



# Buffalo's Proposed Unified Development Ordinance

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Preserving Community Character within a new  
Form-Based Code

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Buffalo New York is undertaking a comprehensive update to its zoning code, which will have broad implications to preserving community character. This document contains Preservation Buffalo Niagara's recommendations to ensure that the new Unified Development Ordinance respects existing historic neighborhoods and building fabric.

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## Executive Summary

For the first time since 1954, the City of Buffalo New York is undertaking a comprehensive review and complete overhaul of its zoning code, the result of which has been popularly dubbed “the Green Code.” The City, particularly Mayor Brown and the leadership and staff at the Office of Strategic Planning are to be commended for undertaking this important task. While there are many positive aspects of this effort, some changes are needed in order to ensure that the final zoning code recognizes, respects, and protects the high quality of our existing building stock and the unique and varied historic character of our neighborhoods and public spaces.

The main purpose of the updated zoning code is to implement the goals of the 2006 Comprehensive Plan, which places a heavy emphasis on protecting and building on our existing assets, with special emphasis on historic preservation and waterfront access. With development pressure mounting in some of our neighborhoods and on our waterfront, it is important that our new zoning code adopt a “first, do no harm” philosophy and state unequivocally that preservation of the community character that has brought so much national recognition to Buffalo and that has formed the basis of many of our successful economic development and neighborhood revitalization efforts is among our top priorities as we continue to grow and evolve as a City.

PBN has five main recommendations:

1. Strengthen the proposed restrictions on demolition in the more densely zoned neighborhoods to ensure that well-meaning attempts to increase allowed density don’t result in unintended demolition pressure;
2. Provide definitions for the words “historic”, “heritage”, “cultural”, and “scenic” that will give the Planning Board, Zoning Board of Appeals, and Common Council true guidance in how to apply these words and concepts that are found in the Code;
3. Respect existing neighborhoods and existing property owners by taking greater care with transition points between commercial and residential properties as well as between existing structures and new structures and decrease allowable density in some areas to ensure that population growth is spread evenly throughout the City, so as not to leave any neighborhood behind;
4. Tighten signage rules so that our waterfront areas are not unduly impacted by inappropriate signage;
5. Down-zone the classifications applied to the Outer Harbor in keeping with the public input received by the City and the Erie Canal Harbor Development Corporation that this land should be preserved as natural and as publicly-accessible as possible.

Making these changes will result in significant upgrades to the code, ensuring that it is a document that can guide our community toward a more sustainable, equitable future.

## **1. Restrict Demolitions**

To protect our most vulnerable neighborhoods, PBN highly recommends expanding the restrictions found in section of 3.2.1G of the proposed Green Code to include all N2C, N2R, N2E, and N3E districts (these neighborhoods include the Elmwood Village, the Fruit Belt, the west side, and Black Rock). In addition, PBN would add an additional criterion to ensure that preservation would be considered at the front end of any project in these districts, rather than as an afterthought. This would allow the UDO to incorporate a preservation ethic into the new zoning code, rather than to punt that issue to other parts of the City Charter or to future efforts at creating local historic districts or landmark designations.

While the strongest protection for historic buildings in the City of Buffalo remains Section 337 of the City Charter, which governs the creation and administration of local historic landmarks and districts, the creation of these protections is outside the purview of the Green Code. A zoning tool must be created and embedded within the UDO to ensure that the new form-based code doesn't result in demolition of existing building stock that may not be currently covered by local preservation ordinances.

In addition to the prohibitions on demolitions already included in this section of the code, PBN would add section 3.2.1.G.1.c to read: the City of Buffalo Preservation Board has determined that the building(s) to be demolished would not be eligible for inclusion on the local, State, or National Register of Historic places.

Restricting demolitions will encourage new projects to retain existing structures as part of a development site and further the preservation and enhancement of the unique character of our local neighborhoods, explicit goals of the 2006 Comprehensive Plan.

