

# PLANNING & DEVELOPMENT COMMITTEE

**Tuesday, March 15, 2016**

*6:00 pm*

Council Board Room

One Batavia City Centre, Batavia NY

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## **AGENDA**

I. Roll Call

II. Call to Order

III. Approval of Minutes – 1/19/16

IV. Proposals

**Address:** 85-89 Main Street

**Applicant:** Adam Lowder (Contractor, Vinyl Sticks)

Proposal 1: Special Sign Permit: placement of a 17.64' x 8.45' window sign across four window panels on the north elevation of this commercial building located within the BID

Actions: 1. Remove application from table  
2. Review application  
3. Discussion and action by the board

**Address:** 216 East Main Street (aka 214)

**Applicant:** Jason Quilliam (business owner)

Proposal 2: Placement of a 13' x 3' unlit wall sign on the north elevation of this commercial building located within the Business Improvement District

Actions: 1. Review application  
2. Discussion and action by the board

**Address:** 41-43 Liberty Street Rear and 45 Liberty Street Rear  
(aka 45 Liberty Street)

**Applicant:** Victor Gautieri (agent for the owner)

Proposal 3: Creation of twelve 1- and 2-bedroom dwelling units on the first floor of this existing commercial building located within the Central Commercial District. A use variance is required for the proposed change

Actions: 1. Review application  
2. Public hearing  
3. Discussion and recommendation to the Zoning Board of Appeals

V. Other/ New Business/Updates: Discussion of Digital Signs

VI. Setting of Next Meeting: April 19, 2016

VII. Adjournment

**PLANNING & DEVELOPMENT COMMITTEE**  
***MINUTES***

**January 19, 2016 6:00 pm**  
Council Board Room  
One Batavia City Centre, Batavia NY

Members present: *Edward Flynn, Matthew Gray, Duane Preston, Robert Knipe*

Members absent: Rachael Tabelski, Marc Staley (Alt.)

Others present: Meg Chilano – Recording Secretary, Doug Randall – Code Enforcement Officer

**I. Roll Call**

Roll call of the members was conducted. Four members were present and Chairman Preston declared a quorum.

**II. Call to order**

Mr. Preston called the meeting to order at 6:10 pm.

**III. Previous Meeting Minutes**

Mr. Knipe moved to approve the minutes; the motion was seconded by Mr. Gray, and on roll call, was approved 4-0.

**RESULT: Approval of November 17, 2015 meeting minutes.**

**IV. Proposal**

Special Sign Permit: placement of a 17.64' x 8.45' window sign across four window panels on the north elevation of this commercial building located within the BID

Address: 85-89 Main Street

Applicant: Adam Lowder (Contractor, Vinyl Sticks)

Actions: Table the application

**Action by the board**

The applicant was not in attendance to speak about the proposal.

**MOTION:** Mr. Preston moved to table the application until the next meeting; the motion was seconded by Mr. Knipe, and on roll call, was approved 4-0.

**RESULT: Application tabled.**

**V. New Business: 2016 Meeting Schedule**

Mr. Flynn moved to approve the schedule; the motion was seconded by Mr. Gray, and on roll call, was approved 4-0.

**RESULT: Approval of 2016 Meeting Schedule.**

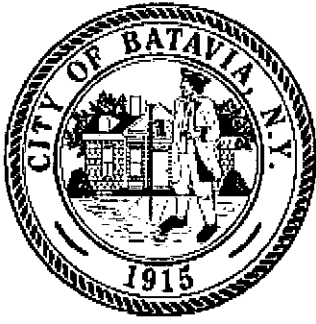
**V. Setting of Next Meeting: February 16, 2016**

**VI. Adjournment**

Mr. Gray moved to adjourn at the meeting at 6:15 pm. Mr. Knipe seconded. All voted in favor.

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Meg Chilano  
Bureau of Inspection Clerk



*City of Batavia*  
*Department of Public Works*  
*Bureau of Inspections*

One Batavia City Center, Batavia, New York 14020

(585)-345-6345

(585)-345-1385 (fax)

To: Genesee County Planning  
Planning and Development Committee

From: Doug Randall, Code Enforcement Officer

Date: 11/23/15

Re: 85-89 Main St.  
Tax Parcel No. 84.049-1-46

Zoning Use District: C-3

The applicant, Adam Lowder (Contractor, Vinyl Sticks), has applied for a Special Sign Permit to place a 17.64' x 8.45' window sign across four window panels on the north elevation of this commercial building located within the Business Improvement District.

**Note:** This is a type II action as defined by Environmental Conservation Law and is not subject to review under SEQR 6 NYCRR Part 617.5 (c) (1).

**Review and Approval Procedures:**

**County Planning Board-** Pursuant to General Municipal Law 239 m, referral to the County Planning Board is required since the property is within 500 feet of a state parkway, throughway, expressway, road or highway.

**City Planning and Development Committee-** Pursuant to section 190-14 D (2) (b), the Planning and Development Committee shall review and approve applications for sign permits on properties located within the B.I.D. Also; Per 190-43 R the PDC shall approve or deny Special Sign Permits.

**BMC 190-43 F and Exhibit A**

**A maximum 25% window sign coverage is permitted in the Central Commercial District.**



**SEND OR DELIVER TO:**

GENESEE COUNTY DEPARTMENT OF PLANNING  
3837 West Main Street Road  
Batavia, NY 14020-9404  
Phone: (585) 344-2580 Ext. 5467

**DEPARTMENT USE ONLY:**

GCDP Referral # \_\_\_\_\_



**\* GENESEE COUNTY \***  
**PLANNING BOARD REFERRAL**

Required According to:

**GENERAL MUNICIPAL LAW ARTICLE 12B, SECTION 239 L, M, N**

(Please answer ALL questions as fully as possible)

**1. REFERRING BOARD(S) INFORMATION**Board(s) Planning and Development CommitteeAddress One Batavia City CentreCity, State, Zip Batavia, NY 14020Phone (585) 345 - 6347

Ext. \_\_\_\_\_

**2. APPLICANT INFORMATION**Name Adam Lowder (contractor, Vinyl Sticks)Address 23 Ganson Ave.City, State, Zip Batavia, NY 14020Phone (585) 409 - 5543

Ext. \_\_\_\_\_

Email \_\_\_\_\_

MUNICIPALITY: ☒ City ☐ Town ☐ Village of Batavia**3. TYPE OF REFERRAL:** (Check all applicable items)☐ Area Variance☐ Use Variance☐ Special Use Permit☐ Site Plan Review☐ Zoning Map Change☐ Zoning Text Amendments☐ Comprehensive Plan/Update☒ Other: Special Sign Pmt

Subdivision Proposal

☐ Preliminary☐ Final**4. LOCATION OF THE REAL PROPERTY PERTAINING TO THIS REFERRAL:**A. Full Address 85-89 Main St.B. Nearest intersecting road Jackson St.C. Tax Map Parcel Number 84.049-1-46

D. Total area of the property \_\_\_\_\_ Area of property to be disturbed \_\_\_\_\_

E. Present zoning district(s) C-3 (BID)**5. REFERRAL CASE INFORMATION:**

A. Has this referral been previously reviewed by the Genesee County Planning Board?

☒ NO ☐ YES If yes, give date and action taken \_\_\_\_\_

B. Special Use Permit and/or Variances refer to the following section(s) of the present zoning ordinance and/or law

BMC 190-14 D(2)(b) and 190-43 RC. Please describe the nature of this request Approval to place 17.64' x 8.45' window sign across four window panels on the north elevation of this building.**6. ENCLOSURES** – Please enclose copy(s) of all appropriate items in regard to this referral☒ Local application☐ Site plan☐ Subdivision plot plans☐ SEQR forms☐ Zoning text/map amendments☐ Location map or tax maps☐ Elevation drawings☐ Agricultural data statement☐ New or updated comprehensive plan☒ Photos☒ Other: Cover letter

If possible, please provide a reduced version or digital copy of any supporting documentation larger than 11 x 17.

Email to [planning@co.genesee.ny.us](mailto:planning@co.genesee.ny.us)**7. CONTACT INFORMATION** of the person representing the community in filling out this form (required information)Name Douglas RandallTitle Code Enf. OfficerPhone (585) 345 - 6327

Ext. \_\_\_\_\_

Address, City, State, Zip One Batavia City Centre, Batavia, NY 14020Email drandall@batavianewyork.com



# SIGN PERMIT APPLICATION

CITY OF BATAVIA  
10 West Main Street, Batavia, NY, 14020  
Phone: (716) 343-8180 • Fax (716) 343-9221

Permit No: \_\_\_\_\_

Date: \_\_\_\_\_

Zone: C-3

Special Sign: Yes

84,049-1-46

## APPLICANT:

Name Adam Lowder/Vinyl Sticks alowder@vinylsticks.com  
E-mail Address  
23 Cansen Ave  
Street Address  
Batavia, NY 14020  
City, State, Zip Code  
Phone 585-409-5543 Fax N/A

## OWNER:

Name Ken Mistler gymowner@icloud.com  
E-mail Address  
85 Main St.  
Street Address  
Batavia, NY 14020  
City, State, Zip Code  
Phone 585-344-3700 Fax N/A

ADDRESS OF SIGN: 85 Main St Batavia, NY 14020 (North side of building)

SIGN AREA: Length 53' Width 101.5' Area 37.4 sq.ft.  
17.64' 8.45' 149.05'

TYPE OF SIGN: One way window film. See out from inside building

1. All sign applications must have an illustration of the sign with its dimensions and copy.
2. Freestanding signs must have a Site Plan to show the sign's location on the property
3. All other signs must include an elevation plan to show the sign's placement on the building

- ☐ Freestanding:  
☐ Wall  
☐ Projecting  
☐ Marquee  
☒ Awning/Canopy  
☒ Window  
☐ Portable

Set Back \_\_\_\_\_ Height \_\_\_\_\_  
Wall Length \_\_\_\_\_ Wall Height \_\_\_\_\_ Area \_\_\_\_\_

(4 Windows - One Sign)  
Length \_\_\_\_\_ Height \_\_\_\_\_ Area \_\_\_\_\_  
Window Length 53' Window Height 101.5' Area 37.4 sq.ft.  
4.41' 8.45' 149 sq.'  
17.64'

LIGHTING: ☐ Internal

☐ External

EXISTING SIGNS (Please list all existing signs with dimensions):

N/A

149 sq'  
37.25 sq.'  
111.75 sq.' over.  
100% Coverage  
25% Permit Fee (149 sq)  
75% over.

Applicant's Signature: \_\_\_\_\_

Date: 11/9/15

Issuing Officer: \_\_\_\_\_

Date: \_\_\_\_\_

Planning Board Chair person: \_\_\_\_\_

Date: \_\_\_\_\_

FEES: ☒ \$25 Sign Permit ☒ \$50 Special Sign Permit ☐ \$10 Portable Sign



**GENESEE COUNTY PLANNING BOARD  
ZONING REFERRALS NOTICE OF FINAL  
ACTION**

GCDP Referral ID **C-39-BAT-12-15**  
Review Date **12/10/2015**

Municipality  
Board Name  
Applicant's Name  
Referral Type  
Variance(s)  
Description:

**BATAVIA, C.**  
**CITY PLANNING AND DEVELOPMENT COMM.**  
**Adam Lowder (contractor, Vinyl Sticks)**

**Special Sign Permit**

**Special Sign Permit to place a 17.64 x 8.45 ft. window sign.**

**Total Window Sign Coverage Area**  
**Maximum allowed: 25% (37.25 sq. ft.)**  
**Proposed Sign: 100% (149 sq. ft.)**

Location  
Zoning District

**85-89 Main St. (NYS Rts. 5 & 33), Batavia**  
**Central Commercial (C-3) District**

**PLANNING BOARD DECISION**

**APPROVAL WITH MODIFICATION(S)**

**EXPLANATION:**

The required modification is that the applicant decreases the size of the window sign to comply with the City's 25% maximum coverage regulation. The amount of signage proposed grossly exceeds that allowed per the City's zoning regulations and by reducing transparency in the first floor windows, detracts from the pedestrian experience. With this required modification, the proposed sign should pose no significant county-wide or inter-community impact.

Director

December 10, 2015

Date

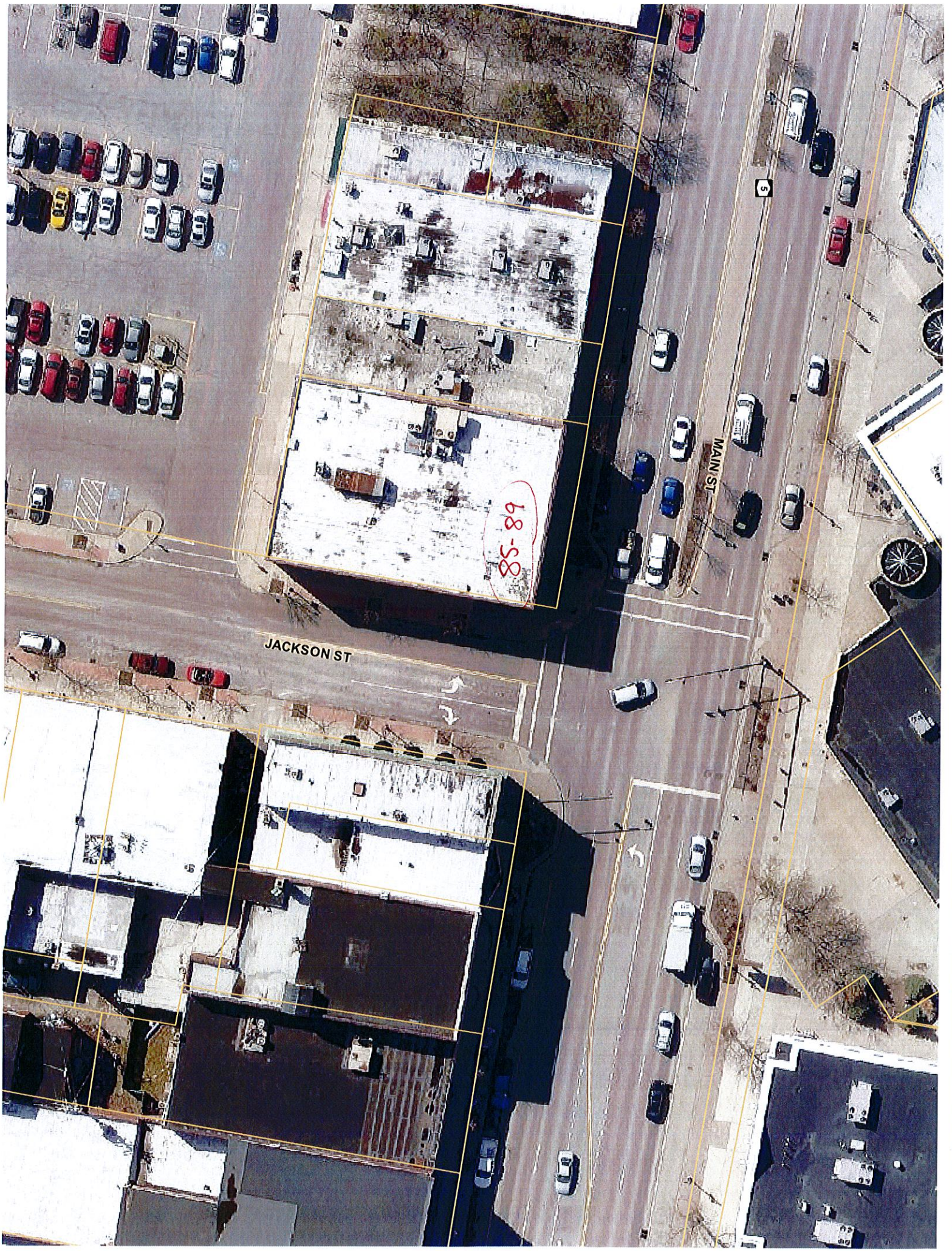
If the County Planning Board disapproved the proposal, or recommends modifications, the referring agency shall NOT act contrary to the recommendations except by a vote of a majority plus one of all the members and after the adoption of a resolution setting forth the reasons for such contrary action. Within 30 days after the final action the referring agency shall file a report of final action with the County Planning Board. An action taken form is provided for this purpose and may be obtained from the Genesee County Planning Department.



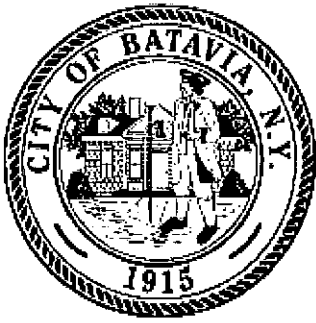


**NEXT LEVEL FITNESS**  
ENTRANCE IN BACK  
←  
next level  
FITNESS  
OPEN 24/7









*City of Batavia*  
*Department of Public Works*  
*Bureau of Inspections*

One Batavia City Center, Batavia, New York 14020

(585)-345-6345

(585)-345-1385 (fax)

To: Genesee County Planning  
Planning and Development Committee

From: Doug Randall, Code Enforcement Officer

Date: 2/26/16

Re: 216 East Main St. (aka 214)  
Tax Parcel No. 84.058-1-5

Zoning Use District: C-3

The applicant, Jason Quilliam (business owner), has applied for approval to place a 13' x 3' unlit wall sign on the north elevation of this commercial building located within the Business Improvement District.

**Note: This is a type II action as defined by Environmental Conservation Law and is not subject to review under SEQR 6 NYCRR Part 617.5 (c) (1).**

**Review and Approval Procedures:**

**County Planning Board-** Pursuant to General Municipal Law 239 m, referral to the County Planning Board is required since the property is within 500 feet of the boundary of the city; the boundary of a County or State park or other recreation area; **the right of way of a state parkway, thoroughway, expressway, road or highway;** the boundary of county or state owned land on which a public building or institution is situated; the boundary of a farm operation located in an agricultural district (not required for area variances).

**City Planning and Development Committee-** Pursuant to section 190-14 D (2) (b), the Planning and Development Committee shall review and approve applications for sign permits on properties located within the B.I.D.

**SEND OR DELIVER TO:**

GENESEE COUNTY DEPARTMENT OF PLANNING

3837 West Main Street Road

Batavia, NY 14020-9404

Phone: (585) 344-2580 Ext. 5467

**DEPARTMENT USE ONLY:**

GCDP Referral # \_\_\_\_\_



**\* GENESEE COUNTY \***  
**PLANNING BOARD REFERRAL**

Required According to:

**GENERAL MUNICIPAL LAW ARTICLE 12B, SECTION 239 L, M, N**

(Please answer ALL questions as fully as possible)

**1. REFERRING BOARD(S) INFORMATION**Board(s) Planning and Development CommitteeAddress One Batavia City CentreCity, State, Zip Batavia, NY 14020Phone (585) 345 - 6347

Ext. \_\_\_\_\_

**2. APPLICANT INFORMATION**Name Jason QuilliamAddress 126 Jackson St.City, State, Zip Batavia, NY 14020Phone (716) 908 - 6751

Ext. \_\_\_\_\_

Email \_\_\_\_\_

MUNICIPALITY: ☒ City ☐ Town ☐ Village of Batavia**3. TYPE OF REFERRAL:** (Check all applicable items)☐ Area Variance☐ Use Variance☐ Special Use Permit☐ Site Plan Review☐ Zoning Map Change☐ Zoning Text Amendments☐ Comprehensive Plan/Update☒ Other: Sign in BID

Subdivision Proposal

☐ Preliminary☐ Final**4. LOCATION OF THE REAL PROPERTY PERTAINING TO THIS REFERRAL:**A. Full Address 216 East Main St.B. Nearest intersecting road Liberty StC. Tax Map Parcel Number 84.058-1-5

D. Total area of the property \_\_\_\_\_ Area of property to be disturbed \_\_\_\_\_

E. Present zoning district(s) C-3**5. REFERRAL CASE INFORMATION:**

A. Has this referral been previously reviewed by the Genesee County Planning Board?

☒ NO ☐ YES If yes, give date and action taken \_\_\_\_\_

B. Special Use Permit and/or Variances refer to the following section(s) of the present zoning ordinance and/or law

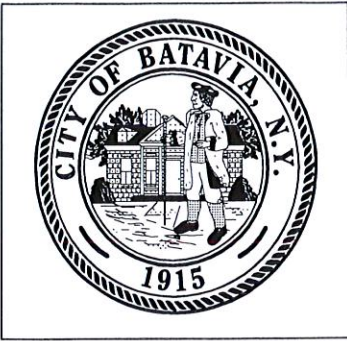
BMC 190-14 D (2)(b)C. Please describe the nature of this request Approval to place a 39 sq.' unlit wall sign on the north elevation of this commercial building located within the Business Improvement District.**6. ENCLOSURES** – Please enclose copy(s) of all appropriate items in regard to this referral☒ Local application☐ Site plan☐ Subdivision plot plans☐ SEQR forms☐ Zoning text/map amendments☐ Location map or tax maps☒ Elevation drawings☐ Agricultural data statement☐ New or updated comprehensive plan☒ Photos☐ Other: Cover letter

If possible, please provide a reduced version or digital copy of any supporting documentation larger than 11 x 17.

Email to [planning@co.genesee.ny.us](mailto:planning@co.genesee.ny.us)**7. CONTACT INFORMATION** of the person representing the community in filling out this form (required information)Name Douglas RandallTitle Code Enf. OfficerPhone (585) 345 - 6327

Ext. \_\_\_\_\_

Address, City, State, Zip One Batavia City Centre, Batavia, NY 14020Email drrandall@batavianewyork.com



Permit No.: \_\_\_\_\_

Date: \_\_\_\_\_

Zone: C-3**SIGN PERMIT APPLICATION**  
**City of Batavia**One Batavia City Centre, Batavia, NY 14020  
(585) 345-6345 • Fax (585) 345-138584.058-1-5**APPLICANT/OWNER:**Jason Quillian  
NameQuillian\_jayson@yahoo.com  
E-mail Address126 Jackson Street  
Street Address716-908-6751  
Phone

Fax

Batavia NY 14020  
City, State, Zip Code**ADDRESS OF SIGN:**216  
217 East Main Street, Batavia NY 14020**AREA OF SIGN:**Length 13 ftWidth 3 ftArea 39 sq ft**TYPE OF SIGN:**

1. All sign applications must have an illustration of the sign with its dimensions and copy.
2. Freestanding signs must have a Sit Plan to show the sign's location on the property.
3. All other signs must include an elevation plan to show the sign's placement on the building.

☐ Freestanding

Set Back \_\_\_\_\_

Height \_\_\_\_\_

☒ WallWall Length 13 ftWall Height 5 ftArea 90 sq ft☐ Projecting☐ Marquee☐ Awning / Canopy

Length \_\_\_\_\_

Height \_\_\_\_\_

Area \_\_\_\_\_

☐ Window

Window Length \_\_\_\_\_

Window Height \_\_\_\_\_

Area \_\_\_\_\_

☐ Portable**Lighting:**☐ Internal☐ External**Existing Signs** (Please list all existing signs with dimensions):existing gamezilla sign will be taken down and  
replaced with new game on logo over itApplicant's Signature Jason QuillianDate 2/25/16

Issuing Officer \_\_\_\_\_

Date \_\_\_\_\_

Planning Board Chairperson \_\_\_\_\_

Date \_\_\_\_\_

**FEES:**x \$25 Sign Permit

\_\_\_\_\_ \$50 Special Sign Permit

\_\_\_\_\_ \$10 Portable Sign





- SALES
- TRADE IN'S
- PARTIES
- REPAIRS
- AND MORE!

**GAME ON**

- SALES
- TRADE IN'S
- PARTIES
- REPAIRS
- AND MORE!

**GAME ON**





*City of Batavia*  
*Department of Public Works*  
*Bureau of Inspections*

One Batavia City Center, Batavia, New York 14020

(585)-345-6345

(585)-345-1385 (fax)

To: Genesee County Planning  
Planning and Development Committee  
Zoning Board of Appeals

From: Doug Randall, Code Enforcement Officer

Date: 2/29/16

Re: 41-43 Liberty St. Rear (84.015-1-23.1) and  
45 Liberty St. Rear (84.015-1-22)  
(aka Address Point 45 Liberty St.)

Zoning Use District: C-3

The applicant, Victor Gautieri (agent for owner, Ellicott Square Plaza, LLC), has requested approval to create twelve, one and/or two bedroom dwelling units on the first floor of this existing commercial building located within the Central Commercial District. A use variance is required for the proposed change.

**Review and Approval Procedures:**

**County Planning Board-** Pursuant to General Municipal Law 239 m, referral to the County Planning Board is required since the property is within 500 feet of the boundary of the city; the boundary of a County or State park or other recreation area; **the right of way of a state parkway, thoroughway, expressway, road or highway;** the boundary of county or state owned land on which a public building or institution is situated; the boundary of a farm operation located in an agricultural district (not required for area variances).

**City Planning and Development Committee-** Pursuant to section 190-49 C. of the zoning ordinance; Applications for variances that include non-permitted uses shall be referred to the PDC for their recommendation to the ZBA.

**Zoning Board of Appeals-** Pursuant to BMC Sec. 190-49 of the zoning ordinance, the ZBA shall review and act on required variances.

Required variances- Use

- 1) **BMC 190-14 A. First floor residential dwelling units are not a permitted principal use in the Central Commercial District (C-3).**

**The Zoning Board of Appeals will be the lead agency to conduct SEQR.**

**SEND OR DELIVER TO:**

GENESEE COUNTY DEPARTMENT OF PLANNING  
3837 West Main Street Road  
Batavia, NY 14020-9404  
Phone: (585) 344-2580 Ext. 5467



**\* GENESEE COUNTY \***  
**PLANNING BOARD REFERRAL**

**DEPARTMENT USE ONLY:**

GCDP Referral # \_\_\_\_\_

Required According to:

**GENERAL MUNICIPAL LAW ARTICLE 12B, SECTION 239 L, M, N**

(Please answer ALL questions as fully as possible)

**1. REFERRING BOARD(S) INFORMATION**Board(s) Zoning Board of AppealsAddress One Batavia City CentreCity, State, Zip Batavia, NY 14020Phone (585) 345 - 6347

Ext. \_\_\_\_\_

**2. APPLICANT INFORMATION**Name Victor GautieriAddress 45 Liberty St.City, State, Zip Batavia, NY 14020Phone (585) 343 - 0852

Ext. \_\_\_\_\_

Email vgautieri@gautieri.comMUNICIPALITY: ☒ **City** ☐ **Town** ☐ **Village** of Batavia**3. TYPE OF REFERRAL:** (Check all applicable items)☐ Area Variance☒ Use Variance☐ Special Use Permit☐ Site Plan Review☐ Zoning Map Change☐ Zoning Text Amendments☐ Comprehensive Plan/Update☐ Other: \_\_\_\_\_

Subdivision Proposal

☐ Preliminary☐ Final**4. LOCATION OF THE REAL PROPERTY PERTAINING TO THIS REFERRAL:**A. Full Address 41-43 and 45 Liberty St. (84.015-1-23.1 and 84.015-1-22)B. Nearest intersecting road Ellicott St.C. Tax Map Parcel Number 84.015-1-23.1 and 84.015-1-22

D. Total area of the property \_\_\_\_\_ Area of property to be disturbed \_\_\_\_\_

E. Present zoning district(s) C-3**5. REFERRAL CASE INFORMATION:**

A. Has this referral been previously reviewed by the Genesee County Planning Board?

☒ NO☐ YES

If yes, give date and action taken \_\_\_\_\_

B. Special Use Permit and/or Variances refer to the following section(s) of the present zoning ordinance and/or law

BMC 190-14 A.

