” with the charitable purpose.

The Board must limit the exception to the minimum extent required to effect “substantial justice” and may prescribe necessary or appropriate conditions.

There is also a hardship exemption for people who can show that they simply cannot afford to make the change that would typically be requested by the Preservation Board.

The Board must conduct a public hearing on the proposed demolition of a building if it is designated as a local landmark, national historic landmark, if it is listed in the National Register for Historic Places, or if it is located in a locally designated or nationally registered historic district. It is current policy, though not required by law, that all proposed demolitions in the City of Buffalo are referred to the Preservation Board for review, but if the demolition is not of a historic building or in a historic district, the Board's opinion is purely advisory.

If the Board denies the demolition application, the applicant may appeal to the Common Council, which will refer it to its Legislation Committee and hold a public hearing. The Council will make a final decision within 60 days of the appeal being filed.



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www.ppgbuffalo.org
617 Main Street, Suite 300
Buffalo, New York 14203
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