## 2. Strengthen Definitions

In several sections of the code where administrative or legislative bodies are to issue findings of facts, they must consider the impact on existing community resources. For instance, the Special Use Permit criteria #6 (page 11-15), says that the “proposed use will not result in the destruction, loss, or damage of any feature determined to be of...*historic* importance.” Likewise, when undertaking major site plan review, approval standards include (page 11-28) that the project will provide for the adequate protection of “heritage” resources. However, neither “historic” nor “heritage” are defined in the definitions section of the Code, leaving a wide range of possible interpretations. The same is true of the words “cultural” and “scenic”.

PBN strongly advocates cutting down on confusion by using the word “historic” consistently, and inserting the following definition: “A building or collection of buildings that is at least fifty years old and that can be documented to have either individual significance or significance as part of a grouping of structures, including but not limited to, buildings and districts that have been or are eligible to be designated as National, State, or Local historic buildings or districts”. This will help to ensure that as development proposals come before the appropriate governing body, any buildings currently on the site will be evaluated carefully prior to any approvals.

PBN recommends using the following definition of “cultural significance”: “Places that help an understanding of the past or enrich the present, and which will be of value to future generations<sup>1</sup>.”

PBN’s recommended definition of “scenic resource” is: “Areas that are valued for their aesthetic appearance.<sup>2</sup> Aesthetic values can include, but are not limited to building facades, streetscapes, view corridors, waterfront vistas, topography, parkways and natural features.”

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<sup>1</sup> Australia ICOMOS, Guidelines to the Burra Charter, Cultural Significance.

<sup>2</sup> Scenic Views, Corridors, and Resources, Portland Oregon Division of Planning, 1991.

### **3. Respect traditional neighborhood development forms and patterns**

Buffalo is a city of neighborhoods, each with their own character, charm, and assets. The vast majorities of properties that will be developed under the Green Code not only have structures currently upon them, but also abut other structures. Recognizing these existing structures and striving to ensure that new developments are good neighbors should be a top priority for the Green Code. For instance, most proposed N2C districts, such as High Street and Elmwood Avenue, abut residential properties. More care must be taken to ensure that as new buildings are built within these commercial zones, their impact on existing residential homes is minimized.

In addition, the UDO is effectively proposing to up-zone some of the most popular areas of the City. In many instances, these areas already have some of the highest density levels in Buffalo and western New York, while other neighborhoods across our City struggle to attract residents and businesses. The UDO should strive to create zoning classifications that encourage density to increase incrementally across the entire City, rather than allow developers to concentrate development in certain highly popular neighborhoods for the sake of profit. This will ensure that all neighborhoods have a chance to benefit from the “back to the City” movement.

Specific recommendations include:

#### **Goal 1: Reduce encroachment of new construction in side yards of existing homes.**

##### 2.3.3.A: 2. Building Features :

d. A balcony may encroach up to eight feet upon any required yard. ADD: “In an N-2R or N-3R zone or in a property abutting an N2R or N3R zone, a balcony is only permitted upon a front, rear, or interior yard.”

e. A bay window or turret that is less than ten feet wide may encroach up to three and one-half feet upon any required yard. ADD: “In an N-2R or N-3R zone, a bay window or turret is only permitted in a side yard if set back at a minimum distance of four feet from the interior side property line.”

f. A building entrance that is less than ten feet wide may encroach up to three and one-half feet upon any required yard. ADD: “In an N-2R or N-3R zone, a building entrance is only permitted in a side yard if set back at a minimum distance of four feet from the interior side property line.

i. A porch or stoop may encroach up to eight feet upon any required yard, so long as it remains enclosed. ADD: “In an N-2R or N-3R zone, a porch or stoop is only permitted in a side yard if set back at a minimum distance of four feet from the interior side property line.”

##### 2.3.4.A Building Height, Feet.

When building height is measured by number of feet, building height is measured as the vertical distance from average ground level to: 1. The peak of a flat roof. Change to: “1. The top of the parapet of a flat roof.”