C. Please describe the nature of this request Approval to create twelve, one and/or two bedroom dwelling units on the first floor of this existing commercial building in a use district that does not permit residential dwelling units as a permitted principal use.

**6. ENCLOSURES** – Please enclose copy(s) of all appropriate items in regard to this referral☒ Local application☒ Site plan☐ Subdivision plot plans☒ SEQR forms☐ Zoning text/map amendments☐ Location map or tax maps☐ Elevation drawings☐ Agricultural data statement☐ New or updated comprehensive plan☒ Photos☒ Other: Cover letter

If possible, please provide a reduced version or digital copy of any supporting documentation larger than 11 x 17.

Email to [planning@co.genesee.ny.us](mailto:planning@co.genesee.ny.us)**7. CONTACT INFORMATION** of the person representing the community in filling out this form (required information)Name Douglas RandallTitle Code Enf. OfficerPhone (585) 345 - 6327

Ext. \_\_\_\_\_

Address, City, State, Zip One Batavia City Centre, Batavia, NY 14020Email drandall@batavianewyork.com





**CITY OF BATAVIA**  
**APPLICATION TO THE ZONING BOARD OF APPEALS**

Application No. 16-04  
Hearing Date/Time \_\_\_\_\_

APPLICANT: V.G. Gauthier Constructors, Inc. vgautieri@gautieri.com  
Name \_\_\_\_\_ E-Mail Address \_\_\_\_\_  
45 Liberty Street 585-343-0852 585-343-2601  
Street Address \_\_\_\_\_ Phone \_\_\_\_\_ Fax \_\_\_\_\_  
Batavia NY 14020  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

STATUS: ☐ Owner ☒ Agent for Owner ☒ Contractor

OWNER: Elliptical Square Plaza, LLC vgautieri@gautieri.com  
Name \_\_\_\_\_ E-Mail Address \_\_\_\_\_  
45 Liberty Street 585-343-0852 585-343-2601  
Street Address \_\_\_\_\_ Phone \_\_\_\_\_ Fax \_\_\_\_\_  
Batavia NY 14020  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

LOCATION OF PROPERTY: 45 Liberty Street, Batavia, NY 14020

DETAILED DESCRIPTION OF REQUEST: Property owner is requesting a use variance to  
to create 12 residential apartments on the Ground Floor of an existing building  
within a C-3 zoning district that has been vacant and un-rentable for conforming  
uses. Please see applicants narrative submitted with this application.

Applicant must be present at the hearing date. Failure to do so will result in the application being discarded. It is the responsibility of the applicant to present evidence sufficient to satisfy the Zoning Board of Appeals that the benefit of the applicant does not outweigh the health, safety, morals, aesthetics and general welfare of the community or neighborhood.

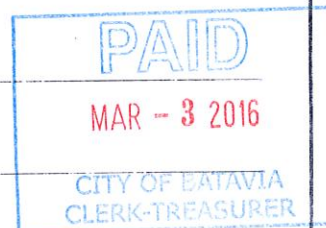
[Signature]  
Applicant's Signature \_\_\_\_\_  
[Signature]  
Owner's Signature \_\_\_\_\_

2/26/16

Date

2/26/16

Date



(41-43) 84.015-1-23.1 *To be Filled out by Zoning Officer*  
TAX PARCEL: (45) 84.015-1-22 ZONING DISTRICT: C-3 FLOOD PLAIN: AH

TYPE OF APPEAL: ☐ Area Variance FEE: ☐ \$50 (One or Two Family Use)  
☒ Use Variance ☒ \$100 (All other Uses)  
☐ Interpretation  
☐ Decision of Planning Committee

Provision(s) of the Zoning Ordinance Appealed: BMC 190-14 A. First Floor  
residential dwelling units are not a permitted principal use in the  
Central Commercial district.







**Use Variance Application**  
***Statement of Unnecessary Hardship***

In order for the Zoning Board of Appeals to grant a use variance, an applicant must show documentation in the record that the restrictions of the Zoning Ordinance has caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Zoning Board of Appeals that for each and every permitted use under the Zoning Ordinance for the particular district where the property is located, that all four (4) requirements as per §81-b of the General City Law have been proven. Additional documentation may be included. If any one of these requirements have not been proven, the Zoning Board of Appeals must deny the variance, as per §81-b of the General City Law.

Explain **how** the request conforms to EACH of the following requirements (additional pages may be attached):

1. **Reasonable Return.** The subject property is not capable of yielding a reasonable rate of return if used for its present use or developed, redeveloped or used for any other use permitted in the district in which such property is located. There is no means other than the granting of the variance by which the property can yield a reasonable return. Such inability to yield a reasonable return must be shown by specific fact (dollars and cents) from an expert or authority in economic deprivation, not the unsupported opinion of the owner or those appearing for the owner.

*"The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence"*

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See attached Applicant Narrative

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**(Please provide / attach competent financial evidence)**

2. **Unique Hardship.** The inability to yield a reasonable return results from a unique circumstance peculiar to the subject property which does not apply to or affect other properties in the immediate vicinity that are subject to the same regulations. The personal situation of the owner shall not be considered unique.

*"The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood"*

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See attached Applicant Narrative

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3. **Essential Character of the Neighborhood.** The granting of the variance will not be materially detrimental to the public health, safety, and welfare or injurious to the enjoyment, use or development of neighboring properties or the community. Applicant must demonstrate that the proposed use will not change the essential character of the neighborhood with regard to such physical and environmental elements such as parking, traffic, signage, landscape, architectural and structural features, location and dimensions of buildings, any by-products of proposed use such as noise or smoke, and any other impacts upon adjacent or neighboring lands.

*"The requested use variance, if granted, will not alter the essential character of the neighborhood"*

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See Attached Applicant Narrative

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4. **Not Self-Created.** The inability to yield a reasonable return is not the result of any action by the owner or predecessors in title. The applicant must show that when the property was purchased the zoning restrictions from which a use variance is now sought were not in existence or that some other change or factor has occurred that has resulted in an inability to yield a reasonable return. Otherwise, the hardship is self-created.

*"The alleged hardship has not been self-created"*

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See attached Applicant Narrative

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 FOR ELlicOTT SQUARE PLAZA, LLC 2/25/16

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Applicant's Signature Date

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Ellicott Square Plaza, LLC 2/25/16

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Provider of Financial Evidence Date

## USE VARIANCE

### Statement of Income and Expense

*All Entries Must be Completed and Documented for at Least Two (2) Calendar Years  
or From the Date of Purchase Whichever is Less*

Ellicott Square Plaza, LLC

PROPERTY ADDRESS: 45 Liberty Street, Batavia, NY 14020

#### A. PROPERTY DATA

1. Date property was purchased by current owner Property transferred to current owner
2. Was a Certificate of Occupancy issued? No  
Date of Issuance? \_\_\_\_\_  
If so, for what use(s)? \_\_\_\_\_  
If not, why? Not required
3. Cost of Purchase N/A
4. a) Amount of Mortgage \_\_\_\_\_ Interest Rate \_\_\_\_\_  
Mortgage Holder \_\_\_\_\_ Duration \_\_\_\_\_  
Address \_\_\_\_\_  
  
b) Amount of Mortgage Current Balance \$787,596 Interest Rate 6.75%  
Mortgage Holder First Niagara Bank Duration Initial 10 yr. term  
Address Buffalo, NY  
  
c) Amount of Mortgage \_\_\_\_\_ Interest Rate \_\_\_\_\_  
Mortgage Holder \_\_\_\_\_ Duration \_\_\_\_\_  
Address \_\_\_\_\_
5. Is the property for sale? No  
If so, for how long \_\_\_\_\_  
Asking price \_\_\_\_\_  
For what use(s) \_\_\_\_\_  
Have any offers been received \_\_\_\_\_  
If so, for what amount(s) \_\_\_\_\_  
  
Summarize any attempts to sell the property Property has not been for sale  
\_\_\_\_\_  
\_\_\_\_\_
6. Present value of property Per Appraisal dated 6/18/14 - \$890,000.00 - see below  
Source(s) Kevin L. Bruckner, MAI

The property value stated above is based upon a Sales Comparison Approach in lieu of an Income Approach. Using the Income Approach based upon the current occupancy level, the value is significantly lower. Our estimate of the value using this method is \$500,000.00



**B. GROSS ANNUAL INCOME [BASED ON PERMITTED USE(S)]**

See attached Narrative and supplemental financial information

	USE	INCOME
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____
	TOTAL RENTAL INCOME	_____
	LESS VACANCY FACTOR	_____
	(Attach explanation if greater than 8%)	
	TOTAL GROSS INCOME	_____

**C. ANNUAL EXPENSES**

1.	<u>Annual Fixed Charges</u>	
	Real Estate Taxes (City & County)	_____
	Insurance	_____
	Average Annual Interest (over next 5 years)	_____
2.	<u>Operating Expenses</u>	
	Electric	_____
	Fuel	_____
	Water	_____
	Advertising	_____
	Miscellaneous (attach explanation)	_____
3.	<u>Maintenance Expenses (attach list)</u>	
	Repairs	_____
	General Building Maintenance	_____
	Yard and Ground Care	_____
	Miscellaneous	_____
	TOTAL ANNUAL EXPENSES	_____
	Profit or Loss	_____

See attached Narrative and supplemental financial information

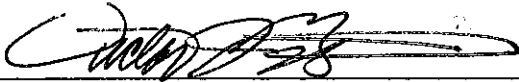
**D. TOTAL INVESTMENT**

1. Downpayment
2. Capital Improvements (attach list)
3. Principal Paid to date (original mortgage less  
current principal balance)

TOTAL INVESTMENT  
(Sum of D1, D2, & D3)

**E. RATE OF RETURN = Profit or Loss**

TOTAL INVESTMENT



Signature of Preparer

2/25/16

Date

Contractor / Developer

Profession of Preparer

## USE VARIANCE REQUEST

### NARRATIVE

**Property Location:** 45 Liberty Street, Batavia, NY 14020

**Property Owner:** Ellicott Square Plaza, LLC

**Property Description:** 19,500 sq. ft. single story office building with inset 2<sup>nd</sup> floor storage area

**Existing Property Zoning:** C-3

**Existing Property Use:** Office space – conforming use

**Requested Change Of Use:** Convert approximately 13,500 sq. ft. of existing ground floor office space to residential apartment use



## **TABLE OF CONTENTS**

1. Property Survey Noting Location Of Existing Property And Building
2. Property Survey With Site Features Overlay
3. Ariel Photo Noting Existing Property, Building And Parking Arrangement
4. Floor Plan Noting Location Of Proposed First Floor Apartments
5. Reasonable Return Narrative
6. As-Is Income And Expense Report
7. Projected Income And Expense Report
8. Unique Hardship Narrative
9. Essential Character Of The Neighborhood Narrative
10. Not Self-Created Narrative





ELLCOTT STREET

LIBERTY ST.

STREET



PORTION OF REQUIRED  
PARKING PROVIDED VIA CITY  
PARKING LOT (TYP.)  
LOT-14  
CITY OF BATAVIA

PROPERTY  
LINE (TYP.)

FORMERLY NEW YORK CENTRAL RAILROAD  
CITY OF BATAVIA (50.0' WIDE)

PERMANENT PARKING BY  
VINCEN  
AGREEMENT (TYP.)

**ZONING DATA**  
PARKING REQUIREMENTS PER SECTION 190-39:  
R-3 ----- 1 1/2 SPACE/D.U. (12 X 1.5 = 18 SPACES)  
• OFFICE ----- 1 SPACE/300 S.F. (3815 S.F./300 = 13 SPACES)  
(NON MEDICAL, NOT INCLUDING OWNERS SHOP)  
TOTAL SPACES REQUIRED ----- 31

SITE PLAN

SCALE: 1" = 20'-0"

1



45 LIBERTY STREET GROUND FLOOR  
45 LIBERTY ST. BLDG. TENANT FIT-UP  
GAUTIERI DEVELOPMENT OF BATAVIA  
45 LIBERTY ST. CITY OF BATAVIA, NEW YORK

SITE PLAN WITH SITE SURVEY

02/24/16  
AS NOTED  
Revisions

NO DATE  
NO SCALE  
NO TITLE

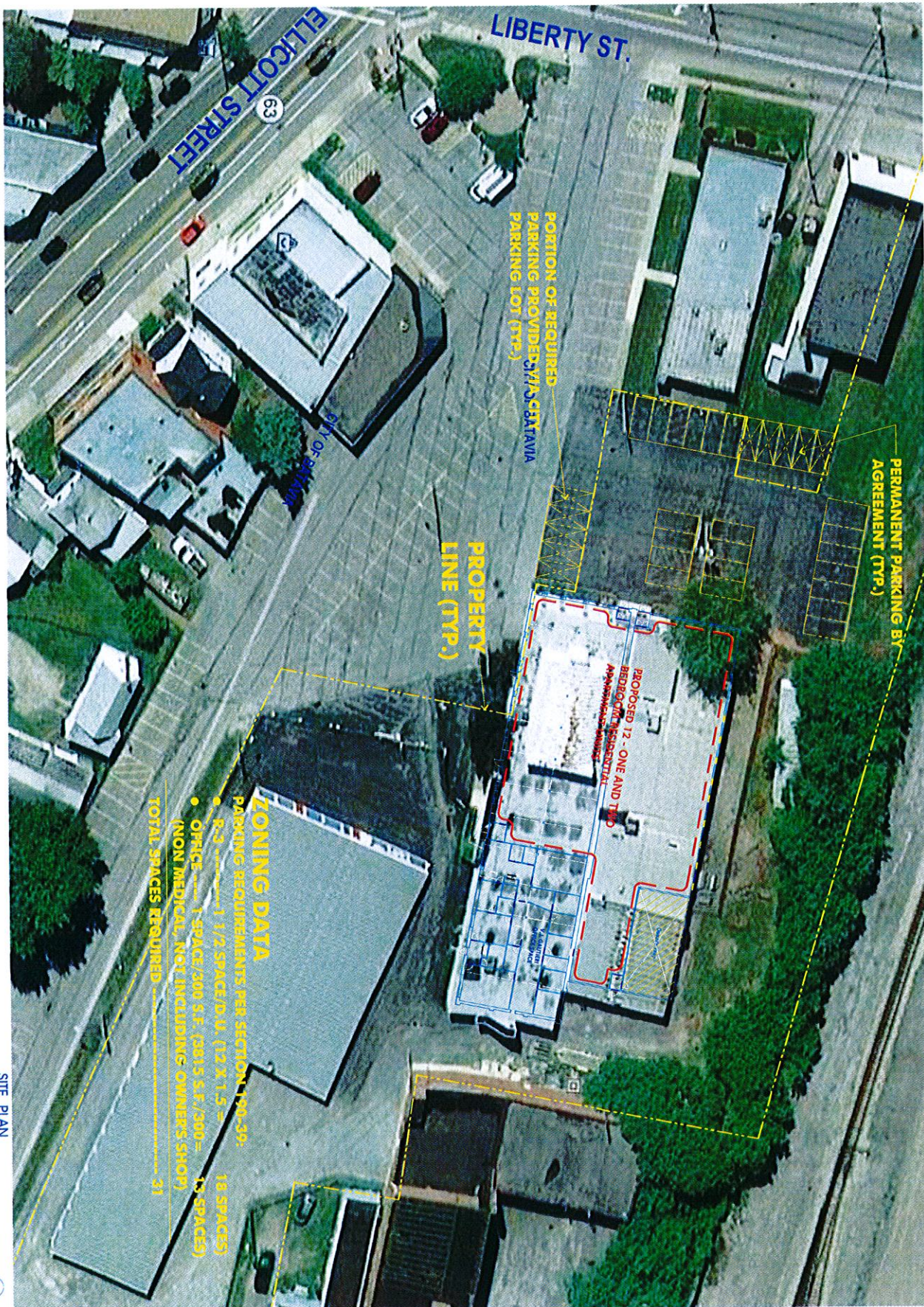
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NO DATE

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NO TITLE  
NO DATE

NO SCALE  
NO TITLE  
NO DATE

NO SCALE  
NO TITLE  
NO DATE





SITE PLAN

SCALE: 1" = 50'-0"

1

**S1**



**45 LIBERTY STREET GROUND FLOOR**  
 45 LIBERTY ST. BLDG. TENANT FIT-UP  
**GAUTIERI DEVELOPMENT OF BATAVIA**  
 45 LIBERTY ST. CITY OF BATAVIA, NEW YORK

SITE PLAN WITH AERIAL PHOTO

DATE	08/24/16
BY	AS NOTED
REVISIONS	
NO.	
DATE	
DESCRIPTION	

Scale: 1" = 50'-0"

08/24/16  
 AS NOTED  
 REVISIONS  
 NO.  
 DATE  
 DESCRIPTION



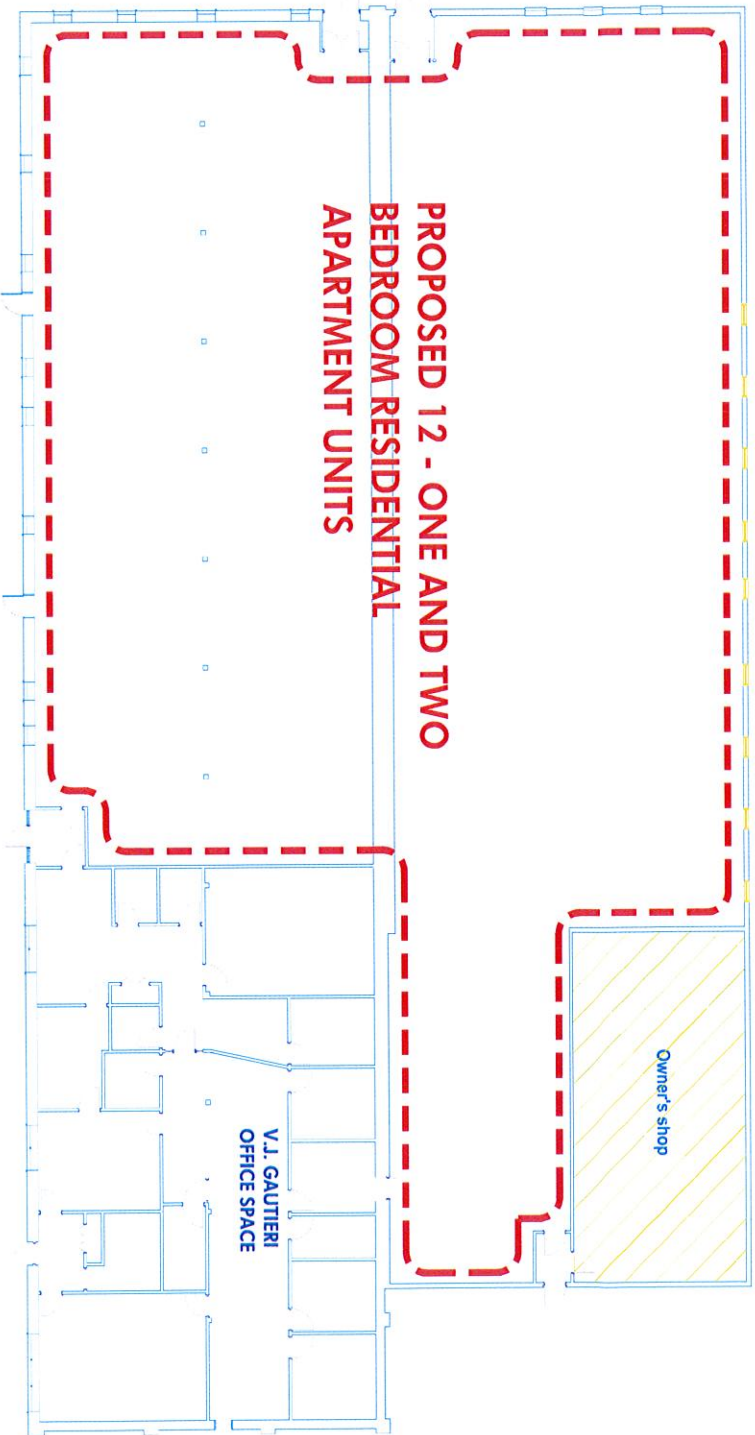


# ZONING DATA

PARKING REQUIREMENTS PER SECTION 190-39:

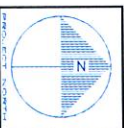
- R-3 ----- 1 1/2 SPACE/D.U. (12 X 1.5 = 18 SPACES)
- OFFICE ----- 1 SPACE/300 S.F. (3815 S.F./300 = 13 SPACES)  
(NON MEDICAL, NOT INCLUDING OWNER'S SHOP)

TOTAL SPACES REQUIRED ----- 31



GROUND FLOOR PLAN  
SCALE: 1/8" = 1'-0"

1



This drawing is the property of the undersigned and shall remain confidential. It is to be used only for the project and site described herein. No part of this drawing may be reproduced or transmitted in any form or by any means electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without the written permission of the undersigned. The undersigned warrants that the information contained herein is true and correct to the best of their knowledge and belief. The undersigned shall be responsible for the accuracy of the information contained herein. The undersigned shall be responsible for the accuracy of the information contained herein. The undersigned shall be responsible for the accuracy of the information contained herein.

Drawn by: 9/2/24/16  
 Check by: AS NOTED  
 Revisions: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 By: \_\_\_\_\_

**45 LIBERTY STREET GROUND FLOOR**  
 45 LIBERTY ST. BLDG. TENANT FIT-UP  
**GAUTIERI DEVELOPMENT OF BATAVIA**  
 45 LIBERTY ST. CITY OF BATAVIA, NEW YORK  
 GROUND LEVEL BUILDING PLAN

**FL1**

OVERMYER  
DESIGN  
ARCHITECTS

277 HUNTER BL., ROOM 201, NEW YORK, NY 10001  
 (212) 691-1000  
 www.overmyerdesign.com



## **1 - Reasonable Return**

The subject property has experienced a loss of three commercial tenants over the last few years that occupied 13,500 sq. ft. of the available 19,500 sq. ft. which represents a 69% reduction of leased space within the building. The loss of two of those three tenants can be attributed to their decisions to move to alternate locations that are owned by not-for-profit entities.

Not-for-profit entities who do not pay real estate taxes have a distinct competitive advantage over other entities that must pay real estate taxes. This advantage allows those entities to offer space at a greatly reduced rental rate.

Ellicott Square Plaza, LLC has attempted to lease the vacant space through advertising and commercial real estate brokers both locally and out of town. There has been no interest in locating in the building thereby creating a deficit situation with respect to income and expense.

Rental income has been limited for several years to that which has been received from owner affiliated companies and not from outside, non-affiliated companies.

It is believed that a reasonable rate of return can be achieved by creating ground floor apartments within the building. The creation of these apartments within the 13,500 sq. ft. of un-rentable space will restore the properties financial viability. As with all financially viable properties, they remain on the real estate tax rolls thereby contributing to the City's, County's and School District's revenue streams. An income producing property that is not generating sufficient income, most likely cannot contribute to those revenue streams in an appropriate and proportionate manner.

Included within this application is an "As-Is" Income and Expense report for year ending 12/31/15 as well as a Projected Income and Expense report that includes the probable income to be derived from the proposed 12 ground floor apartment units along with the corresponding expenses associated with operating and maintaining those apartment.

ELLICOTT SQUARE PLAZA,LLC  
Income Statement  
For the Twelve Months Ending December 31, 2015

	Year to Date	
Revenues		
RENT INCOME	\$ 59,626.98	100.00
Total Revenues	<u>59,626.98</u>	100.00
Cost of Sales		
Total Cost of Sales	<u>0.00</u>	0.00
Gross Profit	<u>59,626.98</u>	100.00
Expenses		
PROPERTY MGMT EXPENSE	4,767.89	8.00
ACCOUNTING	314.25	0.53
LEGAL	320.00	0.54
ADVERTISING & DEVELOPMENT	3,747.71	6.29
ELECTRIC	6,826.25	11.45
NATURAL GAS	1,249.93	2.10
WATER & SEWER	1,581.54	2.65
INSURANCES	9,949.07	16.69
BANK FEES	47.50	0.08
MORTGAGE INTEREST	51,711.55	86.73
POSTAGE	26.76	0.04
REPAIRS & MAINTENANCE PARCEL A	492.20	0.83
REPAIRS & MAINTENANCE PARCEL B	1,154.15	1.94
REPAIRS & MAINTENANCE PARCEL C	1,297.49	2.18
REPAIRS & MAINTENANCE PARCEL D	61.91	0.10
REPAIRS & MAINTENANCE GROUNDS	3,248.29	5.45
SNOW REMOVAL	1,354.63	2.27
OTHER NYS TAXES	25.00	0.04
TAXES - REAL ESTATE	20,426.31	34.26
TAXES - REAL ESTATE	15,997.93	26.83
TAXES - REAL ESTATE	<u>674.79</u>	1.13
Total Expenses	125,275.15	210.10
Less Owner Affiliated Rent Income	<u>(59,626.98)</u>	
Net Income (Loss)	<u>(\$ 125,275.15)</u>	

ELLCOTT SQUARE PLAZA,LLC  
Projected Income Statement  
Existing Commercial and Proposed Apartments

Revenues		
RENT INCOME COMMERCIAL	\$	60,000.00 1
RENT INCOME RESIDENTIAL	\$	111,600.00
RENT INCOME RESIDENTIAL STORAGE	\$	7,200.00
VACANCY RESIDENTIAL - 5%	(\$	<u>5,580.00)</u>

Total Revenues	<u>173,220.00</u>
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Gross Profit	<u>173,220.00</u>
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Expenses		
PROPERTY MGMT EXPENSE		4,800.00
ACCOUNTING		1,000.00
LEGAL		1,000.00
ADVERTISING & DEVELOPMENT		2,400.00
ELECTRIC		4,800.00
NATURAL GAS		1,300.00
WATER & SEWER		2,400.00
INSURANCES		10,000.00
BANK FEES		50.00
MORTGAGE INTEREST		62,500.00
POSTAGE		75.00
REPAIRS & MAINTENANCE RESIDENTIAL		1,500.00
REPAIRS & MAINTENANCE COMMERCIAL		1,500.00
REPAIRS & MAINTENANCE GROUNDS		3,300.00
SNOW REMOVAL		1,500.00
OTHER NYS TAXES		25.00
TAXES - REAL ESTATE		25,000.00
TAXES - REAL ESTATE		16,000.00
TAXES - REAL ESTATE		<u>700.00</u>

Total Expenses	<u>139,850.00</u>
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Net Income (Loss)	<u><u>\$ 33,370.00</u></u>
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1 Owner Affiliated Companies

## 2 - Unique Hardship

1. The building is located a considerable distance from Liberty Street as well as Ellicott Street and is obscured from view by a number of other buildings in the area. The lack of street frontage and limited visibility is not as appealing to many businesses that conform to the existing uses permitted in a C-3 zoned area.

Currently, there exists a substantial amount of vacant space within the City of Batavia that has more favorable geographic qualities than the subject property. These available locations will take precedence over the subject property's location.

This lack of visibility and vacant space within the City makes the building difficult for motorists to find and it also severely limits any form of effective signage that would advertise a business's presence in the building.

The location of any business that is in conformance with the C-3 zoning requirements is a primary factor in the decision making process of whether or not to locate in any particular area. For that reason there has been no interest in locating in this building which differs from the other buildings in the area that are highly visible.