#### **Goal 2: Limit the size and nature of retail businesses to ensure that the streetscapes are diverse and active and to increase protection of historic buildings by reducing incentives for demolishing and replacing existing smaller-scaled buildings.**

### 3.2.1.F Elmwood Village Commercial Space Standards

The below standards apply to all applicable buildings designed to accommodate one or more ground-floor commercial spaces, located on any parcel that is north of North Street, south of Forest Avenue, east of Richmond Avenue, and west of Delaware Avenue, but not including any building which has direct frontage upon Delaware Avenue or Gates Circle.

1. The maximum area for a ground-floor commercial space is 10,000 square feet. Change to: "2500sf. Any increase in retail size allowed only by variance."
2. At least one entrance is required every 30 feet along the front facade of any Commercial Block building type or Stacked Units building type designed to accommodate commercial space(s). SUBSTITUTE: "Any individual business may occupy a maximum of 30' of frontage on Elmwood Avenue."

### **Goal 3: Ensure stringent review of demolitions, regardless of local preservation district status**

#### 3.2.1.G. Demolitions

1. The demolition of a principal building is prohibited in an N-1D, N-1C, N-1S, N-2C, or N-3C except where: Change to "N-1D, N-1C, N-1S, N-2C, N-2E, N-2R, or N-3C, N-2E, N-2R,"
  - a. The Commissioner of Permits and Inspection Services determines that an emergency demolition is required for the purpose of public safety
  - b. A site plan has been approved for one or more new principal buildings, or another use has been approved by the City on the site of the proposed demolition.ADD:
  - c. The City of Buffalo Preservation Board has determined that the building(s) to be demolished would not be eligible for inclusion on the local, State, or National Registers of Historic Places.
2. The City Planning Board may waive this prohibition if both of the following criteria are met:
  - a. The principal building proposed to be demolished does not comply with the form standards of one of the building types allowed in the zone where the demolition is proposed;
  - and b. The principal building proposed to be demolished is inconsistent with the intent of the zone where the demolition is proposed.

### **Goal 4 – Reduce proposed density in residential zones, keeping density levels more in line with historic density patterns**

3.2.2.C Lot dimensions: B. Lot Width (min/max) 15"/40" Change to "minimum of 20 ft."  
Lot Coverage: C Building Coverage (max) 80%. Change to "70%."

3.2.2.D Building Setbacks: Front yard (min/max) +/- 5' from average front yard line. Change to: "Equal to the average setback of principal buildings on adjacent properties; min. 4'."  
Corner side yard (min/max):- N-2E, N-2R, N-3E, N-3R 5'/15 Change to: "Equal to the average setback of principal buildings on adjacent properties; min. 4'. Interior side yard, end unit (min- N-2E, N-2R, N-3E, N-3R 2' Rear yard (min) 10% of lot depth Change to: "Equal to the average setback of principal buildings on adjacent properties; min. 4'

#### 3.2.2.E Building height - Supplemental Standards

1. If located along a high frequency transit route, or within 1,320 feet of a Metro Rail Station, a maximum building height of four stories is permitted. Change footnote 1 to "forty-five feet to the top of the parapet, peak of a gambrel".
- 3.2.2.G.1 A grouping of attached houses may not exceed

3.2.2.G.3 The following exterior facade materials are prohibited on all sides of attached houses  
ADD: as indicated: a. Reflective wall surface material with a Visible Light Reflectance (VLR) of greater than 15%. ADD: “b. Exterior Insulating Finish Systems (EIFS) between finish grade and the first 3 feet of the building walls.

c. Vinyl siding between finish grade and the first 3 feet of the building walls.

d. Fluted or glazed concrete masonry units (CMU’s).

3.2.11. Lot Coverage:

C Building coverage (max) N-2E, N-2R 80% Change to: “70%”

Building Setbacks - Front yard (min/max) N-2E, N-2R, N-3E, N-3R +/- 5’ from average front yard line. Change to: “Equal to the average setback of principal buildings on adjacent properties; min. 5’

Corner side yard (min/max) N-2E, N-2R, N-3E, N-3R 0’/15’ Change to: “Equal to the average setback of principal buildings on neighboring corner properties.”

Interior side yard (min) N-2E, N-2R, N-3E, N-3R 3’ from principal buildings on abutting lots, Change to: “3’ from property line.”

Rear yard (min) N-2E, N-2R 10% of lot depth. Change to: “15% of lot depth.”

3.2.11.E Height

ADD : Max. overall height in N-2R zones (incl. on bus routes) – 45 feet including max. 5ft. high parapet.”

Supplemental Standards:

2. Buildings on lots that abut Delaware Avenue, between North Street and Gates Circle; Gates Circle; North Street, between Main Street and Symphony Circle; and West Ferry Street, between Delaware Avenue, and Elmwood Avenue; may be up to six stories in height. Change to: “four stories”. Add: “Stacked Unit Buildings which are adjacent to an N-2R zone must step back the fourth story at least one foot for every foot in height above the third story.”

TABLE 6A (pg. 6-4)

Revise to eliminate Stacked Units and Attached Homes from N-2R, N-3R as of right.

## **Goal 5 – Reduce impact of large buildings on first houses on side streets.**

3.2.1.C.6 Where any five-story or taller building is proposed on a site which abuts an interior side or rear lot line in an N-2R, N-3R, N-4-30, or N-4-50 zone, the upper stories of such building must either provide a setback (in addition to applicable minimum setback requirements of Section 3.2), or be stepped back, from the respective interior side or rear setback line by at least one foot for each additional foot of building height above the fourth story. Change to: “second story”.

3.2.1.E. Neighborhood Shops. An existing commercial block or shopfront house building in the N-2R or N-3R zones will be considered conforming, irrespective of the provisions of this section. Any alteration to such structures must comply with standards for the applicable building type, as follows:

1. If a commercial block or shopfront house structure exists in the N-2R zone, any alteration to the structure must comply with the standards for the respective building type as applied in the N-2C zone.

2. If a commercial block or shopfront house structure exists in the N-3R zone, any alteration to the structure must comply with the standards for the respective building type as applied in the N-3C zone.

3.2.5.C Lot Coverage: Building coverage (max) - N-2C, N-2E, N-3C, N-3E: 90% Change to: "80%"  
Impervious coverage (max) - All zones: 100% change to: "90%"

3.2.5.D Rear yard setback min.: 0'; 10% of lot depth if rear lot line abuts an N-2R, N-3R, N-4-30, or N-4-50 zone. change to: "minimum 15%"

3.2.5.E Height : On Elmwood – 5 stories with fifth floor one-to-one stepback Change to: " 3 stories with fourth floor one-to-one stepback on side which abuts an N-2R zone. Max. height of 45 ft including 5ft. high parapet."

#### Supplemental Standards

2. Commercial block buildings that are five stories in height, in an N-2C zone, must step back the fifth story from front and corner side facades at least one foot for each foot in height above the fourth story. Change to: Three stories

Story Height:

Ground story height (min/max) 15'/18' change to "max. 18'"

Upper story height (min/max) 10'/12' change to "max. 12'"

3.2.5.F. Activation - Pedestrian Access:

Main entrance location (required) Front facade

Entrance spacing along front facade (preferred) - At least 1 entrance every 30'

#### Supplemental Standards

1. Commercial Block buildings within the Elmwood Village area are required to have at least one entrance every 30 feet, per Section 3.2.1.F. ADD: "The entrances must be accessible from the exterior by the public. The doors may not be used solely for emergency exiting from a interior of the building."

**Goal 6: Ensure successful transitions by establishing reasonable side yards in keeping with what currently exists.**

3.2..6 D Siting: Building setbacks

E. Interior side yard (min) 3' from principal building on abutting lot. ADD: "from property line."

3.2.6. E Building Height - (max) 3 stories ADD: "Match average height of adjacent existing houses."

3.2.6.G Specific Standards

1. The following exterior facade materials are prohibited on detached houses:

a. Reflective wall surface material with a Visible Light Reflectance (VLR) of greater than 15%.  
ADD: "b. Exterior Insulating Finish Systems (EIFS) between finish grade and the first 3 feet of the building walls.

c. Vinyl siding between finish grade and the first 3 feet of the building walls.

d. Fluted or glazed concrete masonry units (CMU's)."