2. The building's close proximity to existing Ground Floor residential properties also impacts the ability to rent the vacant space as conforming users do not see the building as being located in a true business type area due to the mixed use surroundings. While there are other businesses in the area, notably Wortzman Furniture and Farm Family Insurance, the subject building differs considerably from them as they are single user, non-rental income properties.

### **3 – Essential Character Of The Neighborhood**

The requested use variance, if granted will not alter the essential character of the neighborhood.

The existing neighborhood is comprised of residential and C-3 conforming use businesses. Second Floor Residential apartments are a permitted use within a C-3 area.

The addition of 12 proposed Ground Floor apartments will not change the character of the neighborhood nor will it negatively impact the traffic patterns of the surrounding streets and roads. Additionally, sufficient off street, code compliant private parking is currently available to residents of the proposed apartments.

With respect to the existing code wherein residential apartments on the Second Floor of a building are a conforming use, it has been previously determined that Second Floor residential apartments are not a detriment to the character of the neighborhood by virtue of their inclusion as a conforming use. Therefore, Ground Floor apartments do not alter the character of the neighborhood.

#### **4 – Not Self-Created**

The hardship this property has endured is not self-created but rather has been created as a result of socioeconomic changes. These changes have impacted how potential tenants, who operate businesses that are conforming uses, have viewed the available rental space within the building.

The proposed apartments will address the socioeconomic changes that have occurred by providing much needed as has been recommended in several independent studies, quality residential units within the C-3 zoned area.

**Full Environmental Assessment Form**  
**Part 1 - Project and Setting**

**Instructions for Completing Part 1**

**Part 1 is to be completed by the applicant or project sponsor.** Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification.

Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information; indicate whether missing information does not exist, or is not reasonably available to the sponsor; and, when possible, generally describe work or studies which would be necessary to update or fully develop that information.

Applicants/sponsors must complete all items in Sections A & B. In Sections C, D & E, most items contain an initial question that must be answered either "Yes" or "No". If the answer to the initial question is "Yes", complete the sub-questions that follow. If the answer to the initial question is "No", proceed to the next question. Section F allows the project sponsor to identify and attach any additional information. Section G requires the name and signature of the project sponsor to verify that the information contained in Part 1 is accurate and complete.

**A. Project and Sponsor Information.**

<b>Name of Action or Project:</b> Use Variance Request		
<b>Project Location (describe, and attach a general location map):</b> 45 Liberty Street, Batavia, NY 14020		
<b>Brief Description of Proposed Action (include purpose or need):</b> Use variance request to construct 12 residential apartments within an existing building on the Ground Floor. Existing building is within a C-3 zoning district.		
<b>Name of Applicant/Sponsor:</b> V.J. Gautieri Constructors, Inc.		<b>Telephone:</b> 585-343-0852 <b>E-Mail:</b> vgautieri@gautieri.com
<b>Address:</b> 45 Liberty Street		
<b>City/PO:</b> Batavia	<b>State:</b> New York	<b>Zip Code:</b> 14020
<b>Project Contact (if not same as sponsor; give name and title/role):</b> Victor J. Gautieri, President		<b>Telephone:</b> 585-343-0852 <b>E-Mail:</b> vgautieri@gautieri.com
<b>Address:</b> 45 Liberty Street		
<b>City/PO:</b> Batavia	<b>State:</b> New York	<b>Zip Code:</b> 14020
<b>Property Owner (if not same as sponsor):</b> Ellicott Square Plaza, LLC		<b>Telephone:</b> 585-343-0852 <b>E-Mail:</b> vgautieri@gautieri.com
<b>Address:</b> 45 Liberty Street		
<b>City/PO:</b> Batavia	<b>State:</b> New York	<b>Zip Code:</b> 14020

## B. Government Approvals

B. Government Approvals Funding, or Sponsorship. ("Funding" includes grants, loans, tax relief, and any other forms of financial assistance.)		
Government Entity	If Yes: Identify Agency and Approval(s) Required	Application Date (Actual or projected)
a. City Council, Town Board, <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No or Village Board of Trustees		
b. City, Town or Village <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Planning Board or Commission		
c. City Council, Town or <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Village Zoning Board of Appeals	City of Batavia ZBA.	
d. Other local agencies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
e. County agencies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
f. Regional agencies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
g. State agencies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
h. Federal agencies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
i. Coastal Resources. i. Is the project site within a Coastal Area, or the waterfront area of a Designated Inland Waterway? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No ii. Is the project site located in a community with an approved Local Waterfront Revitalization Program? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No iii. Is the project site within a Coastal Erosion Hazard Area? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

## C. Planning and Zoning

C.1. Planning and zoning actions.	
Will administrative or legislative adoption, or amendment of a plan, local law, ordinance, rule or regulation be the only approval(s) which must be granted to enable the proposed action to proceed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No • If Yes, complete sections C, F and G. • If No, proceed to question C.2 and complete all remaining sections and questions in Part 1	
C.2. Adopted land use plans.	
a. Do any municipally-adopted (city, town, village or county) comprehensive land use plan(s) include the site where the proposed action would be located? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, does the comprehensive plan include specific recommendations for the site where the proposed action would be located? <input type="checkbox"/> Yes <input type="checkbox"/> No	
b. Is the site of the proposed action within any local or regional special planning district (for example: Greenway Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other?) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, identify the plan(s): _____ _____ _____	
c. Is the proposed action located wholly or partially within an area listed in an adopted municipal open space plan, or an adopted municipal farmland protection plan? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, identify the plan(s): _____ _____ _____	



**C.3. Zoning**

a. Is the site of the proposed action located in a municipality with an adopted zoning law or ordinance. ☐ Yes ☒ No

If Yes, what is the zoning classification(s) including any applicable overlay district?

C-3

b. Is the use permitted or allowed by a special or conditional use permit? ☐ Yes ☒ No

c. Is a zoning change requested as part of the proposed action? ☐ Yes ☒ No

If Yes,

i. What is the proposed new zoning for the site? \_\_\_\_\_

**C.4. Existing community services.**

a. In what school district is the project site located? City of Batavia, NY School District

b. What police or other public protection forces serve the project site?

City of Batavia Police Dept./Genesee County Sheriffs Dept./NY State Police

c. Which fire protection and emergency medical services serve the project site?

City of Batavia Fire Dept.

d. What parks serve the project site?

There are no parks in close proximity to the site.

**D. Project Details****D.1. Proposed and Potential Development**

a. What is the general nature of the proposed action (e.g., residential, industrial, commercial, recreational; if mixed, include all components)?

Convert existing office space to residential apartment use

b. a. Total acreage of the site of the proposed action? 0.45 acres

b. Total acreage to be physically disturbed? 0.00 acres

c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? 2.50 acres

c. Is the proposed action an expansion of an existing project or use? ☐ Yes ☒ No

i. If Yes, what is the approximate percentage of the proposed expansion and identify the units (e.g., acres, miles, housing units, square feet)? % \_\_\_\_\_ Units: \_\_\_\_\_

d. Is the proposed action a subdivision, or does it include a subdivision? ☐ Yes ☒ No

If Yes,

i. Purpose or type of subdivision? (e.g., residential, industrial, commercial; if mixed, specify types)

ii. Is a cluster/conservation layout proposed? ☐ Yes ☒ No

iii. Number of lots proposed? \_\_\_\_\_

iv. Minimum and maximum proposed lot sizes? Minimum \_\_\_\_\_ Maximum \_\_\_\_\_

e. Will proposed action be constructed in multiple phases? ☐ Yes ☒ No

i. If No, anticipated period of construction: 5 months

ii. If Yes:

• Total number of phases anticipated \_\_\_\_\_

• Anticipated commencement date of phase 1 (including demolition) \_\_\_\_\_ month \_\_\_\_\_ year

• Anticipated completion date of final phase \_\_\_\_\_ month \_\_\_\_\_ year

• Generally describe connections or relationships among phases, including any contingencies where progress of one phase may determine timing or duration of future phases: \_\_\_\_\_

f. Does the project include new residential uses? <span style="float: right;"><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</span>				
If Yes, show numbers of units proposed.				
	<u>One Family</u>	<u>Two Family</u>	<u>Three Family</u>	<u>Multiple Family (four or more)</u>
Initial Phase	12			
At completion of all phases	12			

g. Does the proposed action include new non-residential construction (including expansions)? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>	
If Yes,	
i. Total number of structures _____	
ii. Dimensions (in feet) of largest proposed structure: _____ height; _____ width; and _____ length	
iii. Approximate extent of building space to be heated or cooled: _____ square feet	

h. Does the proposed action include construction or other activities that will result in the impoundment of any liquids, such as creation of a water supply, reservoir, pond, lake, waste lagoon or other storage? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>	
If Yes,	
i. Purpose of the impoundment: _____	
ii. If a water impoundment, the principal source of the water: <input type="checkbox"/> Ground water <input type="checkbox"/> Surface water streams <input type="checkbox"/> Other specify: _____	
iii. If other than water, identify the type of impounded/contained liquids and their source. _____	
iv. Approximate size of the proposed impoundment. Volume: _____ million gallons; surface area: _____ acres	
v. Dimensions of the proposed dam or impounding structure: _____ height; _____ length	
vi. Construction method/materials for the proposed dam or impounding structure (e.g., earth fill, rock, wood, concrete): _____	

**D.2. Project Operations**

a. Does the proposed action include any excavation, mining, or dredging, during construction, operations, or both? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>	
(Not including general site preparation, grading or installation of utilities or foundations where all excavated materials will remain onsite)	
If Yes:	
i. What is the purpose of the excavation or dredging? _____	
ii. How much material (including rock, earth, sediments, etc.) is proposed to be removed from the site?	
<ul style="list-style-type: none"> <li>• Volume (specify tons or cubic yards): _____</li> <li>• Over what duration of time? _____</li> </ul>	
iii. Describe nature and characteristics of materials to be excavated or dredged, and plans to use, manage or dispose of them. _____	
iv. Will there be onsite dewatering or processing of excavated materials? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span>	
If yes, describe. _____	
v. What is the total area to be dredged or excavated? _____ acres	
vi. What is the maximum area to be worked at any one time? _____ acres	
vii. What would be the maximum depth of excavation or dredging? _____ feet	
viii. Will the excavation require blasting? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span>	
ix. Summarize site reclamation goals and plan: _____	

b. Would the proposed action cause or result in alteration of, increase or decrease in size of, or encroachment into any existing wetland, waterbody, shoreline, beach or adjacent area? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>	
If Yes:	
i. Identify the wetland or waterbody which would be affected (by name, water index number, wetland map number or geographic description): _____	

ii. Describe how the proposed action would affect that waterbody or wetland, e.g. excavation, fill, placement of structures, or alteration of channels, banks and shorelines. Indicate extent of activities, alterations and additions in square feet or acres:

iii. Will proposed action cause or result in disturbance to bottom sediments?

☐ Yes ☐ No

If Yes, describe:

iv. Will proposed action cause or result in the destruction or removal of aquatic vegetation?

☐ Yes ☐ No

If Yes:

- acres of aquatic vegetation proposed to be removed: \_\_\_\_\_
- expected acreage of aquatic vegetation remaining after project completion: \_\_\_\_\_
- purpose of proposed removal (e.g. beach clearing, invasive species control, boat access): \_\_\_\_\_
- proposed method of plant removal: \_\_\_\_\_
- if chemical/herbicide treatment will be used, specify product(s): \_\_\_\_\_

v. Describe any proposed reclamation/mitigation following disturbance: \_\_\_\_\_

c. Will the proposed action use, or create a new demand for water?

☒ Yes ☐ No

If Yes:

i. Total anticipated water usage/demand per day: 1,800 gallons/day

ii. Will the proposed action obtain water from an existing public water supply?

☒ Yes ☐ No

If Yes:

- Name of district or service area: City of Batavia Water/Sewer Department
- Does the existing public water supply have capacity to serve the proposal? ☒ Yes ☐ No
- Is the project site in the existing district? ☒ Yes ☐ No
- Is expansion of the district needed? ☐ Yes ☒ No
- Do existing lines serve the project site? ☒ Yes ☐ No

iii. Will line extension within an existing district be necessary to supply the project?

☐ Yes ☒ No

If Yes:

- Describe extensions or capacity expansions proposed to serve this project: \_\_\_\_\_
- Source(s) of supply for the district: \_\_\_\_\_

iv. Is a new water supply district or service area proposed to be formed to serve the project site?

☐ Yes ☒ No

If, Yes:

- Applicant/sponsor for new district: \_\_\_\_\_
- Date application submitted or anticipated: \_\_\_\_\_
- Proposed source(s) of supply for new district: \_\_\_\_\_

v. If a public water supply will not be used, describe plans to provide water supply for the project: \_\_\_\_\_

vi. If water supply will be from wells (public or private), maximum pumping capacity: \_\_\_\_\_ gallons/minute.

d. Will the proposed action generate liquid wastes?

☒ Yes ☐ No

If Yes:

i. Total anticipated liquid waste generation per day: 1,560 gallons/day

ii. Nature of liquid wastes to be generated (e.g., sanitary wastewater, industrial; if combination, describe all components and approximate volumes or proportions of each): residential sanitary wastewater

iii. Will the proposed action use any existing public wastewater treatment facilities?

☒ Yes ☐ No

If Yes:

- Name of wastewater treatment plant to be used: City of Batavia
- Name of district: City of Batavia
- Does the existing wastewater treatment plant have capacity to serve the project? ☒ Yes ☐ No
- Is the project site in the existing district? ☒ Yes ☐ No
- Is expansion of the district needed? ☐ Yes ☒ No

<ul style="list-style-type: none"> <li>• Do existing sewer lines serve the project site? _____</li> <li>• Will line extension within an existing district be necessary to serve the project? _____</li> </ul> <p>If Yes:</p> <ul style="list-style-type: none"> <li>• Describe extensions or capacity expansions proposed to serve this project: _____</li> </ul>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<p>iv. Will a new wastewater (sewage) treatment district be formed to serve the project site? _____</p> <p>If Yes:</p> <ul style="list-style-type: none"> <li>• Applicant/sponsor for new district: _____</li> <li>• Date application submitted or anticipated: _____</li> <li>• What is the receiving water for the wastewater discharge? _____</li> </ul>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<p>v. If public facilities will not be used, describe plans to provide wastewater treatment for the project, including specifying proposed receiving water (name and classification if surface discharge, or describe subsurface disposal plans): _____</p> <p>_____</p>		
<p>vi. Describe any plans or designs to capture, recycle or reuse liquid waste: _____</p> <p>_____</p>		
<p>e. Will the proposed action disturb more than one acre and create stormwater runoff, either from new point sources (i.e. ditches, pipes, swales, curbs, gutters or other concentrated flows of stormwater) or non-point source (i.e. sheet flow) during construction or post construction? _____</p> <p>If Yes:</p> <p>i. How much impervious surface will the project create in relation to total size of project parcel?</p> <p style="padding-left: 20px;">_____ Square feet or _____ acres (impervious surface)</p> <p style="padding-left: 20px;">_____ Square feet or _____ acres (parcel size)</p> <p>ii. Describe types of new point sources. _____</p> <p>iii. Where will the stormwater runoff be directed (i.e. on-site stormwater management facility/structures, adjacent properties, groundwater, on-site surface water or off-site surface waters)? _____</p> <p>_____</p> <ul style="list-style-type: none"> <li>• If to surface waters, identify receiving water bodies or wetlands: _____</li> </ul> <p>_____</p> <ul style="list-style-type: none"> <li>• Will stormwater runoff flow to adjacent properties? _____</li> </ul>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>iv. Does proposed plan minimize impervious surfaces, use pervious materials or collect and re-use stormwater? _____</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>f. Does the proposed action include, or will it use on-site, one or more sources of air emissions, including fuel combustion, waste incineration, or other processes or operations? _____</p> <p>If Yes, identify:</p> <p>i. Mobile sources during project operations (e.g., heavy equipment, fleet or delivery vehicles) _____</p> <p>ii. Stationary sources during construction (e.g., power generation, structural heating, batch plant, crushers) _____</p> <p>iii. Stationary sources during operations (e.g., process emissions, large boilers, electric generation) _____</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<p>g. Will any air emission sources named in D.2.f (above), require a NY State Air Registration, Air Facility Permit, or Federal Clean Air Act Title IV or Title V Permit? _____</p> <p>If Yes:</p> <p>i. Is the project site located in an Air quality non-attainment area? (Area routinely or periodically fails to meet ambient air quality standards for all or some parts of the year) _____</p> <p>ii. In addition to emissions as calculated in the application, the project will generate:</p> <ul style="list-style-type: none"> <li>• _____ Tons/year (short tons) of Carbon Dioxide (CO<sub>2</sub>)</li> <li>• _____ Tons/year (short tons) of Nitrous Oxide (N<sub>2</sub>O)</li> <li>• _____ Tons/year (short tons) of Perfluorocarbons (PFCs)</li> <li>• _____ Tons/year (short tons) of Sulfur Hexafluoride (SF<sub>6</sub>)</li> <li>• _____ Tons/year (short tons) of Carbon Dioxide equivalent of Hydrofluorocarbons (HFCs)</li> <li>• _____ Tons/year (short tons) of Hazardous Air Pollutants (HAPs)</li> </ul>		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

h. Will the proposed action generate or emit methane (including, but not limited to, sewage treatment plants, landfills, composting facilities)? ☐ Yes ☒ No

If Yes:

i. Estimate methane generation in tons/year (metric): \_\_\_\_\_

ii. Describe any methane capture, control or elimination measures included in project design (e.g., combustion to generate heat or electricity, flaring): \_\_\_\_\_

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i. Will the proposed action result in the release of air pollutants from open-air operations or processes, such as quarry or landfill operations? ☐ Yes ☒ No

If Yes: Describe operations and nature of emissions (e.g., diesel exhaust, rock particulates/dust): \_\_\_\_\_

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j. Will the proposed action result in a substantial increase in traffic above present levels or generate substantial new demand for transportation facilities or services? ☐ Yes ☒ No

If Yes:

i. When is the peak traffic expected (Check all that apply): ☐ Morning ☐ Evening ☐ Weekend  
☐ Randomly between hours of \_\_\_\_\_ to \_\_\_\_\_.

ii. For commercial activities only, projected number of semi-trailer truck trips/day: \_\_\_\_\_

iii. Parking spaces: Existing \_\_\_\_\_ Proposed \_\_\_\_\_ Net increase/decrease \_\_\_\_\_

iv. Does the proposed action include any shared use parking? ☐ Yes ☐ No

v. If the proposed action includes any modification of existing roads, creation of new roads or change in existing access, describe: \_\_\_\_\_

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vi. Are public/private transportation service(s) or facilities available within 1/4 mile of the proposed site? ☐ Yes ☐ No

vii. Will the proposed action include access to public transportation or accommodations for use of hybrid, electric or other alternative fueled vehicles? ☐ Yes ☐ No

viii. Will the proposed action include plans for pedestrian or bicycle accommodations for connections to existing pedestrian or bicycle routes? ☐ Yes ☐ No

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k. Will the proposed action (for commercial or industrial projects only) generate new or additional demand for energy? n/a ☐ Yes ☐ No

If Yes:

i. Estimate annual electricity demand during operation of the proposed action: \_\_\_\_\_

ii. Anticipated sources/suppliers of electricity for the project (e.g., on-site combustion, on-site renewable, via grid/local utility, or other): \_\_\_\_\_

iii. Will the proposed action require a new, or an upgrade to, an existing substation? ☐ Yes ☐ No

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l. Hours of operation. Answer all items which apply.

i. During Construction:

- Monday - Friday: 7:00 am - 4:00 pm
- Saturday: \_\_\_\_\_
- Sunday: \_\_\_\_\_
- Holidays: \_\_\_\_\_

ii. During Operations: n/a

- Monday - Friday: \_\_\_\_\_
- Saturday: \_\_\_\_\_
- Sunday: \_\_\_\_\_
- Holidays: \_\_\_\_\_

<p>m. Will the proposed action produce noise that will exceed existing ambient noise levels during construction, operation, or both?</p> <p>If yes:</p> <p>i. Provide details including sources, time of day and duration:</p> <p>_____</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<p>ii. Will proposed action remove existing natural barriers that could act as a noise barrier or screen?</p> <p>Describe: _____</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>n. Will the proposed action have outdoor lighting?</p> <p>If yes:</p> <p>i. Describe source(s), location(s), height of fixture(s), direction/aim, and proximity to nearest occupied structures:</p> <p>Exterior lighting is existing. No additional exterior lighting is anticipated</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<p>ii. Will proposed action remove existing natural barriers that could act as a light barrier or screen?</p> <p>Describe: _____</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<p>o. Does the proposed action have the potential to produce odors for more than one hour per day?</p> <p>If Yes, describe possible sources, potential frequency and duration of odor emissions, and proximity to nearest occupied structures:</p> <p>_____</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<p>p. Will the proposed action include any bulk storage of petroleum (combined capacity of over 1,100 gallons) or chemical products 185 gallons in above ground storage or any amount in underground storage?</p> <p>If Yes:</p> <p>i. Product(s) to be stored _____</p> <p>ii. Volume(s) _____ per unit time _____ (e.g., month, year)</p> <p>iii. Generally describe proposed storage facilities: _____</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<p>q. Will the proposed action (commercial, industrial and recreational projects only) use pesticides (i.e., herbicides, insecticides) during construction or operation? n/a</p> <p>If Yes:</p> <p>i. Describe proposed treatment(s):</p> <p>_____</p> <p>_____</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>ii. Will the proposed action use Integrated Pest Management Practices?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>r. Will the proposed action (commercial or industrial projects only) involve or require the management or disposal of solid waste (excluding hazardous materials)? n/a</p> <p>If Yes:</p> <p>i. Describe any solid waste(s) to be generated during construction or operation of the facility:</p> <ul style="list-style-type: none"> <li>• Construction: _____ tons per _____ (unit of time)</li> <li>• Operation : _____ tons per _____ (unit of time)</li> </ul> <p>ii. Describe any proposals for on-site minimization, recycling or reuse of materials to avoid disposal as solid waste:</p> <ul style="list-style-type: none"> <li>• Construction: _____</li> <li>• Operation: _____</li> </ul> <p>iii. Proposed disposal methods/facilities for solid waste generated on-site:</p> <ul style="list-style-type: none"> <li>• Construction: _____</li> <li>• Operation: _____</li> </ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No

s. Does the proposed action include construction or modification of a solid waste management facility? ☐ Yes ☒ No

If Yes:

i. Type of management or handling of waste proposed for the site (e.g., recycling or transfer station, composting, landfill, or other disposal activities): \_\_\_\_\_

ii. Anticipated rate of disposal/processing:

- \_\_\_\_\_ Tons/month, if transfer or other non-combustion/thermal treatment, or
- \_\_\_\_\_ Tons/hour, if combustion or thermal treatment

iii. If landfill, anticipated site life: \_\_\_\_\_ years

t. Will proposed action at the site involve the commercial generation, treatment, storage, or disposal of hazardous waste? ☐ Yes ☒ No

If Yes:

i. Name(s) of all hazardous wastes or constituents to be generated, handled or managed at facility: \_\_\_\_\_

ii. Generally describe processes or activities involving hazardous wastes or constituents: \_\_\_\_\_

iii. Specify amount to be handled or generated \_\_\_\_\_ tons/month

iv. Describe any proposals for on-site minimization, recycling or reuse of hazardous constituents: \_\_\_\_\_

v. Will any hazardous wastes be disposed at an existing offsite hazardous waste facility? ☐ Yes ☐ No

If Yes: provide name and location of facility: \_\_\_\_\_

If No: describe proposed management of any hazardous wastes which will not be sent to a hazardous waste facility: \_\_\_\_\_

#### E. Site and Setting of Proposed Action

**E.1. Land uses on and surrounding the project site**

a. Existing land uses.

i. Check all uses that occur on, adjoining and near the project site.

☒ Urban ☐ Industrial ☒ Commercial ☒ Residential (suburban) ☐ Rural (non-farm)

☐ Forest ☐ Agriculture ☐ Aquatic ☐ Other (specify): \_\_\_\_\_

ii. If mix of uses, generally describe:

Existing uses are residential, retail, restaurants, self-storage, offices

b. Land uses and covertypes on the project site.

Land use or Covertype	Current Acreage	Acreage After Project Completion	Change (Acres +/-)
• Roads, buildings, and other paved or impervious surfaces	0.28	0.28	0.00
• Forested	0.00	0.00	0.00
• Meadows, grasslands or brushlands (non-agricultural, including abandoned agricultural)	0.00	0.00	0.00
• Agricultural (includes active orchards, field, greenhouse etc.)	0.00	0.00	0.00
• Surface water features (lakes, ponds, streams, rivers, etc.)	0.00	0.00	0.00
• Wetlands (freshwater or tidal)	0.00	0.00	0.00
• Non-vegetated (bare rock, earth or fill)	0.00	0.00	0.00
• Other Describe: _____			

c. Is the project site presently used by members of the community for public recreation? ☐ Yes ☒ No  
 i. If Yes: explain: \_\_\_\_\_

d. Are there any facilities serving children, the elderly, people with disabilities (e.g., schools, hospitals, licensed day care centers, or group homes) within 1500 feet of the project site? ☐ Yes ☒ No  
 If Yes,  
 i. Identify Facilities: \_\_\_\_\_  
 \_\_\_\_\_

e. Does the project site contain an existing dam? ☐ Yes ☒ No  
 If Yes:  
 i. Dimensions of the dam and impoundment:  
     • Dam height: \_\_\_\_\_ feet  
     • Dam length: \_\_\_\_\_ feet  
     • Surface area: \_\_\_\_\_ acres  
     • Volume impounded: \_\_\_\_\_ gallons OR acre-feet  
 ii. Dam's existing hazard classification: \_\_\_\_\_  
 iii. Provide date and summarize results of last inspection: \_\_\_\_\_  
 \_\_\_\_\_

f. Has the project site ever been used as a municipal, commercial or industrial solid waste management facility, or does the project site adjoin property which is now, or was at one time, used as a solid waste management facility? ☐ Yes ☒ No  
 If Yes:  
 i. Has the facility been formally closed? ☐ Yes ☐ No  
     • If yes, cite sources/documentation: \_\_\_\_\_  
 ii. Describe the location of the project site relative to the boundaries of the solid waste management facility: \_\_\_\_\_  
 \_\_\_\_\_  
 iii. Describe any development constraints due to the prior solid waste activities: \_\_\_\_\_  
 \_\_\_\_\_

g. Have hazardous wastes been generated, treated and/or disposed of at the site, or does the project site adjoin property which is now or was at one time used to commercially treat, store and/or dispose of hazardous waste? ☐ Yes ☒ No  
 If Yes:  
 i. Describe waste(s) handled and waste management activities, including approximate time when activities occurred: \_\_\_\_\_  
 \_\_\_\_\_

h. Potential contamination history. Has there been a reported spill at the proposed project site, or have any remedial actions been conducted at or adjacent to the proposed site? ☐ Yes ☒ No  
 If Yes:  
 i. Is any portion of the site listed on the NYSDEC Spills Incidents database or Environmental Site Remediation database? Check all that apply: ☐ Yes ☐ No  
     ☐ Yes – Spills Incidents database Provide DEC ID number(s): \_\_\_\_\_  
     ☐ Yes – Environmental Site Remediation database Provide DEC ID number(s): \_\_\_\_\_  
     ☐ Neither database  
 ii. If site has been subject of RCRA corrective activities, describe control measures: \_\_\_\_\_  
 \_\_\_\_\_  
 iii. Is the project within 2000 feet of any site in the NYSDEC Environmental Site Remediation database? ☐ Yes ☐ No  
 If yes, provide DEC ID number(s): \_\_\_\_\_  
 iv. If yes to (i), (ii) or (iii) above, describe current status of site(s): \_\_\_\_\_  
 \_\_\_\_\_



v. Is the project site subject to an institutional control limiting property uses? ☐ Yes ☒ No

- If yes, DEC site ID number: \_\_\_\_\_
- Describe the type of institutional control (e.g., deed restriction or easement): \_\_\_\_\_
- Describe any use limitations: \_\_\_\_\_
- Describe any engineering controls: \_\_\_\_\_
- Will the project affect the institutional or engineering controls in place? ☐ Yes ☐ No
- Explain: \_\_\_\_\_

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**E.2. Natural Resources On or Near Project Site**

a. What is the average depth to bedrock on the project site? unknown feet

b. Are there bedrock outcroppings on the project site? ☐ Yes ☒ No  
If Yes, what proportion of the site is comprised of bedrock outcroppings? \_\_\_\_\_ %

c. Predominant soil type(s) present on project site: not applicable \_\_\_\_\_ %  
\_\_\_\_\_ %  
\_\_\_\_\_ %

d. What is the average depth to the water table on the project site? Average: \_\_\_\_\_ feet

e. Drainage status of project site soils: ☒ Well Drained: 100 % of site  
☐ Moderately Well Drained: \_\_\_\_\_ % of site  
☐ Poorly Drained: \_\_\_\_\_ % of site

f. Approximate proportion of proposed action site with slopes: ☒ 0-10%: 100 % of site  
☐ 10-15%: \_\_\_\_\_ % of site  
☐ 15% or greater: \_\_\_\_\_ % of site

g. Are there any unique geologic features on the project site? ☐ Yes ☒ No  
If Yes, describe: \_\_\_\_\_

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h. Surface water features.

i. Does any portion of the project site contain wetlands or other waterbodies (including streams, rivers, ponds or lakes)? ☐ Yes ☒ No

ii. Do any wetlands or other waterbodies adjoin the project site? ☐ Yes ☒ No

If Yes to either i or ii, continue. If No, skip to E.2.i.

iii. Are any of the wetlands or waterbodies within or adjoining the project site regulated by any federal, state or local agency? ☐ Yes ☐ No

iv. For each identified regulated wetland and waterbody on the project site, provide the following information:

- Streams: Name \_\_\_\_\_ Classification \_\_\_\_\_
- Lakes or Ponds: Name \_\_\_\_\_ Classification \_\_\_\_\_
- Wetlands: Name \_\_\_\_\_ Approximate Size \_\_\_\_\_
- Wetland No. (if regulated by DEC) \_\_\_\_\_

v. Are any of the above water bodies listed in the most recent compilation of NYS water quality-impaired waterbodies? ☐ Yes ☐ No  
If yes, name of impaired water body/bodies and basis for listing as impaired: \_\_\_\_\_

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i. Is the project site in a designated Floodway? ☐ Yes ☒ No

j. Is the project site in the 100 year Floodplain? ☒ Yes ☐ No

k. Is the project site in the 500 year Floodplain? ☐ Yes ☒ No

l. Is the project site located over, or immediately adjoining, a primary, principal or sole source aquifer? ☐ Yes ☐ No  
If Yes:  
i. Name of aquifer: unknown

<p>m. Identify the predominant wildlife species that occupy or use the project site:</p> <p>_____</p> <p>_____</p>	<p><u>unknown - urban area</u></p> <p>_____</p> <p>_____</p>
<p>n. Does the project site contain a designated significant natural community? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes:</p> <p>i. Describe the habitat/community (composition, function, and basis for designation): _____</p> <p>_____</p> <p>ii. Source(s) of description or evaluation: _____</p> <p>iii. Extent of community/habitat:</p> <ul style="list-style-type: none"> <li>• Currently: _____ acres</li> <li>• Following completion of project as proposed: _____ acres</li> <li>• Gain or loss (indicate + or -): _____ acres</li> </ul>	
<p>o. Does project site contain any species of plant or animal that is listed by the federal government or NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>_____</p>	
<p>p. Does the project site contain any species of plant or animal that is listed by NYS as rare, or as a species of special concern? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>_____</p>	
<p>q. Is the project site or adjoining area currently used for hunting, trapping, fishing or shell fishing? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If yes, give a brief description of how the proposed action may affect that use: _____</p> <p>_____</p>	
<p><b>E.3. Designated Public Resources On or Near Project Site</b></p>	
<p>a. Is the project site, or any portion of it, located in a designated agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes, provide county plus district name/number: _____</p>	
<p>b. Are agricultural lands consisting of highly productive soils present? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>i. If Yes: acreage(s) on project site: _____</p> <p>ii. Source(s) of soil rating(s): _____</p>	
<p>c. Does the project site contain all or part of, or is it substantially contiguous to, a registered National Natural Landmark? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes:</p> <p>i. Nature of the natural landmark: <input type="checkbox"/> Biological Community <input type="checkbox"/> Geological Feature</p> <p>ii. Provide brief description of landmark, including values behind designation and approximate size/extent: _____</p> <p>_____</p>	
<p>d. Is the project site located in or does it adjoin a state listed Critical Environmental Area? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes:</p> <p>i. CEA name: _____</p> <p>ii. Basis for designation: _____</p> <p>iii. Designating agency and date: _____</p>	

e. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on, or has been nominated by the NYS Board of Historic Preservation for inclusion on, the State or National Register of Historic Places?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If Yes: i. Nature of historic/archaeological resource: <input type="checkbox"/> Archaeological Site <input type="checkbox"/> Historic Building or District ii. Name: _____ iii. Brief description of attributes on which listing is based: _____	
f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
g. Have additional archaeological or historic site(s) or resources been identified on the project site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If Yes: i. Describe possible resource(s): _____ ii. Basis for identification: _____	
h. Is the project site within five miles of any officially designated and publicly accessible federal, state, or local scenic or aesthetic resource?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If Yes: i. Identify resource: _____ ii. Nature of, or basis for, designation (e.g., established highway overlook, state or local park, state historic trail or scenic byway, etc.): _____ iii. Distance between project and resource: _____ miles.	
i. Is the project site located within a designated river corridor under the Wild, Scenic and Recreational Rivers Program 6 NYCRR 666?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If Yes: i. Identify the name of the river and its designation: _____ ii. Is the activity consistent with development restrictions contained in 6NYCRR Part 666?	
<input type="checkbox"/> Yes <input type="checkbox"/> No	

**F. Additional Information**


Attach any additional information which may be needed to clarify your project.

If you have identified any adverse impacts which could be associated with your proposal, please describe those impacts plus any measures which you propose to avoid or minimize them.

**G. Verification**

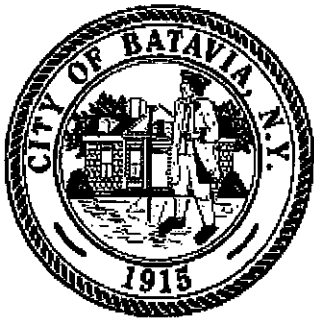
I certify that the information provided is true to the best of my knowledge.

Applicant/Sponsor Name V.J. Gautieri Constructors Date 2/29/16

Signature  Title President


**PRINT FORM**





## City of Batavia

To: Planning and Development Committee

From: Jason Molino, City Manager 

Date: March 7, 2016

Subject: Electronic and digital signs

Attached please find sections of sign code addressing electronic and digital signs from the Town of Clarence, City of Corning, City of Lockport and City of Glens Falls. These are provided as examples of different approaches to regulating electronic and digital signs. Combined with reference material distributed on February 16, 2016, the PDC can begin to consider different issues when addressing this section of the Batavia sign code.

I will be present at the March 15<sup>th</sup> meeting to assist with facilitating the PDC in a discussion on next steps regarding the evaluation of electronic and digital signs.

Should you have any questions, please do not hesitate to contact me.

**Office of the City Manager**  
One Batavia City Centre  
Batavia, New York 14020

Phone: 585-345-6330  
Fax: 585-343-8182  
[www.batavianewyork.com](http://www.batavianewyork.com)

- (1) Changes to the design, copy, structure, size or supporting structure is no longer consistent with the original application.
  - (2) The name of the business or type of business is no longer consistent with the original application.
  - (3) The original permit is found to be in violation of the original approval.
- C. Permitted signs. The only signs permitted are those listed in compliance with these regulations and designated for that zone in accordance with Tables 3-1, 5-1 through 5-3 and 6-1.<sup>5</sup>

#### § 180-10. Completion of work.

- A. Certificate of completion. No sign shall be used unless a certificate of completion has been issued in accordance with the procedures described in Article V of Chapter 76<sup>6</sup> of the Code of the City of Corning.

### ARTICLE IV General Sign Requirements

#### § 180-11. General.

The regulations of this article shall apply to all signs in all zones.

- A. Traffic hazard. No sign shall be located in any manner which may cause a traffic hazard. A sign shall not be located where, by reason of the position, shape, or color of the sign, it may interfere with or obstruct the view of or be confused with any authorized traffic sign, signal or device, nor shall any sign make use of the words "Stop," "Look," "Drive-In," "Left" or "Right," or any other word or phrase, symbol, or character in such a manner as to distract, mislead or confuse traffic.
- B. Roof placement. No sign shall be placed on a roof or similar roof-mounted structure or on top of a parapet or similar architectural element of a building. See § 180-19E for gasoline service station canopies.
- C. Height above grade. Grading of a site for the purpose of raising the elevation of a sign contrary to this section is prohibited, except when such grading is approved by the Planning Commission. [Amended 7-6-2015 by L.L. No. 3-2015]
- D. Property line change. If for any reason a property line is changed, any sign made nonconforming thereby must be altered, changed or relocated within 30 days to conform with these regulations.
- E. Flashing signs. No sign shall, nor have the ability to, stream content or be illuminated by or contain flashing, pulsing, intermittent, rotating or revolving lights. Time, temperature

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5. Editor's Note: Said tables are included as attachments to this chapter.

6. Editor's Note: See Ch. 76, Building Construction and Fire Prevention, Art. V, Certificate of Occupancy.

and gas station fuel prices are permitted to periodically change with no scrolling, fading, flashing or other imitation of movement.

- F. Temporary signs. When computing time restrictions for each temporary sign, any fraction of a day used shall be construed to be one full day.
- G. Maintenance of signs. The owner of any sign as defined and regulated herein shall be required to maintain said sign in a safe condition at all times. In the event there are any exterior parts of said sign which shall become rusted or deteriorated, they shall be properly coated or maintained.
- H. Wind pressure and dead loads. All signs and other advertising structures shall be designed and constructed to withstand a wind pressure of not less than 40 pounds per square foot of area; and shall be constructed to receive dead loads as required in the New York State Building Code.
- I. Sign illumination. Any illumination of a sign either at the time of installation or after installation shall be considered a part of such sign. Signs shall not be illuminated in such a manner that the illumination becomes an infringement to the adjoining properties. Sign illumination shall be not exceed 2,000 lumens.
- J. Moving signage.
  - (1) Except as modified by this chapter, no sign shall consist of balloons, banners, flags, inflatables, pennants, ribbons, streamers, spinners or similar moving, fluttering, revolving devices, or wind-animated devices.
  - (2) Exception. Banners may be used only for temporary signs as described in §§ 180-14J, 180-16J and 180-18J.
- K. New businesses. A new business or a business in a new location awaiting installation of a permanent sign may utilize an interim sign for a period of not more than 60 days or until installation of a permanent sign, whichever occurs first. A permit for such sign shall be required. Such interim sign shall be of any type permitted for that zone and may also be of the banner type.
- L. Representational signs. Any sign permitted in Tables 5-2 through 5-3 and 6-17 may be a representational sign. Representational signs shall require a permit, Design Review Committee approval, and Site Plan approval. Consideration by the Design Review Committee shall occur prior to site plan approval.
- M. Vehicle signs. No person shall park any vehicle or trailer on public property, or on private property so as to be visible from a public right-of-way, which vehicle has attached thereto or located thereon any sign or advertising device for the purpose of providing advertisements of products located on the same or another property or directing people to a business or activity located on the same or another property. This subsection is not intended to apply to standard advertising or identification practices where such signs or advertising devices are painted on or permanently attached to a business vehicle or commercial vehicle, provided that such vehicle remains principally in use upon public

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7. Editor's Note: Said tables are included as attachments to this chapter.



## Chapter 180. Signs

### § 180-6. Signs in commercial or industrial zones.

In commercial and industrial zones, signs shall be regulated in accordance with the following regulations and other applicable sections of this chapter, including, but not limited to, General regulations, § 180-4, and Additional regulations, § 180-7.

- A. Each business/industry shall be allowed one sign attached to the building, the area of which shall not exceed 1 1/2 square feet for each linear foot of building frontage occupied by that business/industry; in no case shall such sign exceed 100 square feet in total. In addition, any business/industry with frontage on more than one public street, public parking lot, or other public use shall be permitted to attach one sign as above on each such building frontage.
- B. No projecting sign shall be higher than the top of the first story of the building to which the sign addresses itself. No sign shall be attached to the rear or side of any building unless that wall faces public space as indicated in Subsection A above.
- C. All signs shall advertise only the name of the owner, trade names, trademarks, logos, insignia, products sold and/or the business or activity conducted on the premises on which the sign is located.
- D. In addition to other permitted signs, directional and enforcement signs not exceeding two square feet each, indicating the only terms "entrance," "entry," "exit," "drive-up window," "parking," or "handicapped parking" may be installed at driveways, parking lots or attached to the building to which they apply. Such signs shall not include business names, logos, or additional text.
- E. Unless otherwise stated elsewhere in this chapter, each building in the business/industrial zone shall be allowed one freestanding sign. The sign must be located on the same lot as the building, must not project beyond the front property line or within 10 feet of any other lot line of the same property and must not exceed 25 feet in height above grade. Signs within five feet of a sidewalk must be at least 10 feet above grade.
- F. Freestanding signs shall be limited to a maximum of two faces, with maximum area of each face as listed below:
  - (1) One hundred square feet:
    - (a) All general, heavy and light manufacturing uses as defined in the Zoning Ordinance (Chapter 220).
    - (b) Automobile dealerships. One such sign will be allowed for each car dealer, or one sign for each car franchise located on the lot.
    - (c) Large business complexes with 300 feet or more of lot frontage on a single street.
  - (2)

Twenty-five square feet. Businesses, or other allowed uses, with 100 feet or more of lot frontage on a single street.

- (3) Twelve square feet. Businesses, or other allowed uses, with less than 100 feet of frontage on a single street.
- (4) No sign of any type may be located so as to cause a visual obstruction for vehicular or pedestrian traffic. At street intersections, any sign located within 20 feet of the nearest curbs, must not be located in the space between two feet six inches and 10 feet above grade, to allow a clear view for vehicles. (Refer to Figure 1-11.<sup>[1]</sup>) At driveways or parking lot exits or entrances, signs located within 10 feet of the driveway, exit or entrance, and within 10 feet of the sidewalk or other public right-of-way, must conform to the same height restrictions.  
[1] Editor's Note: Said figure is on file in the City offices.

G. Portable signs. In order to prevent inconvenience and/or danger to persons using sidewalks or other public rights-of-way, and to maintain the aesthetic appearance of the City of Glens Falls, all portable signs shall conform to the following specifications:

- (1) There shall be only one such portable sign for each business.
- (2) Portable signs shall be located directly in front of the building or other premises containing the business that the sign is advertising.
- (3) The portable sign may be placed on a public sidewalk either adjacent to the building or approximately three feet from the curb. In either case a minimum of six feet of clear space for the passage of pedestrians shall be maintained. Where a sidewalk is not wide enough to meet the six-foot clear space requirement, the sign shall be placed on the owner's property, not in the parkway between the sidewalk and the curb, or on a public right-of-way.
- (4) Portable signs shall be no larger than two feet wide, three feet high and three feet deep at the base, with a maximum of two faces, and shall be constructed of durable weather-resistant materials, except for daily, temporary attachments such as menus, etc. Such attachments shall not be allowed to become unsightly.
- (5) Portable signs shall be displayed only during the hours of operation of the related business.
- (6) Portable signs shall not be used for advertising or publicity other than that dealing with the items being sold within the associated business.
- (7) All portable signs shall be maintained in a safe, neat and clean condition and be in good repair at all times so that they are reasonably free of dirt and grease, chipped, faded, peeling or cracked paint in the visible painted areas thereof and rust and corrosion in the visible unpainted metal areas thereof; the clear plastic or glass part thereof, if any, through which the sign age therein is viewed is unbroken and reasonably free of cracks, dents, blemishes or discoloration; the paper or cardboard parts or inserts thereof, if any, are reasonably free of tears, peeling or fading; and the structural parts thereof are not broken or unduly misshapen.
- (8) Portable signs shall not be illuminated by either internal lighting or by externally attached light sources.
- (9) No person shall install, use or maintain any portable signs:
  - (a) Within three feet of any marked crosswalk.
  - (b) Within three feet of the curb return of any unmarked crosswalk.
  - (c) Within five feet of any fire hydrant, fire call box or other emergency facility.

- (d) Within three feet ahead and 15 feet to the rear of any sign marking a designated bus stop.
  - (e) In any location used, marked or posted for public utility purposes, public transportation purposes, government use or handicap accessible route.
  - (f) Where placement unreasonably interferes with the use of poles, posts, traffic signs or signals, public benches, public telephones, mailboxes or mechanical sidewalk cleaning machinery.
  - (g) Within one foot of any area improved with lawn, flowers, shrubs or trees.
  - (h) Within five feet of any driveway.
  - (i) Where placement unreasonably interferes with or impedes the flow of vehicular or pedestrian traffic, but in no event at any location where the clear space for the passageway of pedestrians is reduced thereby to less than six feet.
  - (j) Where placement unreasonably obstructs, interferes with or impedes access to or the use of abutting property, including but not limited to residences, places of business or legally parked or stopped vehicles.
- (10) Portable signs placed on public sidewalks or other public walkways shall also be subject to the permit and specification requirements of the City Code of the City of Glens Falls, Chapter 189, Part 2, Street and Sidewalk Encroachments.
- (11) The owner of the portable sign shall provide liability insurance of at least \$1,000,000 naming the City of Glens Falls as an additional insured.
- H. Projecting banners which indicate that a business is "OPEN," or which display a logo associated with the business may be displayed only during business hours, provided that:
- (1) The pole or bracket from which the banner hangs must be at least seven feet six inches above any public walkway.
  - (2) Neither the pole or bracket nor the banner may project more than three feet over a public walkway.
  - (3) If any part of the banner hangs less than six feet above a public walkway, it may project no more than two feet over the public walkway.
  - (4) In no case may any such banner restrict the clear space for the passageway of pedestrians to less than six feet in width and less than seven feet six inches in height.
- I. Nonconforming uses.
- (1) Any sign legally erected prior to the effective date of this amendment which does not conform to the requirements of this section (Signs in commercial or industrial zones) shall be allowed to remain in use until it is replaced or there is a change in property or business ownership, at which time a conforming sign shall be required.
  - (2) Any nonconforming sign that is destroyed or damaged in excess of 50% of its area or value shall not be replaced except by a sign that conforms to the requirements of this section. Any nonconforming sign shall not be enlarged, rebuilt, structurally altered or relocated except to make such sign conform to the requirements of this section.
- J. Reader boards.



- (1) Operation and design.
  - (a) Reader boards shall not be designed, located or operated in a manner that may distract vehicle drivers or pedestrians performing movements in adjacent public rights-of-way.
  - (b) Reader board displays, including their background, text and graphics, shall not change more frequently than once per hour.
  - (c) During a display, the display shall not exhibit animated text or graphics, which exhibit movement, shifting, flashing, changes in brightness, or changing parts or components.
  - (d) Reader boards shall be turned off during times when the business is physically closed or nonfunctional.
- (2) On-site locations.
  - (a) Reader boards are permitted only as part of an allowed freestanding sign. Reader boards shall not be attached to any side of a building, a roof, or in a doorway or window of a building.
  - (b) When part of a freestanding sign, which exhibits a business name or other data, a reader board shall be installed beneath the main body of the sign.
- (3) Display content.
  - (a) Reader boards shall not be used as the primary identification of the business or commercial activity located at the site.
  - (b) A reader board display may be comprised of text and graphic images, which are contained in an overall message. Text images are comprised of letters and numbers. Graphic images include borders, outlines, art-images, logos or symbols of any design, configuration or color, which may or may not accompany the text in a message.
  - (c) The design, style and color of a perimeter border or outline shall remain constant and static. However, the color of the border or outline may change with each change to the display content.
- (4) Size.
  - (a) Up to two faces are permitted per sign. The surface area of the reader board, whether part of a larger sign or installed by itself, is limited to 15 square feet per face.
  - (b) The size of the reader board shall be included in the overall calculated size of an allowed freestanding sign.
- (5) Colors.
  - (a) Background colors exhibited on reader boards shall be limited to one color and may be any color, but may not be white or off-white.
  - (b) Text images on reader boards may be any color, but may not be green or white.

## Chapter 190. Zoning

### Article XVII. Sign Regulations

#### § 190-126. Signs requiring permit.

Upon issuance of a building permit for a sign in accordance with § 190-128, Permit, the following signs shall be permitted, subject to the following requirements:

A. Building signs.

- (1) **AWNING SIGN** — A sign painted on, attached to or otherwise displayed on an awning. This sign type does not include canopies over gas pumps.

(a) Standards:

- [1] No such signs shall exceed 80% of the width of each awning or canopy, not to exceed 50% of overall square footage.

(b) Illustration:

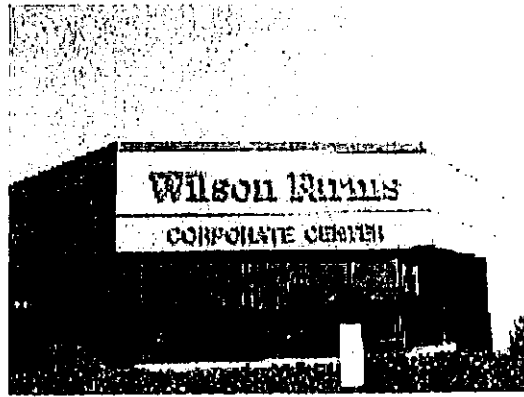


- (2) **FASCIA SIGN** — A sign attached to a soffit or under the fascia of a building.

(a) Standards:

- [1] A maximum of one sign for each establishment or enterprise shall be permitted.
- [2] The bottom edge of such signs shall be located a minimum of eight feet above the finished grade.
- [3] Such signs shall conform with § 190-133, Permitted sign area."

(b) Illustration:

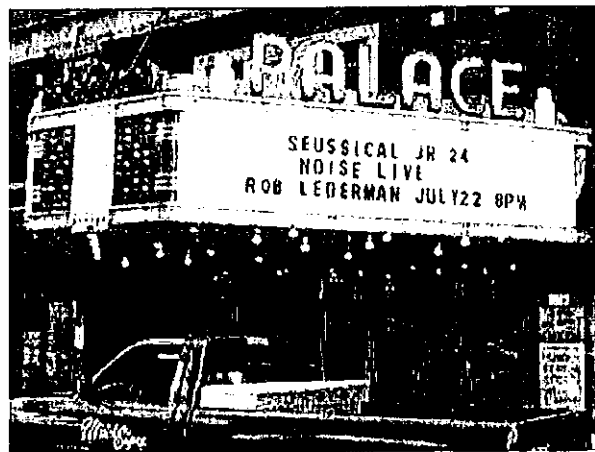


- (3) **MARQUEE SIGN** — A sign attached to the face of a marquee and not projecting above or beneath said marquee face. A marquee is a permanent roof-like structure that projects from the wall of a building and may overhang the public way with the local municipality's authorization.

(a) Standards:

- [1] No more than one marquee sign shall be permitted for each building frontage that includes an entrance serving the general public.
- [2] Such sign shall not extend beyond the top or sides of the building.
- [3] Such signs shall not be oriented toward any residential district.
- [4] Such signs shall not project into any adjacent right-of-way, unless approved by the appropriate federal, state, county, or local highway official.
- [5] The bottom of such signs shall be a minimum of eight feet above the walkway.

(b) Illustration:



- (4) **PROJECTING SIGN** — A sign attached perpendicular to a building or other structure. This definition shall not include hanging signs.

(a) Standards:

- [1] Only one projecting sign is permitted per building frontage with an entrance available to the general public.



- [2] Such sign shall not exceed 16 square feet in area.
- [3] Such signs shall not project into any adjacent right-of-way, unless approved by the appropriate federal, state, county, or local highway official.
- [4] The bottom of such signs shall be a minimum of eight feet above the walkway.

(b) Illustration:



(5) WALL SIGN — A sign integral with or attached to and supported by the exterior wall of a building.

(a) Standards:

- [1] A wall sign shall not project above or beyond the ends of the building or its parapet or the highest point of the roof, whichever is highest.
- [2] Such sign shall not project more than 12 inches from the exterior supporting wall.
- [3] On a multi-occupancy building, each occupant with an outside entrance serving the general public may have a separate wall sign. Corner tenants with a second outside entrance in a side wall shall be allowed one additional wall sign.
- [4] Such signs shall have a maximum area in accordance with the table in § 190-133.

(b) Illustration:



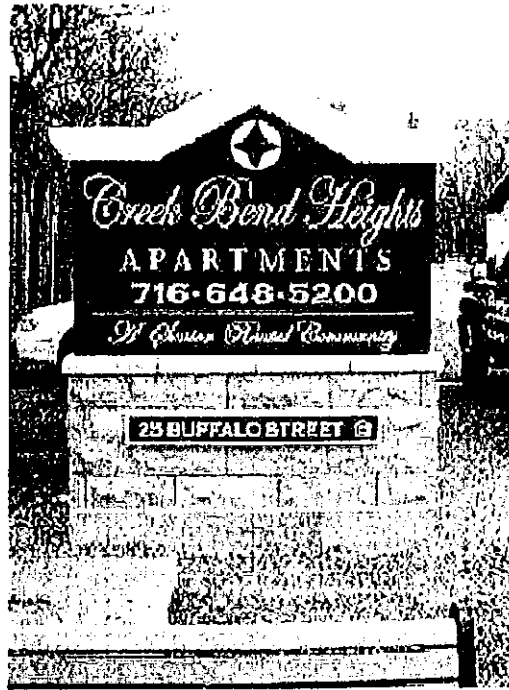
B. Freestanding signs.

- (1) GROUND SIGN — A sign supported by uprights or braces placed upon or in the ground and not attached to any building.

(a) Standards:

- [1] One ground sign shall be permitted for each individual building not a part of a multiple development.
- [2] Such sign shall be no higher than eight feet above the average finished grade and shall be permanently attached to the ground.
- [3] Such sign shall not exceed 32 square feet in total face area.
- [4] Such sign shall be located a minimum of five feet from any nonresidential lot or five feet from any residential lot and five feet from a street right-of-way.
- [5] At each location where motor vehicle fuels are sold at retail, 32 square feet of additional face area, limited to advertising the brand name and price of the fuel, shall be permitted. This area may be used for a separate ground sign or as an addition to the face area of a ground sign otherwise permitted in this section. In no event shall more than 16 square feet of this allowed area be displayed or added to any single face area.

(b) Illustration:



- (2) ELECTRONIC MESSAGE CENTER SIGN — Any sign which contains an illuminated, programmable message or graphic, whether fixed or moving.