#### BUFFER YARDS 7.1.

A. 7.1.6 Required Buffer Yards:

1. A buffer yard must be installed per Table 7A: Buffer Yards, where the below uses are introduced as part of any new development or as the result of a change of use. Refer to the



applicable sections for more information. ADD: s. Between N-2C, N-2E, N-3C, N-3E and all N-2R and N-3R zones.

A type C buffer yard, designed per section 7.1.6 is required along interior side and rear lot lines that abut any lot in an N-2R or N-3R, N-4-30, N-4-50, D-R, D-OS, D-OG, OR D-ON ZONE.

Section 6.1 - Add Type D Buffer requirement between all Single- and Double- Dwelling Units and all other Principle Uses.

### **Goal 7 – Lower threshold to allow for Planning Board hearings**

It is important that as changes occur that will radically alter the existing traditional development patterns or forms, community members have ample input into how their neighborhood is evolving.

#### **Minor Subdivision 11.5.4 Classification**

A. Exempt Alteration of Lots. The Commissioner of Permit and Inspection Services will classify any division, consolidation, or other alteration of lot boundaries as exempt from Planning Board review and a public hearing where each of the following criteria is met:

2. The proposed division, consolidation, or alteration of lot boundaries involves less than one-half acre of land in Neighborhood zones and less than two acres in total. Change to: “ less than one fifth acre of land...” as one-half acre is the approximate equivalent of 5 house lots and too large a consolidation to occur without the neighbors’ knowledge.

## 4. Signage

The natural beauty of our waterfront areas should be preserved and enhanced and therefore PBN supports prohibiting off-premise signs from the C-W zone. However, as currently drafted § 5.3.3.D.c. only protects non-industrial lands signs in the C-W Corridor, while D-IL and D-IH zoned parcels can include these signs by-right (§ 9.3.2.A.). Since the majority of the Buffalo River, City Ship Canal, mouth of Scajaquada Creek, and Union Ship Canal are abutted by D-IL and D-IH property, to not include these classifications in this provision would potentially result in massive new signs being allowed as of right along our waterfront.

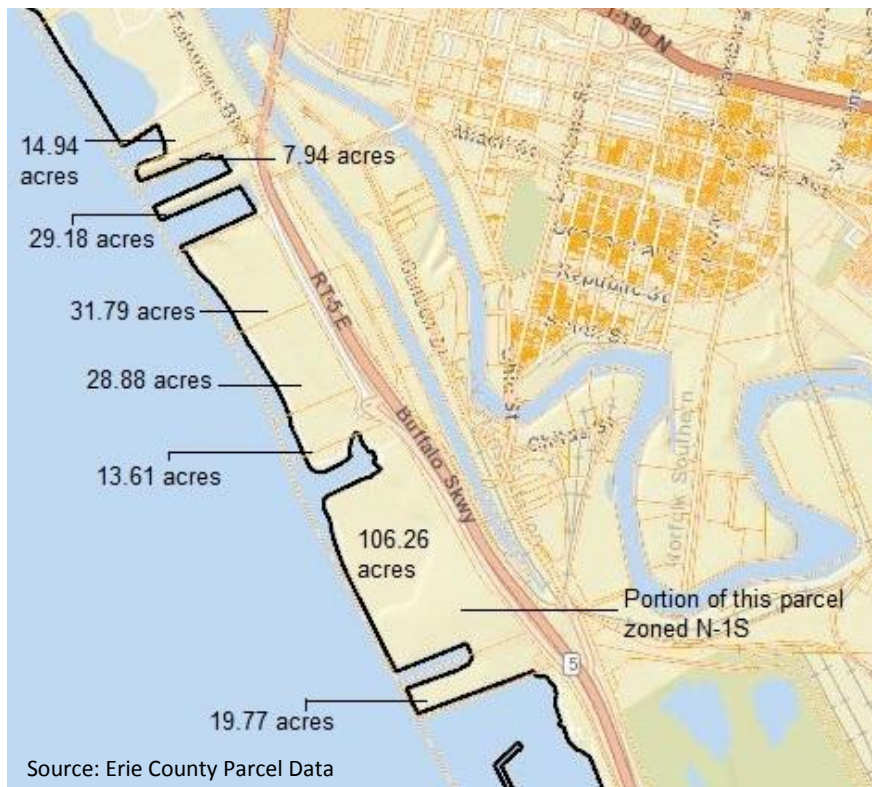
As Buffalo's waterfront becomes more popular for recreational and residential uses, commercial advertising oriented towards the water will also become more popular, which has the potential to spoil the natural aesthetic and restorative experience that water provides. No large off-premise signs, aside from wayfinding, should be allowed to be oriented to the water.