(a) Standards:

- [1] One electronic message center sign for each individual building not a part of a multiple development shall be permitted on Transit Street from the City line to Main Street; on West Avenue from the City line to Transit Street; on all of Park Avenue; on Lincoln Avenue in Business Districts B-1, B-3 and B-4.
- [2] Message center signs may be included as a part of a permitted freestanding sign in any commercial district.
- [3] The information displayed on a message center sign shall remain static for a period of no less than 20 seconds.
- [4] Special effects or operational modes such as scroll, travel, spinning actions or the use of similar transitions and frame effects that have text, graphics or images that appear to move or change in size, or be revealed sequentially rather than all at once, are prohibited.
- [5] Full animation, flashing or video is prohibited.
- [6] Electronic message signs shall have maximum allowable area of 32 square feet.
- [7] Only one electronic message allowed per parcel, including outdoor numeric and time/temperature display signs.
- [8] The characters, height of numbers or letters combined in an outdoor numeric display cannot exceed 12 inches.
- [9] Electronic message signs shall not be located within 500 yards of any other such sign.



(b) Illustration:



- (3) POLE SIGN — A sign that is mounted on a freestanding pole or other support so that the bottom edge of the sign face is a minimum of eight feet above the finished grade of a paved walk, drive, or parking area.

(a) Standards:

- [1] One pole sign for each individual building not a part of a multiple development shall be permitted on Transit Street from the City line to Main Street; on West Avenue from the City line to Transit Street; on all of Park Avenue; on Lincoln Avenue in Business Districts B-1, B-3 and B-4; and on Davison Road in Business District B-1.
- [2] Such sign shall not exceed 20 feet in height.
- [3] Such sign shall be located a minimum of 25 feet from an adjacent residential lot line.
- [4] Such sign shall not project over any public right-of-way or lot line.
- [5] The pole support for such signs shall be fully encased or skirted. A sign with a single support shall have a minimum support width of 20% of the width of the sign face. Each support for a sign with double supports shall be a minimum of 10% of the width of the sign.
- [6] For properties with multiple non-local street frontage, one pole sign is permitted. A ground sign may be placed along each other non-local street frontage.
- [7] At each location where motor vehicle fuels are sold at retail, 32 square feet of additional face area, limited to advertising the brand name and price of the fuel, shall be permitted. This area may be used for a separate ground sign or as an addition to the face area of a ground or pole sign otherwise permitted in this section. In no event shall more than 16 square feet of this allowed area be displayed or added to any single face area.

(b) Illustration:



(4) **SUBDIVISION IDENTIFICATION SIGN** — A sign indicating the name of the subdivision or residential development.

(a) Standards:

[1] All permitted districts. A subdivision or residential development identification sign shall be maintained in good repair by a homeowners' association.

[2] Single-family districts.

[a] One non-internally illuminated permanent subdivision identification sign may be permitted for each side of a subdivision or residential development entryway.

[b] Such sign shall not exceed 32 square feet in area and eight feet in height.

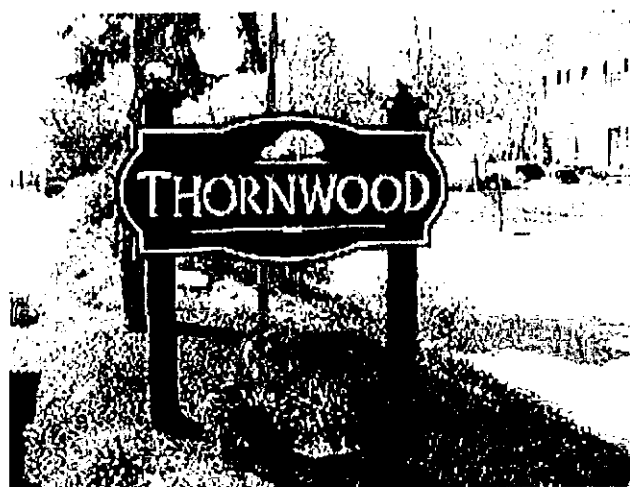
[3] Multifamily districts.

[a] One non-internally illuminated permanent identification sign may be permitted at each entrance to the development.

[b] Such sign shall not exceed 20 square feet in area and six feet in height.

[c] Such sign shall be located a minimum of 25 feet from any lot line.

(b) Illustration:





Town of Clarence, NY  
Tuesday, December 15, 2015

## Chapter 181. SIGNS

[HISTORY: Adopted by the Town Board of the Town of Clarence 10-3-1973 by L.L. No. 3-1973; amended in its entirety 9-10-2014 by L.L. No. 3-2014. Subsequent amendments noted where applicable.]

### GENERAL REFERENCES

Peddling and soliciting — See Ch. 147.

Zoning — See Ch. 229.

### § 181-1. Legislative intent.

The intent of this chapter is to promote and protect the public health, welfare and safety by regulating existing and proposed outdoor signs of all kinds. It is intended to protect property values, restrict visual blight, and enhance the appearance of the community. It is further intended to enhance the business environment while protecting and improving upon the character of the community by reducing the visual blight and hazards that may be caused by advertising obstructions and distractions.

### § 181-2. General regulations.

The provisions of this section shall apply to all signs in all zoning districts as established and those amended in the future by the zoning laws of the Town of Clarence.

#### A. Permits required.

- (1) No person, firm or corporation shall hereafter erect, re-erect, construct or structurally alter a sign or sign structure without a permit first having been issued by the Planning and Zoning Department.
- (2) Every application for a sign permit shall be accompanied by plans, to scale, showing the dimensions of the sign, the structure supporting the sign, the position of the sign in relation to nearby buildings or structures, the location of the building, structure or lot to which or upon which the sign is to be attached or erected, the method of illumination, if any, and such other information as the Planning and Zoning Department shall require to show full compliance with this chapter and all other laws and ordinances of the Town of Clarence.
- (3) Acceptable proof of consent to the placing of a sign by the owner of the building, structure, or premises must be provided with the application for a permit when the applicant is not the said owner.
- (4) The Planning and Zoning Department shall grant permits for all temporary signs that conform to the dimensional, locational, and construction requirements as herein stated. Any permanent sign application shall be referred to the Sign Review Board for architectural review. The Sign Review Board may, in its discretion, approve minor variations (up to 10%) from the sign dimensions contained in this chapter.

- (5) All permanent sign applications are subject to a fifteen-day review by the Sign Review Board. All permits issued are subject to Town Board objection until 15 days after approval has been granted by the Sign Review Board.
- B. Plaza signs.
- (1) All new plaza signs shall be reviewed by the Sign Review Board during site plan review. Each tenant in a plaza will be allowed one building sign and one roadway sign that must be contained within one common tenant freestanding sign. The Sign Review Board will determine the best location and size of the common tenant sign during site plan review. The Sign Review Board may review and determine permit applications if the sign is replacing an existing freestanding sign or common tenant sign. In no case shall a plaza sign in a commercial, restricted business or traditional neighborhood zoning district exceed 48 square feet.
  - (2) A single wall sign, such as a sign directory, may be used to identify more than one on-premises establishment. For buildings with multiple tenants having storefronts only, the facade rented by the tenant shall be considered as wall area for a sign and must meet the wall sign standards in this chapter.
- C. Illumination and movement.
- (1) Any illuminated sign or lighting device shall employ only light of constant intensity.
  - (2) No sign shall be placed or be directed so as to permit the sign illumination to be directed upon a public street, highway, sidewalk or adjacent premises so as to cause hardship or danger to any person or persons.
  - (3) No sign or part thereof shall contain or consist of any pennant, ribbon, streamer, balloons, spinner or other similar moving, fluttering, or revolving device. Such devices shall be prohibited even if they have no message or logo on them. The said devices, as well as strings of lights, shall not be used for advertising or attracting attention, whether or not they are part of the sign.
  - (4) No sign or part thereof may rotate or move in any direction, except flag signs as permitted on a temporary basis. Signs that flash, blink or scroll-change shall not be allowed for safety reasons.
  - (5) LED signs must have messages that remain of constant intensity for at least 30 seconds. No part of an LED sign may move or scroll or be considered an animated sign.
- D. Location of signs.
- (1) All permanent signs within the Town of Clarence must maintain a minimum setback of 10 feet off any roadway right-of-way. All signs must maintain a minimum side yard setback of 10 feet. Any permanent freestanding sign must be at least 50 feet from any other.
  - (2) A sign placed upon a roof shall abut the roof and shall not be elevated above the ridge of the roofline on any post, pole, or other elevating supports.
  - (3) No sign shall be located in, nor project into, the public right-of-way.
  - (4) No sign shall be placed, painted or drawn upon trees, utility poles, light poles or standards.
- E. Off-premises and billboard signs.
- (1) The Town of Clarence prohibits off-premises and billboard signs. The Town of Clarence will allow off-premises signs without a permit that are associated with community activities or any

not-for-profit activity directing the public to such activity, provided that they do not exceed eight square feet in area and are in place for no greater than a sixty-day period. Temporary signs directing traffic to seasonal agricultural products, less than 16 square feet in area per side, will also be allowed without a permit. Such signs shall not be placed within a public right-of-way.

- (2) Any freestanding sign over 60 square feet will not be permitted at any location within the Town of Clarence except in shopping plazas as approved by the Sign Review Board.

F. Secondary building signs.

- (1) On commercial buildings with rear or side orientation to a shopping plaza or mall parking lot or any other public access area, a rear-or side-facing sign shall be allowed with the name of the business and its logo only. Such signs must meet the dimensional requirements of this chapter.
- (2) The secondary signs must be removable and mounted flat against the rear or side of the building. Painting signs on a building is prohibited.

G. Multiple residences or apartment developments.

- (1) For multiple residences or apartment developments, one sign advertising the availability of residential units will be permitted, provided that the sign does not exceed four square feet.
- (2) One freestanding sign that identifies the apartment complex or multiple-family residence will be allowed, provided that the sign does not exceed 20 square feet in area.

H. Public utility signs. Signs necessary for the identification, operation or production of a public utility, not exceeding 32 square feet, may be erected on the premises of such public utility.

I. Residential subdivision project signs. For residential subdivisions or projects, one sign that identifies the project by name and address may be erected near the principal entrance. The one sign shall not exceed 32 square feet. The location of the sign shall be approved as part of the site plan review by the Sign Review Board.

J. Insurance. Security shall be made, in a manner and amount satisfactory to the Town Board, in the event that a sign projects over or above any public walkway, driveway or road, to protect the Town of Clarence from any and all claims for damages or injuries caused to persons or property by such sign.

K. Number of signs. Any business establishment within a commercial zone may have both one wall sign and one freestanding sign. Businesses located in a shopping mall shall utilize a common tenant sign as reviewed and approved by the Sign Review Board.

L. Fees.

- (1) A fee schedule for permanent and temporary signs across all sign districts shall be established by resolution of the Town Board. Sign fees shall be reviewed periodically and may be amended by resolution of the Town Board.
- (2) Temporary signs not removed at the end of the permit period will cause the applicant to be charged \$25 per day as a civil penalty. The failure to remove said signs shall also remain subject to any and all other enforcement provisions of this chapter.
- (3) Signs erected without a permit will incur a penalty as specified in § 181-8.

M. Nonconforming signs.

- (1) Every sign not conforming to the regulations of the district in which it is located at the time of adoption of this chapter shall be nonconforming.
- (2) A nonconforming sign may not be rebuilt except in conformity with the regulations for the district in which it is located.
- (3) All signs that are nonconforming by reason of size, height, location, illumination or changeable copy must be removed or brought into compliance at such time as the sign is replaced.
- (4) A nonconforming sign may only be altered by a new face panel, updated illumination or changeable copy in conformity with the zoning district in which the sign is located. Any changes to exterior dimensions would constitute a rebuild and therefore be subject to conformity with current regulations within the zoning district in which the sign is located.
- (5) Nothing in this chapter shall be deemed to prevent the strengthening or restoring of any nonconforming sign declared unsafe by a duly designated official to a safe condition.
- (6) Nothing in this chapter shall be deemed to prevent, without proper permit, the reconstruction of a nonconforming structure to its original configuration when destroyed by fire or act of God and with review and approval by the Zoning Board of Appeals.
- (7) Whenever an area is changed from a zoning district of one classification to a zoning district of a different classification or amendments are adopted that change regulatory measures governing signs, the above regulations shall apply to nonconforming signs created by such transfer.

### § 181-3. Regulations for specific sign districts.

- A. Major Arterial Zoning District. The Major Arterial District is designed to encourage large, dense commercial development in an area of Town that can adequately accommodate a high volume of automobile traffic. This sign area will encourage business promotion/advertising while reducing visual clutter and distraction.
  - (1) One freestanding sign shall be permitted on any parcel. The total area for a freestanding sign shall not exceed 60 square feet per side. A single freestanding sign may be used to identify more than one on-premises establishment.
  - (2) The total area for the changeable-copy portion of a freestanding sign may not exceed 21 square feet in area per side.
  - (3) A single-owner automobile dealership with multiple national franchises operating on an individual parcel may have additional freestanding signs. One sign per each 300 linear feet of frontage along the principal facade of the automotive dealership may be erected. Contractual requirements of franchise operations will be considered if presented in writing.
  - (4) No freestanding sign shall exceed 20 feet in height. All freestanding signs must have a front setback line of at least 40 feet from any roadway right-of-way. The side yard setback will be a minimum of 10 feet.
  - (5) Signs in a plaza shall be as approved by the Sign Review Board in accordance with § 181-2B of this chapter.
- B. Commercial Zoning District. The Commercial and Restricted Business Zoning Districts are designed to encourage high-quality development while maintaining the traditional character of the Clarence commercial corridors away from Transit Road. Freestanding signs shall match the



architectural style of the structures they identify to promote a classic, understated business corridor.

- (1) Any business within said sign district may have a freestanding sign that is architecturally complementary to the building it is representing. Pole signs are prohibited in this sign district. Monument signs shall not exceed 32 square feet in area.
  - (2) All signs must be set back a minimum of 10 feet from any roadway right-of-way and 10 feet from a side yard lot line.
  - (3) Any freestanding sign shall not exceed 12 feet in height. No sign may be located as to create a visual obstruction from a public road entrance or egress or distraction to drivers on an adjoining public road.
  - (4) The total area for the changeable-copy portion of a sign shall not exceed 10 square feet in area per side.
  - (5) Externally illuminated signs are preferred. Internally illuminated signs are permitted in certain circumstances as follows:
    - (a) Where the backlit letters are silhouetted against a softly illuminated wall;
    - (b) Individual letters with translucent faces containing soft lighting elements inside each letter; and
    - (c) Metal-faced box signs with cutout letters and soft-glow fluorescent tubes.
  - (6) Plaza signs shall be limited to 48 square feet to maintain the character of the area. (See § 181-2B.)
  - (7) Parcels zoned Industrial Business Park will comply with the commercial zoning sign criteria.
- C. Restricted Business Zoning District. The Commercial and Restricted Business Zoning Districts are designed to encourage high-quality development while maintaining the traditional character of the Clarence commercial corridors away from Transit Road. Freestanding signs shall match the architectural style of the structures they identify to promote a classic, understated business corridor.
- (1) Any business within said sign district may have a freestanding sign that is architecturally complementary to the building it is representing. Pole signs are prohibited in this sign district. Freestanding signage located in the Restricted Business Zone shall be limited to a monument sign with the following standards: having a low profile no greater than 8.5 feet, where the base of the sign structure is situated on the ground; or where the sign face is located a maximum of 24 inches above the lowest point of the ground adjacent to the sign, as supported by two posts or columns and supplemented with perennial vegetation. No sign may be located so as to create a visual obstruction from a public road entrance or egress or distraction to drivers on an adjoining public road. Monument signs shall not exceed 32 square feet in area.
  - (2) All signs must be set back a minimum of 10 feet from any roadway right-of-way and 10 feet from a side yard lot line.
  - (3) The total area for the changeable-copy portion of a sign shall not exceed 10 square feet in area per side.
  - (4) Externally illuminated signs are preferred. Internally illuminated signs are permitted in certain circumstances as follows:
    - (a) Where the backlit letters are silhouetted against a softly illuminated wall;

- (b) Individual letters with translucent faces containing soft lighting elements inside each letter; and
  - (c) Metal-faced box signs with cutout letters and soft-glow fluorescent tubes.
- (5) Plaza signs shall be limited to 48 square feet to maintain the character of the area. (See § 181-2B.)
- D. Traditional Neighborhood Zoning District. This district includes the hamlets of Clarence Hollow, Clarence Center, Swormville, Wolcottsburg and Harris Hill districts for sign law administration. The intent of this sign district is to encourage a small-town, historic-style business district that limits large-scale, out-of-character signage and encourages a walkable, pedestrian-friendly environment. Freestanding signs shall match the architectural style of the structures they identify to promote the traditional character of this district.
  - (1) All signs in this sign district must be made of complementary material and must architecturally form to the building on which they are going to be attached and/or representing.
  - (2) Permanent freestanding signs can be no larger than 20 square feet in area. Any freestanding sign shall be located a minimum of 10 feet from any front or side lot line and shall not be higher than 10 feet from average grade.
  - (3) Awning signs or projecting wall signs under 16 square feet may be allowed after review by the Sign Review Board and provided that all conditions of projecting wall signs as stated in § 181-5F below have been met.
  - (4) Externally illuminated signs are preferred. Internally illuminated signs are permitted in certain circumstances as follows:
    - (a) Where the backlit letters are silhouetted against a softly illuminated wall;
    - (b) Individual letters with translucent faces, containing soft lighting elements inside each letter; and
    - (c) Metal-faced box signs with cutout letters and soft-glow fluorescent tubes.
  - (5) LED signs shall be prohibited except for gas price display panels.
- E. Residential Single-Family, Agricultural Flood Zone and Agricultural Rural Residential Zoning Districts. The intent of the agricultural/residential sign districts is to maintain the visual quality of the Town's residential areas.
  - (1) One sign, not exceeding four square feet in size, shall be permitted for residences with an approved business or professional activity conducted on the premises.
  - (2) Community institutions, such as places of worship, libraries, museums, social clubs or societies, may erect on such premises one freestanding sign not exceeding 32 square feet in size.
  - (3) Recreational areas, golf clubs, and other similar uses as permitted by the zone the facility is in and the Zoning Ordinance<sup>[1]</sup> shall be permitted to erect one freestanding sign.  
[1]: Editor's Note: See Ch. 229, Zoning.
  - (4) No illuminated signs shall be allowed.
  - (5) LED signs shall be prohibited.

## § 181-4. Temporary signs.

### A. Permitted temporary signs.

- (1) Temporary signs are allowed within all sign districts, provided that the applicant has obtained a permit from the Planning and Zoning Department. Temporary signs may be a maximum of 32 square feet in area. Signs constructed of a fabric material are allowed if securely fastened to a permanent surface or sign structure.
- (2) Temporary A-frame signs shall not exceed eight square feet in area per side. Said signs must be used during business hours. One said sign will be allowed per tenant in a plaza containing more than one commercial entity. No sign shall be permitted in any roadway right-of-way. An annual (three-hundred-sixty-five-day) permit will be issued for each sign upon approval by the Sign Review Board. Temporary A-frame signs are not permitted within Residential Single-Family, Agricultural Flood Zone and Agricultural Rural Residential Zoning Districts.
- (3) Temporary roadside signs must be separated a minimum of 100 feet from each other. All temporary signs may be permitted if the dimensional, location, and construction requirements are met for the district that applies.
- (4) Temporary signs will be granted a time limit of 30 days. A business may have a temporary sign not exceeding 60 days per year.
- (5) Temporary LED signs shall only be allowed in the Major Arterial Sign District in accordance with the provisions of this chapter.
- (6) Temporary flag signs shall be permitted with the following conditions; any flag must be separated a minimum of 100 feet from any other flag on the property. The flagpole and/or flag may not exceed 10 feet in height from ground level. A flag must not exceed 32 square feet in area. Flags must be situated within the parcel on which the business is located. Flags shall not be placed within the public right-of-way nor be closer than 10 feet from any drive approach to maintain visibility for cars entering/exiting a parking lot or driveway. Flags are not permitted in residential zones. An applicant seeking approval for a flag must provide a survey showing the proposed flag location, as well as a diagram depicting the overall size, area and type of flag.

### B. Special event signs.

- (1) Temporary signs may be permitted in conjunction with a special event permit as issued under the Special Events Local Law<sup>[1]</sup> and may be permitted for a period not to exceed one week.  
[1]: Editor's Note: See Ch. 187, Special Events.
- (2) Temporary signs announcing the event must be freestanding and located so as not to create a visual obstruction and may not be attached to utility poles, street signs, or existing structures in the right-of-way.
- (3) Not-for-profit, charitable, civic and similar organizations that do not have a permanent sign may be permitted to place a temporary sign for a special event for a period of 30 days, provided that they meet the restrictions in § 181-4B(2). Any fee for said permit may be waived.
- (4) For temporary LED signs, a permit is required, and the criteria shall be as described in § 181-2.

### C.

Commercial event sales. Signs for a commercial event sale must be approved through the Planning and Zoning Department. Decisions against any sign permit may be appealed to the Sign Review Board. Temporary sign fees apply for these events.

## § 181-5. Construction and maintenance standards.

### A. General provisions.

- (1) All signs shall comply with applicable regulations of the New York State Building Code.
- (2) All electrical signs shall be constructed in accordance with the standards of the National Electrical Code.
- (3) All freestanding signs shall be designed and constructed to withstand a wind pressure of not less than 20 pounds per square foot of surface area.
- (4) All signs, including wall-mounted signs, shall be securely anchored and shall not swing or move in any manner.
- (5) All signs, sign finishes, supports and electrical work shall be kept clean, neatly painted, and free from all hazards, including but not limited to faulty wiring and loose supports, braces, guys and anchors.
- (6) All signs shall be maintained in a condition that will enhance or maintain the aesthetic quality of the surrounding neighborhood.
- (7) Directional signs on a premises. Such signs shall be exempt from the permit requirements of this chapter but shall not exceed eight square feet in area.
- (8) Landscaping of the base of any freestanding sign shall be required, unless there is a demonstrated hardship. Furthermore, landscaping shall be maintained, to include replacement of dead or dying vegetation on an annual basis.

### B. Materials and colors. Any materials and colors used in the construction or maintenance of all signs must be of complementary character to the principal building and the subject property. Sign district specifications may be included to govern the construction of signs. All materials and coloring schemes shall maintain or enhance the appearance of the neighborhood. The sign support structure shall be clad in stone or brick or similar materials to the extent practicable, as approved by the Sign Review Board. Painting a sign on a building is prohibited.

### C. Obstruction to safety. No sign shall be erected, relocated or maintained so as to prevent or obstruct free ingress to or egress from any walkway, door, window or fire escape. No sign shall be attached to a standpipe or fire escape.

### D. Signs not to constitute traffic hazards.

- (1) No sign shall be erected or maintained in a manner so as to obstruct free and clear vision of roadways or driveways and the safe egress from all roadways or distract the attention of the driver of any vehicle by reason of position, shape or color thereof.
- (2) No sign shall be erected or maintained that could be confused as a traffic sign, signal, or controlling device.
- (3) Signs with text that changes more frequently than every 30 seconds and signs that flash, blink or scroll-change shall not be allowed for safety reasons.



- E. Mirror or fluorescence. No sign shall, in its construction, employ any mirror or mirror-like surface nor any day-glowing or other fluorescent paint or pigment.
- F. Wall sign standards.
  - (1) Wall signs shall not extend beyond the ends or over the top of the walls to which they are attached and shall not extend above the first-floor level of the building.
  - (2) Wall signs shall not extend more than six inches from the face of the buildings to which they are attached, except for some electrical wall signs which are allowed to exceed 14 inches from the face of the building. Traditional Neighborhood Districts will allow hanging wall signs or awning signs that do not exceed 16 square feet in area and that meet all other requirements of this chapter.
  - (3) One wall sign per establishment shall be permitted, unless that establishment has street frontage on more than one side, in which case one wall sign will be permitted for each side of the structure that has street frontage. Additional signs must meet secondary sign requirements as stated in § 181-2F above.
  - (4) The total area for wall signs shall not exceed the lesser of 15% of the total area of the one building facade upon which the sign is placed or 100 square feet in a Commercial or Traditional Neighborhood Zoning District. In a Major Arterial Zoning District, the total area of a wall sign may be up to 500 square feet.
- G. Freestanding and pole sign standards.
  - (1) No permanent freestanding sign may be located less than 50 feet from any other freestanding sign.
  - (2) No freestanding sign shall extend into or over the public right-of-way or any property lines.
- H. Roof sign standards.
  - (1) A roof sign must be installed in a plane parallel to the wall of the facade of the building which the roof covers. In no case shall a roof sign extend above the ridge of the roof.
  - (2) The bottom portion of the roof sign, except for certain electrical signs, shall not extend more than six inches from the roof surface. Electric signs may extend up to 14 inches.
- I. Two-sided signs. A sign legible from two sides and having faces in parallel planes shall be considered one sign. Each side of such sign shall be permitted the square-foot display area hereinafter set forth.

## § 181-6. Exceptions to permit requirement.

The following signs do not require permits but must conform to the requirements as specified below:

- A. Historical markers, tablets, statues, memorial signs and plaques; names of buildings and dates of erection when cut into any masonry surface, bronze, stainless steel, or similar material; and emblems installed by governmental agencies or religious or nonprofit organizations, not exceeding six square feet.
- B. Flags and insignia of any government, except when displayed in connection with commercial promotion.
- C.

On-premises directional signs for the convenience of the general public, identifying public parking areas, fire zones, entrances, exits and similar signs, internally illuminated or nonilluminated and not exceeding eight square feet per face. Business names and logos may be allowed with Sign Review Board approval. Directional signs shall not extend more than six feet in height above finished grade and shall not be located in the public right-of-way.

- D. Nonilluminated "warning," "private drive," "posted" or "no trespassing" signs not exceeding two square feet in area.
- E. One on-premises wall sign, in connection with any residential building in any district, for permitted professional offices or home occupations, not exceeding four square feet in area. Such sign may state name and vocation only.
- F. Street number and nameplates identifying residents, mounted on a house, apartment or mailbox, and not exceeding 1 1/2 square feet in area.
- G. Lawn signs identifying residents, not exceeding 1 1/2 square feet in area. Such signs shall not be illuminated except by a light which is an integral part of a lamppost, if used as a support, with no advertising message thereon.
- H. Private-owner merchandise sale signs for garage sales and auctions, not exceeding four square feet, for a period not exceeding 10 days. Such signs shall not be attached to utility poles, trees, or any other man-made or natural off-premises structure. All garage sale signs will meet the applicable temporary sign requirements of this chapter.
- I. Temporary, nonilluminated "for sale," "for rent," and real estate signs and signs of a similar nature concerning the premises upon which the sign is located. Each sign shall not exceed 16 square feet in a residential sign district and 32 square feet in a business sign district. All such signs shall be removed one week after the sale, lease, or rental of the premises.
- J. One temporary sign for a roadway stand selling agricultural produce grown on the premises in season, provided that the sign does not exceed 32 square feet in area. Seasonal off-premises signs advertising agricultural produce may be allowed if they are under 16 square feet in area and are freestanding.
- K. Holiday decorations, including lighting, are exempt from the provisions of this chapter.
- L. A sign attached to gasoline pumps, not to exceed two square feet in area, on a premises where retail gasoline is sold.
- M. Temporary, on-premises directional signs for meetings, conventions, and other assemblies, not exceeding eight square feet. Signs must be removed after the event.
- N. One sign, not exceeding 16 square feet in all sign districts, listing the architect, engineer, contractor and/or owner, on premises where construction, renovation, or repair is in progress. Signs must be removed after the event.
- O. Political posters and signs, not exceeding 16 square feet in the residential sign district nor 32 square feet in nonresidential sign districts. Such signs shall be allowed 30 days prior to a special election or political event, provided that they meet the restrictions in § 181-4B(2) above. All signs shall be removed within one week after the election or political event. Signs shall not be placed in the public right-of-way.
- P. Signs erected by a governmental entity in order to fulfill the duties and administration of said entity. Exempt signs may include, but not be limited to, traffic control devices, including temporary detour signs, the posting of rules and regulations, directional signs for governmental offices, and similar such signs.

## § 181-7. Variances.

An applicant shall have the right to petition the Zoning Board of Appeals of the Town of Clarence in the event of a denial of the right to place or erect a sign within the Town of Clarence, whether by permit or otherwise. The Zoning Board of Appeals of the Town of Clarence, after public notice and a hearing, may approve, deny, or vary/modify the application of this chapter in harmony with its general purpose and intent.

## § 181-8. Penalties for offenses; revocation of permit; absentee businesses; unsafe signs.

- A. Penalties for offenses. Failure to comply with any provisions of this chapter shall be deemed a violation, and the violator shall be liable to a fine. For a first offense, a violator will be subject to a fine of not less than \$100. A second offense and any others thereafter shall be subject to a fine of not less than \$250 or imprisonment for not more than 15 days. Each day such violation occurs or continues shall constitute a separate violation, accruing the given penalty for each day.
- B. Revocation of permit.
  - (1) If a sign authorized under any such permit has not been completed, erected or placed within six months from the date of the issuance thereof, such permit shall become null and void but may be renewed within 30 days of the expiration thereof for good cause shown and upon the payment of an additional fee of \$10 as determined by the Town Board.
  - (2) If a sign authorized under any such permit has been completed, erected or placed other than in conformance with all terms and conditions of the application and permit, the Planning and Zoning Department shall give written notice to the owner of the sign, building, or premises to which it is attached, specifying the violation and directing conformance. The sign shall thereupon be modified to conform to the permit or removed within 10 days from the date of such notice. In the event that the sign is not modified or removed in 10 days, the Planning and Zoning Department shall revoke the permit, and such sign shall be removed by the owner or, upon order of the Town Board, by the Planning and Zoning Department, with the owner paying all removal costs.
- C. Absentee businesses. Any sign that advertises a business or operation no longer conducted or a product no longer sold on the premises shall be removed by the owner of the premises upon which said sign is located after written notice specifying a sixty-day compliance period. Upon failure to correct, the Planning and Zoning Department shall remove or cause to be removed said sign and shall cause to be assessed against all property all costs and expenses incurred.
- D. Unsafe or insecure signs.
  - (1) If the Planning and Zoning Department finds that any sign or other advertising structure regulated herein is unsafe or insecure or is a menace to the public or is in violation of the construction and maintenance provisions of this chapter, it shall give written notice to the permitted agent thereof. Any sign that is unsafe, insecure, or in any way endangers the public shall be reported to the owner of the premises upon which such sign is located. If said sign is not repaired or removed to the reasonable satisfaction of the Planning Department in 10 days, the Planning and Zoning Department shall revoke the permit, if any, and may cause said sign to be removed in the manner provided in § 181-8B above. If the permitted agent fails to remove or alter the structure so as to comply with the standards within 10 days after such

notice, such sign shall be removed or altered to comply with this chapter at the expense of the permitted agent or owner of the property upon which it is located.

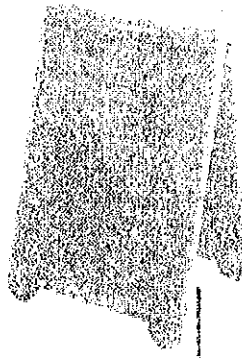
- (2) The Planning and Zoning Department shall refuse to issue a permit to any permitted agent who refuses to pay costs so assessed.

## § 181-9. Definitions.

For the purpose of this chapter, the terms used herein are defined and shown in this illustration<sup>[1]</sup> as follows:

### **A-FRAME SIGN**

A portable temporary sign of solid construction, connected at the top and angled down on either side in the shape of an "A," usually with advertisement on two sides; also called a "sandwich board sign."

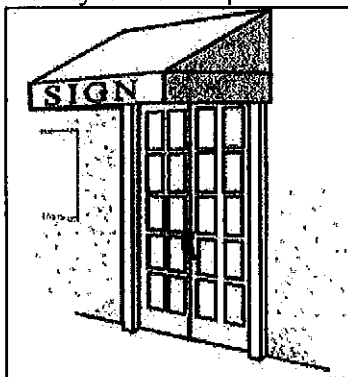


### **ANIMATED SIGN**

Any sign that uses movement or change of lighting to depict action or create a specific effect or scene.

### **AWNING SIGN**

Advertising displayed on an overhanging structure supported with braces that attach to the main building and that projects over a walkway for weather protection.



### **BANNER**

A piece of cloth or other material that is a separate entity from the building, either attached directly to the building or hung on posts, cables, wires or poles, and either blank or bearing a sign outside of the building. National flags, state or municipal flags or the official flag of any institution shall not be considered banners.

**BILLBOARD SIGN**

A sign that exceeds 60 square feet in area, usually located alongside a roadway, except for plaza signs as approved by the Planning Board.

**CHANGEABLE-COPY SIGN**

A sign that contains a message, text or graphics that can be changed intermittently, either manually or electronically, to display a different message.

**COMMERCIAL EVENT SALES**

Activities conducted by existing and permitted commercial, retail and similar uses, located within the commercial and major arterial zones, which utilize space outside of an approved commercial/retail building in the required yard space and/or parking facilities of such buildings. Such sales shall include, but are not limited to, sidewalk sales, tent sales, grand openings, going-out-of-business sales, holiday sales and similar activities.

**COMMERCIAL SIGN DISTRICT**

Any area that is designated in the Commercial District, the Restricted Business District and the Industrial Business Park District on the Official Zoning Map of the Town of Clarence.

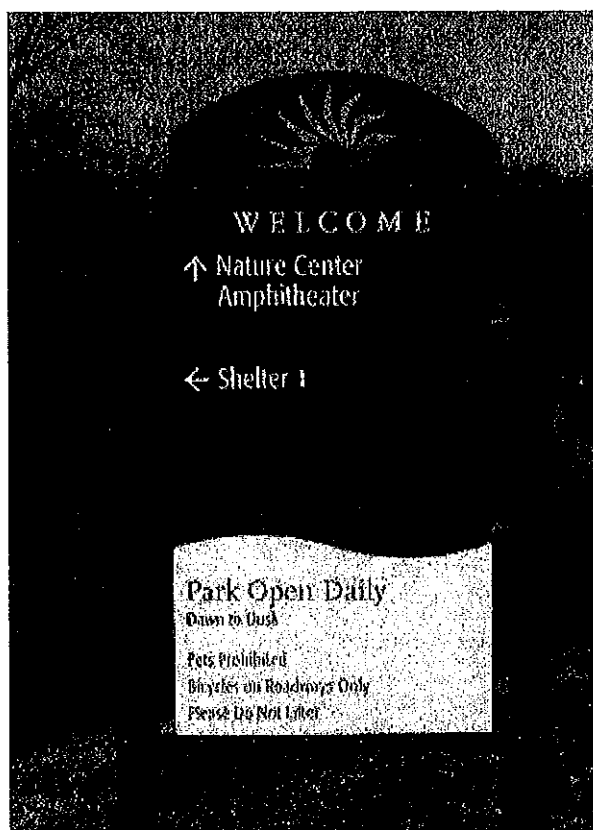
**COMMON TENANT SIGN**

A freestanding sign designed to accommodate all roadway signage for plaza tenants and business owners.

**DIRECTIONAL SIGN**

A sign located on premises and used to direct traffic to a business.



**ERECT**

Includes build, construct, alter, display, relocate, attach, hang, place, suspend, affix or maintain any sign, and shall also include the painting of exterior wall signs. This includes murals or wall billboards.

**FACE**

The surface area on a sign where advertising copy is displayed.

**FLAG SIGN**

A flag is a sign attached to a pole that has characters, letters, illustrations or ornamentations applied to a cloth, paper, fabric or other lightweight material and is suspended so that it is actuated by wind.

**FLASHING SIGN**

Animated signs or animated portions of signs with illumination that is characterized by a repetitive cycle in which the period of illumination is either the same as or less than the period of nonillumination.

**FREESTANDING SIGN**

Any sign not attached to or part of any building, but separate and permanently or temporarily affixed by any other means in or upon the ground.

**HANGING SIGN**

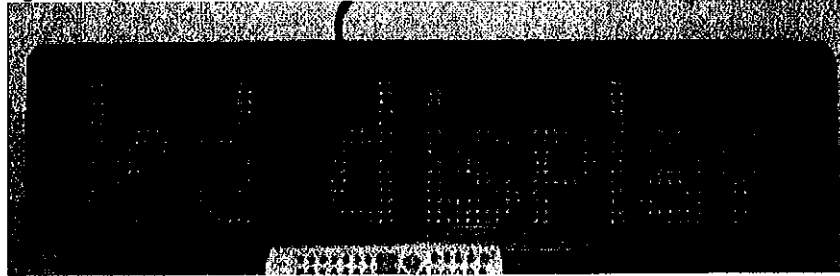
Any sign which is suspended from or supported by a building, other structure or sign and which does not lie parallel to or within the plane of the building, structure or sign structure. (See diagram at the end of the definitions.)

**ILLUMINATED SIGN**

Any sign lighted by electricity, gas or other artificial light, including reflective or phosphorescent light. Such light, when permitted, shall conform to all requirements of the National Board of Fire Underwriters.

#### **LED SIGN**

Light-emitting diodes, differing from incandescent bulbs because a variety of colors can be emitted from the same bulb without using filters; has the ability to display scrolling or flashing messages as well as a variety of colors. This definition includes electronic message boards, liquid crystal displays, digitized signs or sign parts, variable electronic message centers and similar electronic displays.



#### **LIGHTING DEVICE USED**

Any light, string of lights or group or movement of lights located or arranged so as to cast illumination on and draw attention to a sign or to a person, activity or business.

#### **MAJOR ARTERIAL SIGN DISTRICT**

Any area designated in the Major Arterial Zoning District on the Official Zoning Map of the Town of Clarence.

#### **MONUMENT SIGN**

A permanent sign of solid construction with dual architecturally complementary pillars or posts supporting a sign/advertisement area between said posts or pillars. (See diagram at the end of the definitions.)

#### **PERMANENT SIGN**

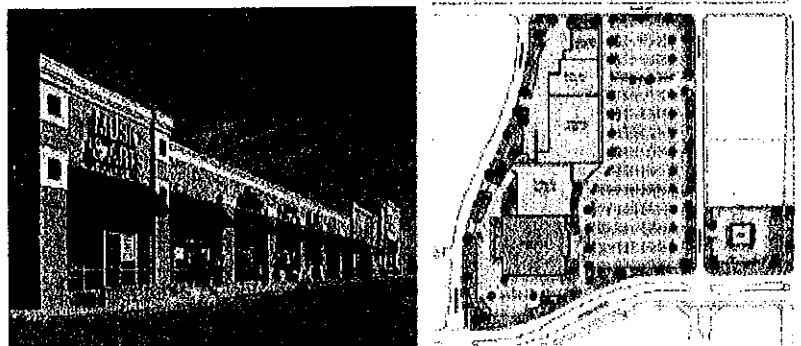
Any sign that is erected for the life of business activities at a given location for at least 60 days.

#### **PERMITTED BUILDING**

Any building which has received a certificate of occupancy from the Building Department for its current use.

#### **PLAZA or SHOPPING MALL**

Two or more retail businesses and/or commercial operations having one or more common walls or utilizing the same parking area or areas, accessways or outdoor lighting systems.



**POLE SIGN**

Any sign that is attached to a single pole or similar structure that conforms with the construction and maintenance section of this chapter. (See diagram at the end of the definitions.)

**PORTABLE SIGN**

Any sign that is not permanently attached to a structure or the ground and can be moved with relative ease.

**PRIMARY SIGN**

Any sign related to a business or activity conducted or a commodity or service sold or offered for sale upon the premises where the sign is located. The primary sign shall be the most predominantly featured for advertising purposes. Only one primary sign per business shall be allowed to be placed on any permitted building.

**RIGHT-OF-WAY (ROW)**

Any state-, county-, or Town-owned land for the purposes of public transportation.

**SECONDARY SIGN**

Any sign related to a business or activity conducted or a commodity or service sold or offered for sale upon the premises where the sign is located. The secondary sign shall be subordinate to the primary sign and shall be located at the side or rear of the building on site. Secondary signs shall only be allowed in instances where a second side of a permitted building faces a public parking lot, street, highway, or accessway. Only one secondary sign is allowed per business that has a public parking lot, street, highway or accessway.

**SIGN**

Any material, structure or device, or part thereof, composed of lettered, painted or pictorial information which, when used and located out-of-doors, displays an announcement, notice, directional matter or a name and which is either permanent, temporary, mobile or portable; includes sign frames, illuminated signs, projecting or ground signs and any illustration or insignia used to advertise or promote the interests of any person, activity or business when the same is placed in view of the public.

**SIGN REVIEW BOARD**

The agency designated by the Town Board to review and approve sign permit applications. The Sign Review Board shall be three Planning Board members, consisting of the Planning Board Chairperson (or Vice Chairperson in his or her absence) and two other Planning Board members.

**SIGN STRUCTURE**

Any part of a sign that does not specifically advertise but may act as a frame, support, guy, brace, pole, or similar structure.

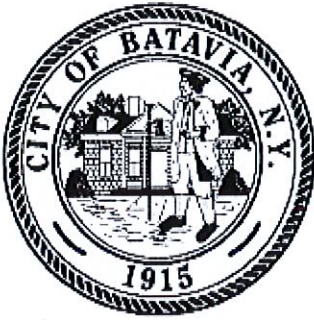
**SPECIAL EVENT**

Community-wide events not otherwise associated with a commercial entity. Such activities shall include, but not be limited to, craft fairs, trade shows, circus or carnival events, holiday or seasonal events, parades, demonstrations and other similar community-wide attractions/events.


**TEMPORARY SIGN**

Any sign that is erected for a time period not to exceed 30 days and that announces a special event or sale.





# City of Batavia

To: Honorable Planning and Development Committee (PDC)  
From: Jason Molino, City Manager   
Date: February 16, 2016  
Subject: Digital Sign Code Referral

At the February 9, 2016 City Council meeting Council passed Resolution #16-2016 requesting:

*“that the City Planning and Development Committee to review § 190-43. Signs, of the Batavia Municipal Code, in particular, to address digital technology and other common provisions related to electronic and digital signage, to include but not limited to definitions, zoning districts, placement and orientation, sign area, illumination, message duration and transition not to exceed once every ten seconds and make a recommendation to the City Council for consideration.”*

The attached information is being provided to the PDC for review prior to the next regular meeting in March. Attached, please find a copy of the City’s sign code, along with supporting documents from the American Planning Association, Dutchess County Planning Federation and New York Conference of Mayors regarding technology and sign codes.

Also, the Genesee County Planning Department has offered support and assistance to the City PDC regarding the review of electronic and digital signage.

I will be present at the March meeting, and future meetings, to assist the PDC with reviewing the code and provide any additional information for consideration.

Should you have any questions please do not hesitate to contact me.



**#16-2016**

**A RESOLUTION REFERRING THE INCLUSION OF DIGITAL TECHNOLOGY FOR  
SIGNS IN THE BATAVIA MUNICIPAL CODE TO THE PLANNING AND  
DEVELOPMENT COMMITTEE**

**WHEREAS**, the City Council is desirous of reviewing the City's municipal zoning code to address the use of digital display signs in response to inquiries from sign owners to install new signs that use new technology; and

**WHEREAS**, § 190-43 of the Batavia Municipal Code currently prohibits digital display signs and all signs illuminated by or contain flashing, intermittent, rotating or moving lights, except to show time and temperature; and

**WHEREAS**, under the City Charter § 13-3 the City Planning and Development Committee shall have such powers and duties to serve in an advisory capacity and provide such advice as to assist the City Council in developing a strategy that interprets, plans and leads in the implementation of land use matters relating to public and private development within the City of Batavia; and

**WHEREAS**, General City Law Section 27 provides City Council with the authority to refer matters the Planning and Development Committee requesting reviews and recommendations regarding planning and development within the City of Batavia; and

**NOW THEREFORE, BE IT RESOLVED**, that the City Council of the City of Batavia hereby requests that the City Planning and Development Committee to review § 190-43. Signs, of the Batavia Municipal Code, in particular, to address digital technology and other common provisions related to electronic and digital signage, to include but not limited to definitions, zoning districts, placement and orientation, sign area, illumination, message duration and transition not to exceed once every ten seconds and make a recommendation to the City Council for consideration.

**Seconded by Councilperson  
and on roll call**

City of Batavia, NY  
Tuesday, February 16, 2016

## Chapter 190. Zoning

### Article IX. Supplementary Regulations

#### § 190-43. Signs.

[Amended 11-25-1996]

- A. Statement of purpose. The purpose of this section is to promote the public health, safety and welfare of the community by regulating the placement and size of outdoor signs and advertising displays. It is intended to protect all property values by ensuring that individual signs do not detract from the overall appearance and safety of the community.
- B. Definitions. See definitions in § 190-3.
- C. Permit required. It is unlawful for any person to erect, enlarge, relocate or change the copy of any sign other than those identified as exempt in this section, without first obtaining a sign permit and paying the fee therefor as provided in this section. Routine maintenance of existing signs, not involving erection, enlargement, relocation or change of copy, shall not require a permit.
- D. Application for permit. Application shall be made in writing to the Department of Community Development on forms prescribed and provided by the City of Batavia and shall contain the following information:

[Amended 12-10-2001]

- (1) Name address and telephone number of applicant and property owner.
- (2) Location of building, structure or land upon which the sign now exists or is to be erected.
  - (a) If a new sign is to be erected, elevation and plan drawings should be included. A clear description of the placement and appearance of the proposed sign should include the following:
    - [1] Location on the premises, specifically, its position in relation to adjacent buildings, structures and property lines.
    - [2] The method of illumination, and position of lighting.
    - [3] Graphic design, including symbols, letters, materials, and possible color combinations.
  - (b) If the sign is in compliance, the Department of Community Development shall issue a permit for the proposed or existing sign. On the other hand, the Department of Community Development shall give written notice to the applicant if the sign application has been denied.

- E. Fees. Fees for sign permits, special sign permits and portable sign permits shall be as set by resolution of the City Council.

- F. Permitted signs. All signs shall be allowed that comply with the provisions and conditions set forth in the Chart incorporated and made a part hereof by reference as EXHIBIT A and/or the other provisions of this Section, and all signs not so compliant are specifically prohibited.
- G. Exempt signs. The following signs are considered to be exempt from obtaining a permit, but not exempt from the provisions of this section. Exempt signs of a temporary nature shall not be attached to fences, utility poles or the like and shall not impair traffic visibility. Exempt signs, not in compliance with the provisions of Subsections (1) through (12) below may not continue after the effective date of any amendment of this section.

[Amended 12-10-2001]

- (1) Historical markers, tablets and statues, memorial signs or plaques; names of building and dates of erection when cut into masonry surface or when constructed of bronze, stainless steel or similar material; and emblems installed by governmental agencies, religious or nonprofit organizations not exceeding six square feet.
- (2) Flags and insignia of any government, except when displayed in connection with commercial promotion.
- (3) On-premises directional signs for the convenience of the general public, identifying parking areas, fire zones, entrances and exits and similar signs, not exceeding four square feet per face and four feet in height.
- (4) Nonilluminated warning, private drive, posted or no trespassing signs, not exceeding two square feet per face.
  - (a) "Warning," "private drive," "posted" or "no trespassing" signs shall not be in excess of four feet in height and shall not be in excess of two square foot per face. A maximum of one posted, "warning" or "no trespassing" sign shall be permitted to be placed along the perimeter of property lines at intervals not less than 100 feet apart. This restriction will not apply to properties owned by public entities or utility companies.
- (5) Number and nameplates identifying residents, mounted on the house, apartment or mailbox, not exceeding one square foot in area.
- (6) Lawn signs identifying residents, not exceeding two square foot per side. Such signs are not to be illuminated except by a light which is an integral part of a lamppost if used as a support, with no advertising message thereon.
- (7) Private-owner merchandise sale signs for garage sales and auctions, not exceeding four square feet for a period not exceeding seven days.
- (8) "For Sale" and "For Rent" real estate signs. Maximum size in residential districts shall not exceed six square feet per side; maximum size in commercial or industrial zones shall not exceed 32 square feet per side.
- (9) Temporary signs (window, posters, directional) not exceeding 60 days.
- (10) Holiday decorations, including lighting.
- (11) Signs identifying contractors, engineers or architects working on a structure or job site not to exceed 12 square feet in residential districts or 32 square feet in commercial or industrial districts.
- (12) Political posters not exceeding six square feet in residential zones and 20 square feet in commercial or industrial zones.

- H. Prohibited signs.

- (1) No off-premises signs shall be allowed other than those allowed under the exempt sign section (Subsection G).
  - (2) No sign shall be illuminated by or contain flashing, intermittent, rotating or moving lights, except to show time and temperature.
  - (3) No sign shall impair or cause confusion of vehicular or pedestrian traffic, in its design color or placement.
  - (4) No sign shall be placed upon the roof of any building.
  - (5) No sign shall consist of moving, revolving or fluttering devices such as ribbons and streamers.
  - (6) No advertising message shall be extended over more than one sign placed along a street or highway.
  - (7) No signs shall be attached to utility poles in all zones of the City of Batavia. No permanent, temporary or exempt signs shall be attached, placed, painted or drawn upon fences, trees or man-made or natural features, including permanent, temporary or exempt signs. These restrictions shall not apply to properties owned by public agencies or utility companies.  
[Added 12-10-2001]
  - (8) No signs shall be placed anywhere within the City or state rights-of-way without the permission of the City Engineer, excepting projecting signs in commercial, industrial and planned development districts not exceeding six square feet and sandwich board signs not exceeding 20 square feet in commercial industrial and planned development districts.  
[Added 12-10-2001]
- I. Special event signs. A sign used to advertise or promote a community-wide event which is not for the purpose of advertising products, events, or services at an individual business or location. Sponsors of the special event may be included upon the sign. All signs for special events, except as otherwise provided by this section, shall be permitted for period not exceeding six weeks prior to the activity or event nor exceeding four days after the activity or event. Such signs shall be attached or secured to a building or a structure and shall not be attached to fences, trees, utility poles, rocks or other facets of the natural landscape, nor be placed in a position that will obstruct or impair traffic.
- J. Portable signs/sandwich board signs.
- (1) Portable signs, if powered by electric, must meet all the construction standards of the New York State Uniform Fire Prevention and Building Code.
  - (2) Sandwich board signs do not require a permit but must be taken inside the place of business at the close of business and must not obstruct pedestrian traffic.
  - (3) Portable sign size shall not exceed 32 square feet and shall be limited to five feet above grade.
  - (4) Sandwich board signs shall not exceed 20 square feet and shall be limited to five feet above grade.
  - (5) Portable signs must be removed after 60 days. Another portable sign permit can be applied for 30 days after removal of a portable sign.  
[Added 12-10-2001]
- K. Freestanding signs in mall areas, shopping center plazas and industrial parks. No individual freestanding signs shall be allowed in a shopping center plaza, mall area or an industrial park. A freestanding directory sign, including all businesses in the plaza or industrial park, shall be allowed.
- L. Nonconforming signs. Any sign or other advertising structure lawfully in existence on the date this amendment to this section is enacted or the effective date of any amendment to this section may

continue. However, a nonconforming sign shall not be enlarged or replaced by another nonconforming sign and shall be maintained.

- M. Removal of signs. Any sign, existing on or after the effective date of this amendment to this section, which no longer advertises an existing business conducted or product sold on the premises upon which such a sign is located, or is unsafe shall be removed within 30 days upon written notice from the Department of Community Development.  
[Amended 12-10-2001]
- N. Maintenance. All signs shall be maintained in such a condition so as to not constitute a danger to the public health, safety or welfare. The Department of Community Development shall inspect and have the authority to order the painting, repair and alteration or removal of signs which become dilapidated or are abandoned, or which constitute physical hazard to the public safety.  
[Amended 12-10-2001]
- O. Business signs. Any sign that advertises a place of business shall have no more than 25% of its copy advertise a product that may be purchased within the premises.
- P. Barber poles. Barber poles shall not be permitted in residential districts. Such signs shall be allowed to rotate and have a maximum size of 18 inches in height. Projection of barber pole signs from the building shall not exceed nine inches and the cylinder size shall not be greater than four inches by 10 inches. The Planning and Development Committee shall approve such signs.  
[Amended 12-10-2001]
- Q. Construction standards. All signs shall be constructed and installed in conformance with the New York State Uniform Fire Prevention and Building Code. Separate certification may be required for illuminated signs indicating compliance with the National Electrical Code (NFPA 70).
- (1) Wall signs shall not extend beyond the ends or over the top of the walls to which attached and shall not extend above the level of the second floor of the building.
  - (2) Wall signs shall not extend more than 15 inches from the face of the buildings to which they are attached.
  - (3) Freestanding signs shall not extend over the public right-of-way.
  - (4) The Department of Community Development shall have the option to require a review by the City Engineer. If the City Engineer finds the mounting technique questionable, a professional review by a New York State registered engineer would be required.  
[Amended 12-10-2001]
- R. Appeal procedures. Any person aggrieved by a decision of the Department of Community Development relative to the provision of this section may appeal such decision by applying for a special sign permit. The Department of Community Development shall refer the application to the Planning and Development Committee for approval or denial.  
[Amended 12-10-2001]
- S. In granting a special sign permit the Planning and Development Committee must determine that the sign is in harmony with the general purposes of this section, does not harm the neighborhood character, and is not detrimental to public health, safety or welfare. The Planning and Development Committee should also consider the benefit to the applicant versus the detriment to the community in granting the special use permit.<sup>[1]</sup>  
[Amended 12-10-2001]

[1] Editor's Note: **Exhibit A**, which immediately followed this section, is included at the end of this chapter.