It is also imperative that the City protect our large, historic, iconic structures found along major waterways (i.e. grain elevators) from becoming billboards for the waterfront.

## 5. The Outer Harbor

Preservation Buffalo Niagara strongly advocates changes in the proposed zoning for the Outer Harbor. A majority of the land is zoned D-OG (Green), which at first glance appears to be appropriate based on the public's desired use of the land for recreational purposes. However, when one looks at the forms, square footage, and uses allowed within this zone much more development is allowed on the Outer Harbor than the public has expressed interest in through the various public planning processes over the last several years.

For example, with the D-OG's buildable lot coverage of 25%, the 31.79 acre parcel in the map below would equate to a 7.9 acres buildable, which is roughly a 340,000 square foot building. To put that in perspective, a Super Walmart is 260,000 square feet. If you add up the buildable acres for all of the Outer Harbor parcels zoned D-OG the total buildable square footage is roughly 1.9 Million square feet, or 7 Super Walmarts. This development level is completely out of scale to the community's desired development level on the Outer Harbor.



The land uses allowed in the D-OG are also extreme and swing more towards a Clifton Hill entertainment district (amusement facilities, live entertainment, movie theatres, retail services, restaurants, taverns), than a passive park space with bike trails, bird watching towers, and comfort stations. Even though the vast majority of these uses are considered Special Use, the criteria for deciding whether to grant a Special Use Permit are not stringent enough to protect the public's interest in this unique and irreplaceable part of our community.

To address these issues and better reflect the public's desire to preserve open space and public access for the Outer Harbor and not to create another neighborhood on the waterfront, Preservation Buffalo Niagara recommends the City revise the Outer Harbor parcels currently zoned "D-OG" to "D-ON", and scale back the buildable lot coverage to 2%. These changes would enable approximately 152,000 square feet of buildable space and reserve that for uses much more in-keeping with passive recreation, such as comfort stations, bird watching towers, trails, and pavilions.

Preservation Buffalo Niagara also recommends changing the zoning classification along the interior of the Outer Harbor, adjacent to the City Ship Canal to D-OG from N-3E, as this zoning classification would allow exactly the kind of new, private neighborhood on the waterfront that the community has consistently and overwhelmingly rejected. This zoning classification is not in line with the "waterfront for all" mindset, as it will essentially restrict public access and reduce land available for traditional water-dependent uses, similar to the way Waterfront Village functions today as an isolated gated community. In this case, PBN recommends limiting mixed-use development on the Outer Harbor to the former Terminal A&B complex as it is currently zoned and revising the N-3E parcels to D-OG parcels. The smaller lot sizes in this area plus the special uses allowed under D-OG will encourage water-dependent uses and some unique uses complementary to a waterfront location without excluding the public as a residential condo complex will.

PBN also strongly advocates for the reuse and retrofitting of Terminal A&B's historic buildings over the demolition and redevelopment of the land. Please see previous comments regarding demolition policies. Buffalo should honor its industrial waterfront past as it strives to create a new waterfront environment. Recognition and visual representation of our past working waterfront in our buildings and facades found along the water are what will create truly unique urban spaces that represent and respect who we are as a city.