# ZONING

## CITY OF BATAVIA EXHIBIT A [Amended 12-10-2001]

Zones	R-1	R-2	R-3	C-1	C-2	C-3	I-1, P1	I-2	L	P2	P3
<b>FREESTANDING SIGNS</b>											
Permitted	NP	NP	NP	P	P	NP	P	P	P	P	P
Maximum Number Permitted				1 per lot, plus 1 additional sign per 100 feet of frontage	1 per lot, plus 1 additional sign per 200 feet of frontage	NP	1 per lot, plus 1 additional sign per 200 feet of frontage	1 per lot, plus 1 additional sign per 200 feet of frontage	1 per lot	1 per lot	1 per lot
Maximum area				1.5 sq. ft.	40 sq. ft.		40 sq. ft.	40 sq. ft.	6 sq. ft.	15 sq. ft.	6 sq. ft.
Setback				5 ft.	5 ft.		5 ft.	5 ft.	10 ft.	5 ft.	5 ft.
Maximum Height				12 ft.	25 ft.		18 ft.	18 ft.	12 ft.	12 ft.	6 ft.
Internal Lighting				P	P		P	P	NP	P	NP
External Lighting				P	P		P	P	P	P	P
Price Pod											
<b>WALL SIGNS</b>											
Permitted	P	P	P	P	P	P	P	P		P	P
Maximum Number Permitted	1 per dwelling	1 per dwelling	1 per dwelling	1 for each street frontage or 1 per business	1 for each street frontage or 1 per business	1 for each street frontage of 1 per business	1 for each street frontage or 1 per business	1 per business		1 per business	1 per business
Size Allocation (max. sq. ft. or max. % of wall area)	2 sq. ft.	2 sq. ft.	2 sq. ft.	10%	15%	15%	15%	15%		15%	10%
Internal Lighting	NP	NP	NP	P	P	P	P	P		P	P
External Lighting	NP	NP	NP	P	P	P	P	P		P	P
<b>PROJECTING SIGNS</b>											
Permitted	NP	NP	NP	P	P	P	P	P	NP	P	P
Maximum Number Permitted				1 per business if no free-standing signs	1 per business if no free-standing signs	1 per business if no free-standing signs	1 per business if no free-standing signs	1 per business if no free-standing signs		1 per business if no free-standing signs	1 per business if no free-standing signs
Maximum Area				6 sq. ft.	6 sq. ft.	6 sq. ft.	6 sq. ft.	6 sq. ft.		6 sq. ft.	6 sq. ft.
Internal Lighting				NP	NP	NP	NP	NP		NP	NP
External Lighting				P	P	P	P	P		P	P

# BATAVIA CODE

## CITY OF BATAVIA EXHIBIT A (cont'd)

Zones	R-1	R-2	R-3	C-1	C-2	C-3	I-1,PI	I-2	L	P2	P3
Minimum Height				8 ft.	8 ft.	8 ft.	8 ft.	8 ft.		8 ft.	8 ft.
MARQUEE SIGNS											
Permitted	NP	NP	NP	NP	P	P	NP	NP	NP	NP	NP
Maximum Number permitted					1 per business if no wall sign is directed to the same street frontage	1 per business if no wall sign is directed to the same street frontage					
Size Allocation (max. % of wall area)					40%	40%					
AWNING/CANOPY SIGNS											
Permitted	NP	NP	NP	P	P	P	P	P	NP	P	P
Maximum Number Permitted				1 per business	1 per business	1 per business	1 per business	1 per business		1 per business	1 per business
Size Allocation (max % of vertical canopy area)				15%	25%	20%	20%	20%		20%	20%
Internal Lighting				NP	P	P	P	P		P	P
Maximum height				7 ft.	7 ft.	7 ft.	7 ft.	7 ft.		7 ft.	7 ft.
WINDOW/OUTDOOR SIGNS											
Permitted	NP	NP	NP	P	P	P	P	P	NP	P	P
Size Allocation (Max. % of window coverage, total window space)				25%	25%	25%	25%	25%		25%	25%
Internal Lighting				P	P	P	P	P		P	P
SUSPENDED SIGNS											
Permitted	P	P	P	P	P	P	P	P		P	P
Max # Permitted	1 per entrance	1 per entrance	1 per entrance	1 per entrance	1 per entrance	1 per entrance	1 per entrance	1 per entrance	NP	1 per entrance	1 per entrance
Maximum Area	2 sq. ft.	2 sq. ft.	2 sq. ft.	6 sq. ft.	6 sq. ft.	6 sq. ft.	6 sq. ft.	6 sq. ft.		6 sq. ft.	6 sq. ft.

# ZONINGPRACTICE

April 2008

AMERICAN PLANNING ASSOCIATION



➔ ISSUE NUMBER FOUR

## PRACTICE SMART SIGN CODES

A large billboard advertisement for Zoning Practice magazine. The billboard is mounted on a building facade and features a background of a grid of small, dark squares. The text 'Digital Signs: Context Matters' is prominently displayed in a bold, white, sans-serif font. Below the text, there is a small, stylized graphic of a building. The billboard is framed by a metal structure, and the building it is mounted on has a modern, industrial look with visible structural elements and a tall, thin tower in the background.

**Digital  
Signs:  
Context Matters**

# Looking Ahead: Regulating Digital Signs and Billboards

By Marya Morris, AICP

Cities and counties have always been challenged to keep their sign ordinances updated to address the latest in sign types and technologies.

Each new sign type that has come into use—for example, backlit awnings and electronic message centers—has prompted cities to amend their regulations in response to or in anticipation of an application to install such a sign.

The advent in the last several years of signs using digital video displays represents the latest, and perhaps the most compelling, challenge to cities trying to keep pace with signage technology. More so than any other type of sign technology that has come into use in the last 40 to 50 years, digital video displays on both off-premise (i.e., billboards) and on-premise signs raise very significant traffic safety considerations.

This issue of *Zoning Practice* covers current trends in the use of digital technology on off-premise billboards and on-premise signs. It recaps the latest research on the effects of

this type of changeable signage on traffic safety. It also discusses the use of digital video sign technology as a component of on-premise signs, including a list of ordinance provisions that municipalities should consider if they are going to permit this type of sign to be used. I use the phrase digital display or video display, but these devices are also referred to as LEDs or, collectively, as “dynamic signs.”

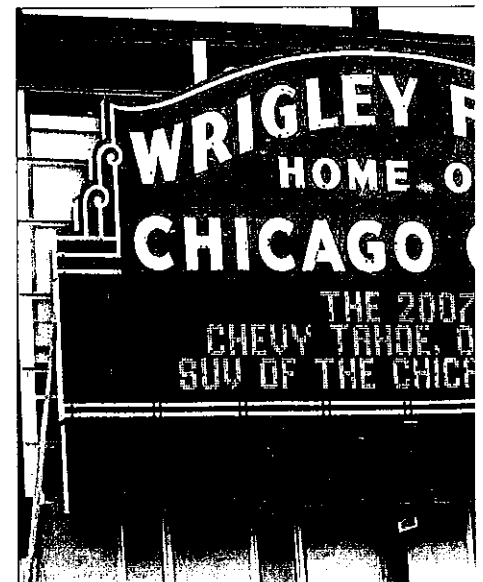
## BRIGHT BILLBOARDS

While digital technology is growing in use for on-premise signs, it is the proliferation of digital billboards that has triggered cities and counties to revise their sign ordinances to address this new type of display. Of the approximately half-million billboards currently lining U.S. roadways, only about 500 of them are digital. However, the industry's trade

group, the Outdoor Advertising Association of America, expects that number to grow by several hundred each year in the coming years. In 2008, digital billboards represent for the sign industry what the Comstock Lode must have represented for silver miners in 1858—seemingly limitless riches. The technology allows companies to rent a single billboard—or pole—to multiple advertisers. A billboard company in San Antonio, for example, estimated that annual revenue from one billboard that had been converted from a static image to a changeable digital image would increase tenfold, from \$300,000 to \$3 million just one year after it went digital.

It is very difficult for cities and counties to get billboards removed once they are in place. Billboard companies have made a concerted effort to get state legislation passed that limits or precludes the ability of local

ⓐ A typology of moving-image signs. The variable message sign at the right uses a motor to switch among three different static images. Next, the electronic messageboard at Wrigley Field in Chicago displays scrolling text and simple images. The on-premise digital sign, pictured third from left, looks like a giant television screen, displaying a steady stream of video images. On the far right, this digital billboard cycles through a number of static video images at regularly timed intervals.



## ASK THE AUTHOR JOIN US ONLINE!

Go online from May 12 to 23 to participate in our "Ask the Author" forum, an interactive feature of *Zoning Practice*. Marya Morris, AICP, will be available to answer questions about this article. Go to the APA website at [www.planning.org](http://www.planning.org) and follow the links to the Ask the Author section. From there, just submit your questions about the article using the e-mail link. The author will reply, and *Zoning Practice* will post the answers cumulatively on the website for the benefit of all subscribers. This feature will be available for selected issues of *Zoning Practice* at announced times. After each online discussion is closed, the answers will be saved in an online archive available through the APA *Zoning Practice* web pages.

### About the Author

Marya Morris is a senior associate at Duncan Associates, a planning consulting firm specializing in land development regulations and infrastructure finance. [www.duncanassociates.com](http://www.duncanassociates.com)

governments to require removal of existing billboards through amortization. The only option left is paying cash compensation. The federal Highway Beautification Act, which was modified many years ago under industry pressure, also prohibits amortization and requires cash compensation for billboard removal.

With the amortization option unavailable, some cities and counties have struck deals with billboard companies requiring them to remove two boards for every new one they install. Other jurisdictions have established simple no-net-increase policies. Although many communities have had success with these approaches, in the

last few years the industry has devised a litigious tactic to secure new billboard permits. Billboard companies challenge the constitutionality of a sign provision, and when the ordinance is in legal limbo, they rush in to secure billboard permits.

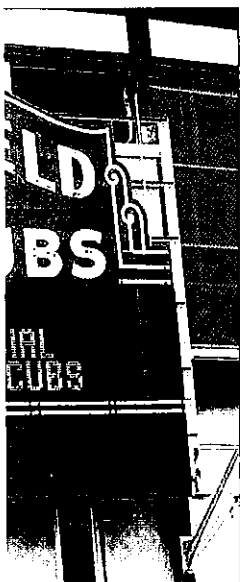
The American Planning Association has joined Scenic America, the International Municipal Lawyers Association, and others in filing amicus curiae briefs in many of these cases to show the courts the industry's pattern of conduct and deliberate strategy to circumvent local sign codes. A review in January 2006 found 113 such "shakedown" sign cases filed in the federal

courts since 1997, and eight filed in state courts in the same time period. For more information visit the APA Amicus Curiae webpage at [www.planning.org/amicusbriefs](http://www.planning.org/amicusbriefs).

The emergence of the highly lucrative digital billboards has also, however, given local governments some leverage to at least reduce the total number of billboards. Many of the applications cities are seeing for the video billboards are requests by companies to replace the static type with the new video displays in key locations. The added revenue potential from a digital format has proved to be enough of an incentive to get companies to agree to remove multiple static billboards in exchange for permits to install video display in certain locations.

In June 2007, Minnetonka, Minnesota, in the Twin Cities area, reached a settlement with Clear Channel in which the company agreed to

The emergence of the highly lucrative digital billboards has given local governments some leverage to at least reduce the total number of billboards.



Photos by David Morley



remove 15 of the 30 conventional static image billboards in the city in exchange for permission to install its digital billboards. The city will permit the company to install no more than eight dynamic signs at four to six locations.

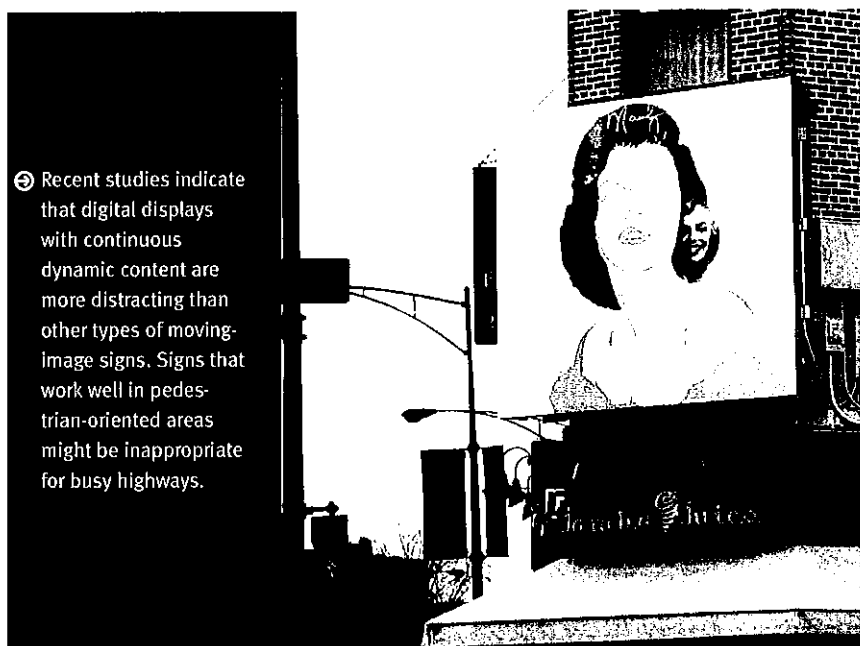
The City of San Antonio amended its sign and billboard ordinance in December 2007 to require the removal of up to four static billboards in exchange for permission to install one digital display billboard in their place. Prior to that amendment the city had no provisions for digital sign technology, but it did already have a two-for-one replacement requirement. The city has a developed a sliding scale that determines the number of billboards required to be removed in exchange for a single digital billboard. According to the scale, the number of digital signs permitted is determined by the total square footage of static billboard faces removed. Therefore, a billboard company will be required to demolish as few as three and as many as 19 billboards to get one new digital billboard structure placed or an existing static billboard face replaced.

#### IT DEPENDS ON YOUR DEFINITION OF 'DISTRACTING'

Digital signs are brighter and more distracting than any other type of sign. Other attention-grabbers, like strobe lights, mirrors, searchlights, and signs with moving parts, are typically prohibited (or allowed under very narrow circumstances) by even the most hands-off jurisdictions. The high visual impact of digital signs has prompted highway and traffic safety experts to try to quantify how drivers respond to such distractions. This research, which is summarized below, has been instrumental in helping cities craft new sign ordinances that address the specific characteristics of such signs, including how often the messages or images change, the degree of brightness, and their placement relative to residential areas.

The Federal Highway Administration is currently conducting a study on driver distraction and the safety or impact of new sign technologies on driver attention. The initial phase, which is slated to be completed by June 2008, will identify and evaluate the most significant issues and develop research methods needed to secure definitive results. The FHWA anticipates the second phase of the research study and final report will be completed in the latter part of calendar year 2009. Also, the Transportation Research Board (a branch of the National Science Foundation) has formed a subcommittee to examine research needs on electronic signs.

⊕ Recent studies indicate that digital displays with continuous dynamic content are more distracting than other types of moving-image signs. Signs that work well in pedestrian-oriented areas might be inappropriate for busy highways.



David Morley

Until a couple of years ago, one of the only studies on the effects of billboards and traffic safety was a 1980 survey of existing research on the subject prepared for the Federal Highway Administration (Wachtel and Netherton 1980). It did not, however, provide any concrete answers. The study noted "attempts to quantify the impact of roadside advertising on traffic safety

have not yielded conclusive results." The authors found that courts typically rule on the side of disallowing billboards because of the "readily understood logic that a driver cannot be expected to give full attention to his driving tasks when he is reading a billboard."

A 2006 study by the National Highway Traffic Safety Administration that focused primarily on driver distractions inside the car (i.e., phone use, eating, and changing the radio station) concluded that any distraction of more than two seconds is a potential cause of crashes and near crashes.

A 2004 study at the University of Toronto found that drivers make twice as many glances at active (i.e., video signs) than they do at passive (i.e., static) signs. All three of the moving sign types that were studied (video, scrolling text, and trivision) attracted more than twice as many glances as static signs. They also found that the drivers' glances at the active signs were longer in duration; 88 percent of glances were at least 0.75 seconds long. A duration of 0.75 seconds or longer is important because that is the amount of time required for a driver to react to a vehicle that is slowing down ahead. Video and scrolling text signs received the longest average maximum glance duration.

An earlier study also at the University of Toronto that was designed to determine whether video billboards distract drivers' attention from traffic signals found that drivers made roughly the same number of glances at traffic signals and street signs with and without full-motion video

#### ORDINANCES AND ZONING REPORTS

- ◆ City of Minnetonka, Minnesota. 2007. Staff report to city council recommending adoption of an ordinance regulating digital signs. June 25. Available at [www.eminnetonka.com/community\\_development/planning/show\\_project.cfm?link\\_id=Dynamic\\_Signs\\_Ordinance&cat\\_link\\_id=Planning](http://www.eminnetonka.com/community_development/planning/show_project.cfm?link_id=Dynamic_Signs_Ordinance&cat_link_id=Planning).
- ◆ City of San Antonio City Code, Chapter 28. Amendment Adding Provisions for Digital Signs. Last revised December 2, 2007. Available at <http://cpay.sanantonio.gov/dsddocumentcentral/upload/SIGNsecDRAFT.pdf>.
- ◆ City of Seattle, Land Use Code, Section 23.55.005 Signs, Video Display Methods. Last revised 2004. <http://clerk.ci.seattle.wa.us/~public/clrkhome.htm>.

billboards present. This may be interpreted to mean that while electronic billboards may be distracting, they do not appear to distract drivers from noticing traffic signs. This study also found that video signs entering the driver's line of sight directly in front of the vehicle (e.g., when the sign is situated at a curve) are very distracting.

A 2005 study by the Texas Transportation Institute of driver comprehension of sign messages that flash or change concluded that such signs are more distracting, less comprehensible, and require more reading time than do static images. While this research did not evaluate advertising-related signs, it does demonstrate that flashing signs require more of the driver's time and attention to comprehend the message. In the case of electronic billboards, this suggests that billboards that flash may require more time and attention to read than static ones.

The City of Seattle commissioned a report in 2001 to examine the relationship between

## Sign messages that flash or change are more distracting, less comprehensible, and require more reading time than do static images.

The Seattle study also found that drivers expend about 80 percent of their attention on driving-related tasks, leaving 20 percent of their attention for nonessential tasks, including reading signs. The report recommended the city use a "10-second rule" as the maximum display time for a video message.

### APPROACHES TO REGULATING DIGITAL DISPLAY SIGNS

Most cities and counties that have amended their sign ordinances to address the use of digital display on on-premise signs and billboards have done so in response to an application by a sign owner to install a new sign that uses the

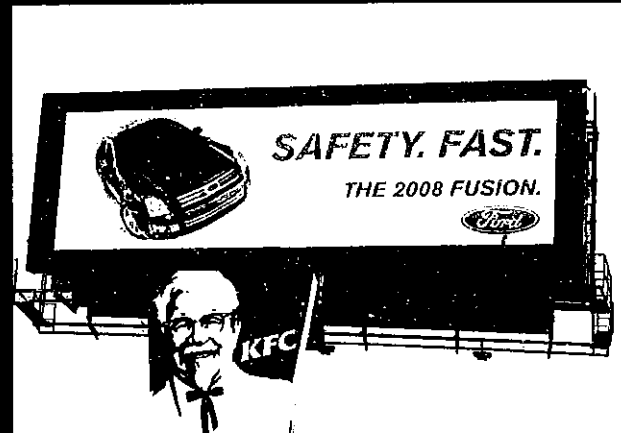
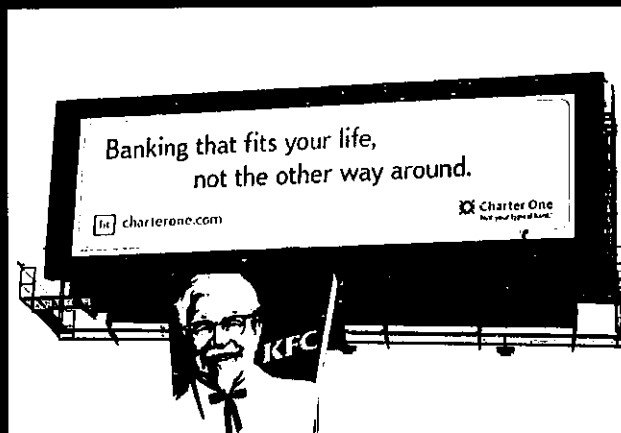
ital video display signs while still permitting electronic message centers.

3) A relatively small number of sign ordinances have been amended to allow video display signs under narrowly prescribed circumstances and with numerous conditions.

For jurisdictions that want or need to allow them, the following section explains additional considerations that should be added to a sign ordinance to effectively regulate digital display signs.

**Sign type.** The ordinance must indicate whether the digital display can be used on off-premise billboards only, on on-premise signs only, or on both sign types.

Billboards with changeable digital images allow billboard companies to dramatically increase their revenue by renting the same sign face to multiple advertisers.



David Morley

electronic signs with moving/flashing images and driver distraction. The study was conducted by Jerry Wachtel, who in 1980 had conducted the first-ever study on signs and traffic safety for the Federal Highway Administration.

The Seattle report concluded that electronic signs with moving images will distract drivers for longer durations (or intervals) than do electronic signs with no movement. The study also noted that the expanded content of a dynamic sign also contributes to extended distraction from driving. Specifically it found that signs that use two or more frames to tell a story are very distracting because drivers are involuntarily compelled to watch the story through to its conclusion.

technology or in response to a sign owner having replaced an existing sign face with a digital display. Some cities, like Minnetonka, were required by a court settlement with a billboard company to allow the technology. Although regulations for digital signs are still relatively new, we can group the regulatory approaches (or lack thereof) into three general categories:

- 1) Most sign ordinances are still silent on the issue of digital video displays, but almost all do regulate electronic message centers and also prohibit or restrict signs that move, flash, strobe, blink, or contain animation.
- 2) A smaller but growing number of sign ordinances contain a complete prohibition on dig-

**Definitions.** The definitions section must be updated to include a detailed definition of digital display signage and the sign's functional characteristics that could have an effect on traffic safety and community aesthetics.

**Zoning districts.** The ordinance should list the districts in which such signs are permitted and where they are prohibited. Such signs are commonly prohibited in neighborhood commercial districts, historic districts, special design districts, and scenic corridors, in close proximity to schools, and in residential districts. On the other end of the spectrum, East Dundee, Illinois, for example, expressly encourages digital video signs in two commercial overlay districts, but only a

## RESOURCES

- ◆ Beljer, D. and A. Smiley. 2005. "Observed Driver Glance Behavior at Roadside Advertising Signs," *Transportation Research Record*.
- ◆ Dudek, C. L. et al. 2005. "Impacts of Using Dynamic Features to Display Messages on Changeable Message Signs," Washington, D.C.: Operations Office of Travel Management: Federal Highway Administration.
- ◆ "Dynamic" Signage: Research Related To Driver Distraction and Ordinance Recommendations. Prepared by SRF Consulting Group, Inc. for the City of Minnetonka, Minnesota. June 7, 2007 ([www.digitalooh.org/digital/pdf/2007-minnetonka\\_digital-srf\\_consulting\\_report06-08-07.pdf](http://www.digitalooh.org/digital/pdf/2007-minnetonka_digital-srf_consulting_report06-08-07.pdf)).
- ◆ "The Impact of Driver Inattention on Near-Crash/Crash Risk: An Analysis Using the 100-Car Naturalistic Driving Study Data." 2006. National Highway Traffic Safety Administration, U.S. Department of Transportation. April.
- ◆ McBride, Sarah. "Seeing the Light: In Billboard War, Digital Signs Spark a Truce." *Wall Street Journal*. February 3, 2007.
- ◆ Smiley, A. et al. 2004. "Impact of Video Advertising on Driver Fixation Patterns." *Transportation Research Record*.
- ◆ *Unsafe at Any Speed: Billboards in the Digital Age*. 2007. Scenic America Issue Alert 2. Available at [www.scenic.org/pdfs/eb.pdf](http://www.scenic.org/pdfs/eb.pdf). The Scenic America website has a number of excellent resources for planners and citizens interested in regulating digital signage, including a downloadable PowerPoint presentation, research summaries, and model ordinances.
- ◆ Wachtel, J. and R. Netherton. 1980. "Safety and Environmental Design Considerations in the Use of Commercial Electronic Variable-Message Signage." Report No. FHWA-RD-80-051. Washington, D.C.: Federal Highway Administration.

few land uses—new car dealerships, multi-tenant retail centers, and amusement establishments—are permitted to have them.

**Placement and orientation.** A minimum spacing requirement between signs and residential areas should be considered, as should a provision requiring that the sign face be oriented away from residential areas and other scenic or sensitive areas. The Baker and Wolpert study recommended that dynamic signs be limited or prohibited at intersections, in demanding driving environments, and in places where they obstruct a driver's view. In Seattle, the sign face of on-premise digital signs must not be visible from a street, driveway, or surface parking area, nor may it be visible from a lot that is owned by a different person.

**Sign area.** For on-premise signage, many ordinances include a limit on the percentage of the sign face that can be used for digital display. Thirty percent is common although in some areas, such as entertainment districts, that proportion may be much higher.

**Illumination and brightness.** The ordinance should address the legibility and brightness of a sign both during the day and after dark. During the day the issue is reducing or minimizing glare and maintaining contrast between the sign face and the surrounding area. At night the issues are the degree of brightness and its impact on driver distraction and on light trespass into residential areas. In the study for the City of Minnetonka, researchers noted the challenge posed by this aspect of digital signs: "There is no objective definition of excessive brightness because the appropriate level of brightness depends on the environment within which the sign operates."

**Message duration and transition.** The ordinance must include a minimum duration of time that a single message must be displayed. Typically this is expressed in terms of seconds. The San Antonio billboard ordinance requires each image to remain static for at least eight seconds and that a change of image be accomplished within one second or less.

The city's ordinance requires any portion of the message that uses a video display method to have a minimum duration of two seconds and a maximum duration of five seconds. Further, it requires a 20-second "pause" in which a still image or blank screen is showed following every message that is shown on a video display.

**Public service announcements.** In exchange for permission to use digital displays, owners of billboards in Minnesota and San

Antonio have agreed to display emergency information such as Amber Alerts and emergency evacuation information. Such a requirement can be included in an ordinance or imposed as a condition of approval.

Whether undertaking a comprehensive revision of a sign ordinance or more limited, strategic amendments to address digital technology, there are other common provisions related to electronic and digital signage that should be revisited as part of the rewrite. At the top of the list would be updating standards for conventional electronic message centers to reflect the latest research regarding driver distraction and message duration. Also, the boilerplate provisions common to so many ordinances that prohibit signs that flash, are animated, or simulate motion should also be rethought. These provisions could conceivably be used to prohibit digital displays without additional regulations. The problem is that these characteristics are very rarely defined in the ordinance and remain open to interpretation. Also, whenever new regulations are being considered for digital billboards, jurisdictions should take the opportunity to draft new provisions to address digital technology for on-premise signs as well. And, finally, any time the sign ordinance goes into the shop for repair—whether to address digital signage or to make broader changes—is a good time to remove or revise any provisions that violate content neutrality rules.

## NEWS BRIEFS SMART GROWTH TAKES A HIT IN MARYLAND

By Lora Lucero, AICP

The *Baltimore Sun* hit the nail on the head when it reported on March 12 "[t]he state's highest court declared that Maryland law does not require local governments to stick to their master plans or growth-management policies in making development decisions."

*Trail, et al. v. Terrapin Run, LLC, et al.* presented an important question for the court to address: What link is required between the community's adopted plan and the decision by the Zoning Board of Appeals (ZBA) to grant or deny a request for a special exception? In a 4 to 3 vote, the majority concluded that Article 66B, the state planning law, is permissive in nature and plans are only advisory guides, so a strong link between plans and implementation is not required. The court affirmed the county's

## The majority concluded that the state planning law is permissive in nature and plans are only advisory guides, so a strong link between plans and implementation is not required.

approval of the special exception and determined that the “in harmony with” traditional standard in applications for special exceptions remains the standard, in the absence of specific legislative language to the contrary. The court’s decision is available at [www.planning.org/amicusbriefs/pdf/terrapinrundecision.pdf](http://www.planning.org/amicusbriefs/pdf/terrapinrundecision.pdf).

Terrapin Run, LLC, the developer, proposed to build an “active adult” community of 4,300 homes on 935 partially wooded acres in Allegany County, a rural area of mountainous Western Maryland. The land is primarily zoned District “A” (Agricultural, Forestry, and Mining), with a portion located in District “C” (Conservation). In addition to the homes, the developer proposed to build an equestrian center, a community building, and a 125,000-square-foot shopping center.

The residential density is 4.6 units per acre. A planner who testified at trial indicated that the density of the proposed development would approximate that of Kentlands, in Montgomery County. The initial phase of development would use individual septic tanks, but the project would eventually require its own sewage treatment plant. Significantly, the property is not located in one of Maryland’s priority funding areas.

The zoning ordinance divides Allegany County into urban and nonurban areas. “A” and “C” are classified as nonurban zoning districts. The zoning ordinance provides:

“Non-urban districts are designed to accommodate a number of non-urban land uses including agriculture, forestry, mining, extractive industries, wildlife habitat, outdoor recreation, and communication, transmission and transportation services, as well as to protect floodplain areas, steep slope areas, designated wetlands and habitat areas, and Public Supply Watersheds from intense urban development.” Allegany County Code, Chapter 141, Part 4 (Zoning) §141-5(B) (emphasis supplied).

Opponents to the project argued that the ZBA erred when it found that strict conformity with the plan was not required and that the proposed development would be “in harmony with” the Allegany County Comprehensive Plan

because Maryland Code (Article 66, § 1(k)) requires a special exception to be “in conformity with” the plan.

Gov. Martin O’Malley’s administration argued in its amicus brief that counties and municipalities are required to conform to the seven broad “visions” for growth in Maryland as listed below:

### § 1.01. Visions

- (1) Development is concentrated in suitable areas.
- (2) Sensitive areas are protected.
- (3) In rural areas, growth is directed to existing population centers and resource areas are protected.
- (4) Stewardship of the Chesapeake Bay and the land is a universal ethic.
- (5) Conservation of resources, including a reduction in resource consumption, is practiced.
- (6) To assure the achievement of items (1) through (5) of this section, economic growth is encouraged and regulatory mechanisms are streamlined.
- (7) Adequate public facilities and infrastructure under the control of the county or municipal corporation are available or planned in areas where growth is to occur.

APA and its Maryland Chapter jointly filed an amicus brief. We argued that “[p]lans are documents that describe public policies that the community intends to implement and not simply a rhetorical expression of the community’s desires.” APA’s position is that (1) the adopted comprehensive plan must be implemented; (2) effective implementation requires that the day-to-day decisions made by local officials be consistent with the adopted comprehensive plan; and (3) the court’s review of whether consistency is achieved should be more searching when local officials are acting in their administrative (quasi-judicial) capacity. APA’s amicus brief is available at [www.planning.org/amicusbriefs/pdf/terrapinrun.pdf](http://www.planning.org/amicusbriefs/pdf/terrapinrun.pdf).

The lengthy majority opinion (52 pages) recounts much of Maryland’s legislative history in statutory reforms. “[T]his case, in one sense is a continuation of legislative battles that began in the early 1990s, where representatives of the

environmental protection and professional land planning interests attempted to establish that the State, or State planners, should exercise greater control than theretofore enjoyed over most aspects of land use decision-making that then reposed in the local jurisdictions” (*Trail, et al. v. Terrapin Run, LLC, et al.*, 2008 WL 638691, p.1). The majority concludes that the “in harmony” standard is synonymous with “in conformity.” However, the three dissenting justices said the majority “sets special exception considerations on a lubricious path” (*Trail, et al. v. Terrapin Run, LLC, et al.*, Minority Opinion, p.13). The statutory amendments made by the legislature in 1970, and subsequent case law, buttresses the argument that a stricter linkage is required between the adopted plan and the grant of a special exception, the minority opined.

Richard Hall, Maryland secretary of planning and past president of the Maryland Chapter of APA, said: “We think this is a time when we need more smart, sustainable growth, not less.” The O’Malley administration is going to study the ruling before deciding whether to advance legislation to reverse the court’s decision.

Lora Lucero, AICP, is editor of *Planning & Environmental Law* and staff liaison to APA’s amicus curiae committee.

Cover concept by Lisa Barton.

Photos: Sign © iStockphoto.com/David McShane; Screen © iStockphoto.com/Alexey Khlobystov

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## ZONING PRACTICE

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# IS YOUR COMMUNITY READY FOR DIGITAL SIGNAGE?

# 4



# Plan On It

A Dutchess County Planning Federation eNewsletter

May 2012

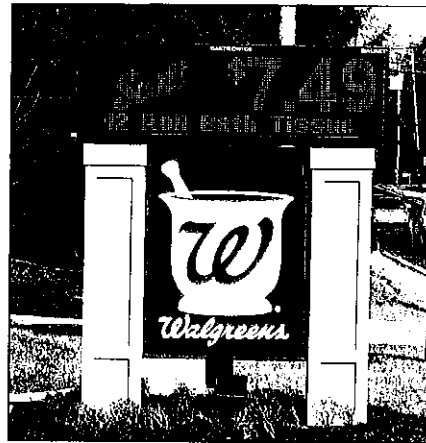
## Regulating Digital Signs *To Glow or Not To Glow*

By Heather LaVarnway, Senior Planner; and Emily Dozier, Planner

A digital sign is one whose message is both delivered and changed electronically, typically through the use of light emitting diodes, or LEDs. Digital signs are highly visible and allow sign owners to change messages easily and quickly. Consequently, they are cropping up in many of our communities. In response, many local municipalities have raised concerns about digital signs and have reached out to the Dutchess County Department of Planning and Development for guidance. Some of the concerns expressed include:

- Potential for driver distraction — bright signs with changing messages are inherently designed to grab attention — what does this mean for driver and pedestrian safety?
- Brightness and legibility — although it may seem counterintuitive, some digital signs are so bright that they are actually more difficult to read than their non-lit counterparts;
- Visual clutter — one might be okay, but what happens if digital signs proliferate?

All local zoning codes prohibit flashing, moving, and intermittent or rotating lights. Some municipalities further prohibit all internally illuminated signs. The Greenway Guide on Signs recommends against moving or glaring signs, billboards, and portable or readerboard signs. Our Department's stance on digital signs is no different — we recommend prohibiting them.



*An example of a digital sign, sometimes called an electronic messaging center.*

Of the 30 municipalities in Dutchess County:

- 50% prohibit internal illumination
- 100% prohibit flashing, animation, intermittent lighting
- 100% prohibit large-scale off-premise signs or new billboards

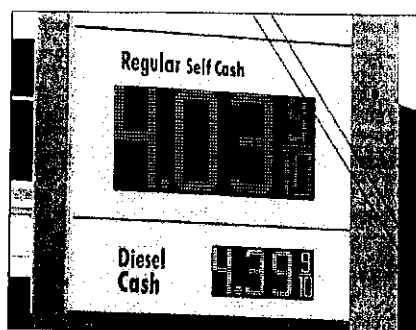
In all cases, local municipalities should be aware of the issues surrounding digital signs, and are encouraged to incorporate appropriate regulatory language into their municipal codes — whether to prohibit digital signs altogether, only permit certain types, or permit them with standards and restrictions.

Below is an overview of the main issues with digital signs, and guidance on how to regulate them. Please note that this overview is not exhaustive, and local municipalities should engage their own planning consultants to conduct additional research and make recommendations appropriate for each municipality. As always, municipalities should seek legal advice on any proposed regulations.

### Types of Digital Signs

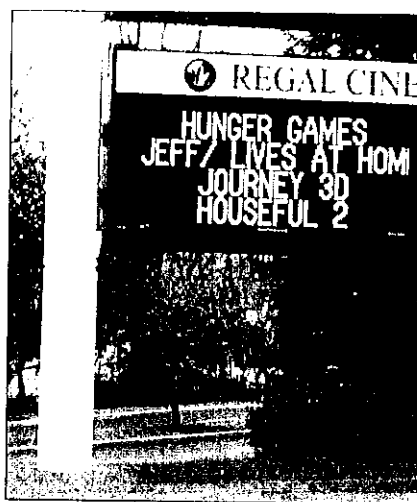
Most digital signs use LED technology, which is more energy efficient than neon or incandescent. Before we delve into the details, it's important to define the three main types of digital signs:

*Digital fuel pricing signs* are gas station signs with electronically changeable fuel prices.



A digital fuel pricing sign.

*Electronic messaging centers* are digital readerboards that display more complex messages and graphics, and may either be static or involve frequent changes to the message (depending on local regulations). Examples include a drugstore sign that electronically advertises various products and sales, a movie theater sign showing what's playing, or a school sign that lists upcoming holidays or sporting events.



An electronic messaging center.

*Digital billboards* are large, off-premises signs that utilize digital messaging capabilities, have the appearance of a huge movie theater screen, and can be programmed with complicated graphics and frequent message transitions.

### Digital Signs and Driver Distraction — Is It an Issue?

Driving is a complicated task that requires constant processing of information and decision-making. While a singularly causal relationship between digital signs and driver distraction has been subject to conflicting studies, most experts agree that when digital signs are added to the mix, they can contribute to driver distraction and pose a safety concern.

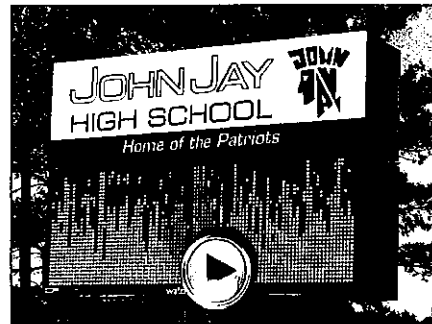
Common sense, too, tells us that seeing a brightly lit sign in the distance will initially draw our attention away from the road, and then reading that sign (which may include several lines of text and/or a changing message) holds our attention — and this can only serve to distract us from the tasks of driving. Research has shown that drivers diverting their attention away from the road for 2 or more seconds make a crash 3.7 times more likely. References that address driver distraction are provided at the end of the article.

## Regulatory Issues to Consider

Some municipalities may choose to simply prohibit digital signs, while others may allow them with certain restrictions. Digital signs, regardless of type, share certain characteristics. Issues to consider, and examples of regulations for these issues, are provided below:

### 1. Transitions and Display Type

- Limit frequent changes to the message, e.g.:
  - \* Consider a minimum display time of 12-24 hours.
- For message transitions, require instantaneous changes without any special effects.
- Prohibit “sequencing” of messages, which is when only a portion of the message is displayed at a time and the viewer must wait through at least one transition to see the entire message, e.g.:
  - \* The messages portrayed shall be complete in themselves without continuation of content to the next image, display, or to another sign.
- Prohibit motion, animation, or video, including any type of special effect that simulates movement including flashing, fading, blinking, dissolving, scrolling, traveling, or changes in intensity.
- Prohibit sound or auditory components.



*Click on the photos above to view videos of electronic messaging centers with changing, moving, and/or flashing images. [These videos are best viewed in QuickTime, which is a free download.]*

### 2. Legibility

- Establish performance measures, such as:
  - \* Digital signs should be clear and easy to read, without excessive text, colors, graphics, or other features that reduce their legibility.
- Encourage use of a limited number of words on the sign, e.g.:
  - \* The text of the message should use the fewest number of words possible to allow the entire copy to be read with minimal distraction [some codes recommend no more than 9 or 12 words per sign].

- Consider a maximum letter size to ensure that the sign is not overpowering, e.g.:
  - \* The character height of numbers or letters contained in an outdoor numeric display cannot exceed x inches [some codes allow 12-15 inches].
- Consider a minimum lettering size to ensure that the letters don't blur together, e.g.:
  - \* Some codes require 7" tall letters where speed limits are 25-34 mph, 9" tall letters where speed limits are 35-44 mph, 12" tall letters where speed limits are 45-54 mph, and 15" tall letters where speed limits are 55+ mph.

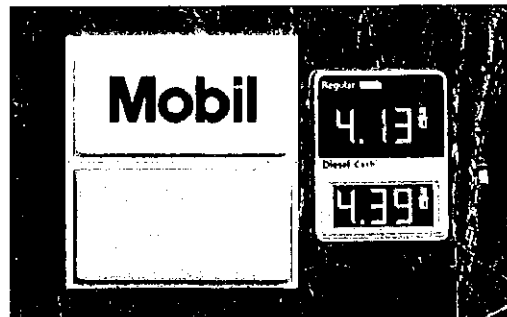
### 3. Brightness/Illumination Level

Just because a sign is lit doesn't necessarily mean it's easier to read. Presenters at a 2011 Northeast States Sign Association industry-sponsored conference stated that LEDs used in digital signs, particularly fuel pricing signs, are often too bright, making them appear blurry to the viewer. This becomes a safety concern, especially near intersections, traffic signals, curb cuts and sidewalks, and near other competing signs:

According to a study done for the City of Minnetonka, MN:

***"Sign industry representatives indicate that excessive brightness can be the result of..... lack of understanding that brightness is not necessarily an advantage, especially if it makes a sign unreadable or unpleasant to look at."***

- Establish purpose statements, such as:
  - \* No sign shall be brighter than is necessary for clear and adequate visibility;
  - \* No sign shall be of such intensity or brilliance as to impair the vision of a motor vehicle driver or to otherwise interfere with the driver's operation of a motor vehicle;
  - \* No sign shall be of such intensity or brilliance that it interferes with the effectiveness of an official traffic-control sign, device or signal.
- Limit brightness, e.g.:
  - \* Signs should be limited to a brightness level that is below the maximum output of the sign [one industry expert suggests digital signs be limited to 60% of maximum output].



Notice the blurry glow around these LED numbers, making it more difficult for some viewers to discern the actual numbers from a distance.

- \* Signs should include light sensors to automatically dim the sign as ambient light levels decrease. Requiring both a dimmer control as well as light sensors may be an optimal solution.
- \* If measuring brightness using footcandles, consider requiring the illuminance of a digital sign to not exceed 0.3 footcandles over the ambient light level for the area.
- \* If measuring brightness using nits, consider requiring digital signs to operate below a maximum illumination of x nits during daylight hours and x nits between dusk to dawn [Some codes specify 5,000–7,000 nits during daylight and 280–500 nits from dusk to dawn, while others address different maximum nit levels for red, green, amber, and full color signs.].
- \* If measuring nits and/or footcandles is deemed cost prohibitive, conformity with brightness regulations could be established by submittal of a manufacturer's certification that the sign is incapable of exceeding the stated limits of the municipal code.

- Require a black screen in case of malfunction, e.g.:
  - \* All digital signs shall contain a default mechanism that will cause the sign to revert immediately to a black screen if the sign malfunctions.

#### 4. Location

- Specify permitted zoning districts and sign types, e.g.:
  - \* Digital displays are allowed only on freestanding signs in certain districts [such as commercial or highway business zones].
- Limit the number of signs per property and visible at one time, e.g.:
  - \* A maximum of one digital display sign is permitted per property;

Brightness refers to the perceived intensity of a source of light. It is subjective and relative to ambient light levels. The same sign viewed at night or in a dimly lit area appears brighter than during the day or in an urban environment with many competing sources of artificial illumination.

There are two objective measures related to brightness: illuminance and luminance:

- **Illuminance** is the amount of light that lands on a surface, such as from a pole light onto the ground, and is measured in *footcandles* or *lux*.
- **Luminance** is the amount of light leaving a surface, such as light given off from an internally illuminated sign. Luminance is measured in candelas per square meter, also referred to as *nits*.

The Illuminating Engineering Society of North America and other organizations agree that luminance (nits) is the best measure for judging relative sign brightness. Determining nit levels may be best achieved by the manufacturer. However, measuring footcandles may be less expensive and easier to do in the field if a municipality is interested in field-checking digital signs.



*This malfunctioning message was displayed for several months before being repaired.*



- \* Only one digital sign face, on either side of the road, shall be visible to a driver at one time.
- Limit the digital portion of a sign, e.g.:
  - \* Only one contiguous digital display area is allowed on a sign face.
- Prohibit vehicle-mounted and other mobile digital signs, except those authorized by the Department of Transportation.

#### 5. Size

- Establish a maximum size and/or percentage of a sign's area that can be digital, e.g.:
  - \* The digital portion of a sign shall have a maximum allowable area of x square feet or x percent of the sign area, whichever is less [some codes allow a maximum size of 40 square feet; some allow 25-50 percent of the sign area to be digital].

#### 6. Permits

- Consider requiring an annual permit and fee, e.g.:
  - \* All digital signs require a permit, along with a fee to defray the municipality's cost to monitor and regulate their operational mode in accordance with the provisions of this chapter. The permit must be renewed annually. [This allows the municipality to adjust standards as needed based on changing technology and evaluation of impacts].
- Require an owner/operator certification, e.g.:
  - \* The initial permit application must include a certification from the owner or operator of the sign stating that the sign shall at all times be operated in accordance with municipal codes and that the owner or operator shall provide proof of such conformance upon request by the municipality.

### Additional Issues for Digital Billboards

According to a [report](#) for the National Cooperative Highway Research Project, "Of those research studies that have addressed driver distraction and roadside billboards, nearly every empirical study undertaken since 1995, including that by Lee et al., and sponsored by the outdoor advertising industry, have demonstrated that there is an adverse relationship between distraction and digital billboards" (p.145).

In addition to the items previously listed in this article, the following specific issues apply to digital billboards:

- Determine whether the conversion of existing paper billboards to digital billboards should be allowed. We strongly suggest that digital billboards are not appropriate for Dutchess County.
- If digital billboards are allowed, these standards should be considered:



Digital billboard. [Photo credit: Associate Press via The Post Standard website, syracuse.com]

- \* Establish a minimum display time (the Federal Highway Administration recommends a minimum of 8 seconds between message transitions). An alternative approach would establish a few minimum display times based on typical road speeds and sight distances to the billboard.
- \* Specify acceptable and unacceptable locations, such as not within a highway interchange, where drivers are contending with a multitude of road signs, or performing complex maneuvers such as merging and changing lanes.

### What is the Future for Digital Signs in Our Communities?

Many communities in Dutchess County already prohibit internally lit signs. However, as the cost of digital signs continues to fall, there may be added pressure from applicants to allow them. While communities can discuss and debate the particular issues presented above, it is worth noting that the marketing materials of digital sign manufacturers often state that these digital signs are designed to be attention-getting. It is difficult to understand how they can be attention-getting for the sign owner and simultaneously not be a safety hazard or visual intrusion for the community. Municipalities must decide which is more important —the benefit to the digital sign owner, or the safety and visual quality of the community. Through local regulations, municipalities have the power and the right to prohibit or permit digital signs as they see fit.

#### More Information

"Dynamic" Signage: Research Related to Driver Distraction and Ordinance Recommendations

Prepared for the City of Minnetonka, MN (June 2007).

Looking Ahead: Regulating Digital Signs and Billboards  
American Planning Association, *Zoning Practice* (April 2008)

Safety Impacts of the Emerging Digital Display Technology for Outdoor Advertising Signs  
National Cooperative Highway Research Program, by Jerry Wachtel (2009)

Scenic America

Greenway Guide E2: Signs

#### Municipal Code Examples

*Disclaimer: The Dutchess County Department of Planning and Development does not necessarily endorse any of these codes, but provides them as examples of the many different ways to address digital signs.*

Minnetonka, MN Sign Ordinance — see Ch. 3, Section 300.30 (Zoning, Signs) — subsection 2 (Definitions), subsection 14 (Dynamic Displays), and subsection 15 (Brightness Standards)

*Continued on next page...*

## Municipal Code Examples

...cont'd

Hamburg, NY Sign Regulations — see §280-234 (Definitions), §280-238 (Illumination), and §280-261 (Business signs in C or M Districts)

Mesa, AZ Sign Regulations — see §11-41-5 (Definitions) and §11-41-8[D-17] (Electronic Message Displays)

Bastrop, TX Sign Ordinance — see §3.20.006 (Definitions), §3.20.011 (Sign Illumination), and §3.20.015-5 (Electronic Message LED)

Eden Prairie, MN Sign Permits — City Code Chapter 11, see §11.70.2 (Definitions), §11.70.3C (General Provisions), §11.70.7 (Dynamic Displays).

Vancouver, WA Land Use and Development Code — see §20.150.040 (General Definitions), and §20.960.060-I (Commercial District Signs).

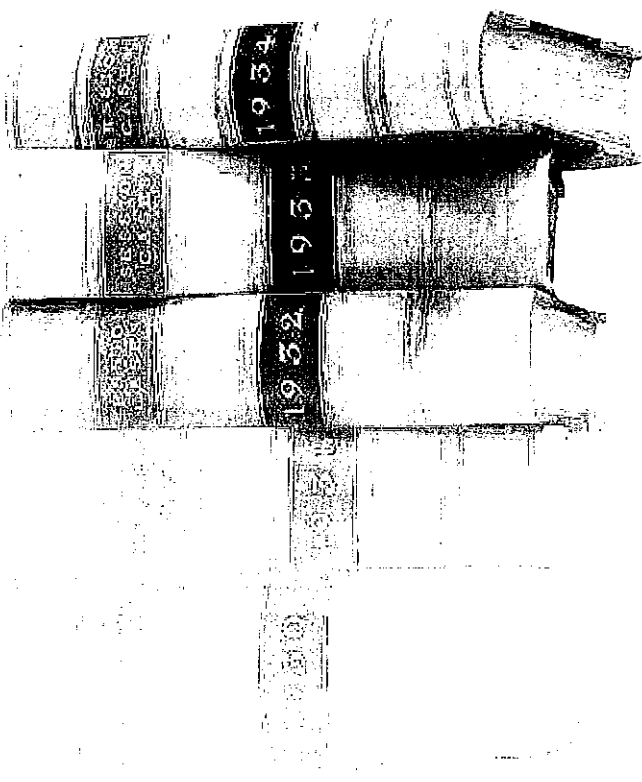
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# For The Record

## Signs, Signs, Everywhere are Signs: Avoiding the Pitfalls of Regulating Lighted Signs

Wade Beltramo, General Counsel



## Technological

advances have resulted in innovations in medicine, transportation, and electronics that have greatly improved our quality of life. But technology has a way of presenting society and, as a result, local officials with unforeseen challenges. One such challenge that has cropped up in communities across New York over the last several years is electronic signs.

Advances in light emitting diode (LED) technology have made lighted message signs a cost-effective alternative to traditional signs. As a result, LED signs have become extremely popular due to the ease with which the signs' messages can be changed, their ability to display multiple messages in succession, and their high visibility and easy readability. Businesses are using them to advertise and non-commercial entities find them invaluable for notifying their members and informing the public about upcoming events and other pertinent information.

Despite the numerous benefits of this LED technology, electronic signs can also negatively impact the surrounding community. Signs in general can create safety issues, obstructing traffic and pedestrians. Moreover, transportation experts have serious concerns about the effect LED signs have on distracting drivers.<sup>1</sup> In addition, many localities are concerned about the visual impact signs will have on the community if the signs do not fit in with the area's aesthetic and historic fabric. Consequently, opposition to LED signs can be grounded in a community's desire to preserve its character and architectural and historic identity. Finally, neighboring property owners also commonly complain that LED signs are a nuisance because they are too bright.

Local officials frequently respond to the negative impacts from LED signs by adopting sign regulations to address community concerns about safety, aesthetics, and nuisance lighting. However, local officials can easily run afoul of the First Amendment when adopting and enforcing sign regulations. Regulating signs can become more confusing when the owner of a sign is a religious or educational institution because they are afforded certain privileges under New York land use law. That does not mean that local government officials may not impose sign regulations on churches and schools, only that such regulations must be carefully crafted and enforced. This article will provide an overview of the issues local officials need to be aware of when regulating signs in general and when regulating school and church signs in particular.

### Signs - First Amendment Considerations

Before addressing the specific issues that arise when regulating church and school signs, it is important to understand basic First Amendment tenets and how they relate to sign regulations. Because the inherent function of a sign is to convey a message, signs are afforded First Amendment protections. In *Lusk v. Village of Cold Spring*, a case involving local government regulation of signs, the Second Circuit Court of

Appeals succinctly articulated the parameters under which local governments may regulate speech:

Generally, "time, place, and manner restrictions are permitted so long as they [survive intermediate scrutiny, i.e., they] are 'content neutral,' 'narrowly tailored to serve a significant governmental interest, ... leave open ample alternatives for communication,' and [also if they] do 'not delegate overly broad licensing discretion' to government officials."<sup>2</sup>

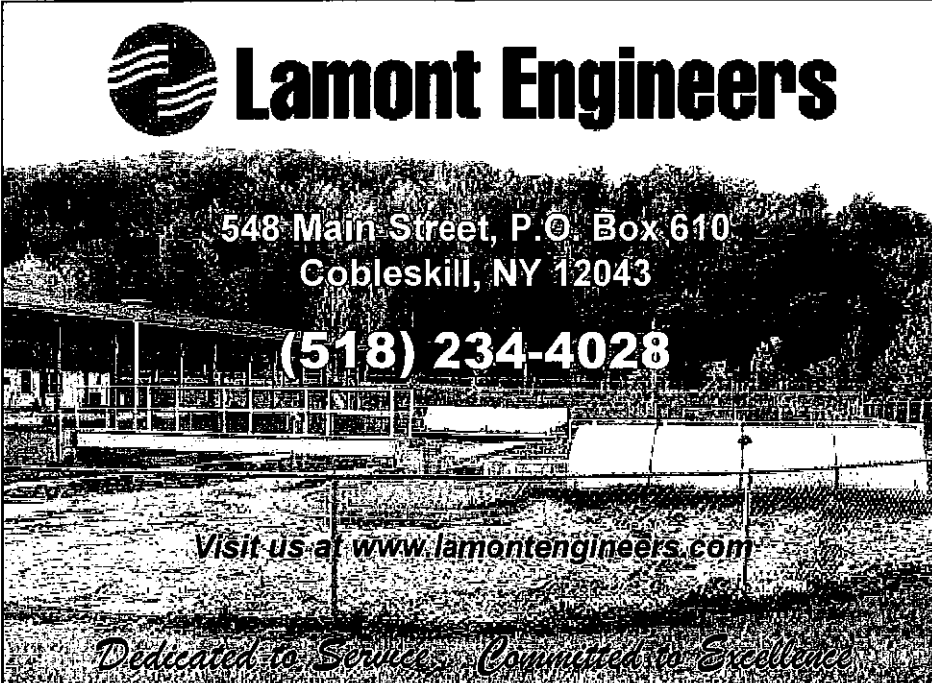
In other words, local officials may impose reasonable "when, where, and how" sign regulations, but regulations of "who" is erecting a sign, "what" message is being put on a sign, and "why" a sign is being erected are going to be subject to a heightened level of judicial review. Moreover, outright prohibitions of signs are generally not allowed<sup>3</sup> and the local officials charged with administering any regulations may not be empowered with unbridled discretion in enforcing the regulations.

Time, place, and manner regulations include reasonable regulations regarding the number of signs allowed in a particular location<sup>4</sup> as well as regulations of signs' height, width, and total area.<sup>5</sup> Reasonable regulations may also be imposed on the materials of

which a sign can be made so that the signs fit in with the community's character, architecture, and history.<sup>6</sup> In addition, local officials may impose reasonable regulations on where signs may be placed on property.

An example of acceptable sign regulations can be seen in *Lusk*, where the Court of Appeals upheld standards requiring signs to "be compatible with [a property's] historic character, and with exterior features of neighboring properties." The Court reasoned that the following factors established by the Village were both content neutral and sufficiently "narrow" and "definite":

- (a) The general design, character and appropriateness to the property of the proposed alteration or new construction;
- (b) The scale of proposed alteration or new construction in relation to the property itself, surrounding properties, and the neighborhood;
- (c) Texture and materials, and their relation to similar features of the properties in the neighborhood;
- (d) Visual compatibility with surrounding properties, including proportion of the property's front facade, proportion and arrangement of windows and other openings within the facade and roof shape; and
- (e) The importance of architectural or other features to the historic sig-



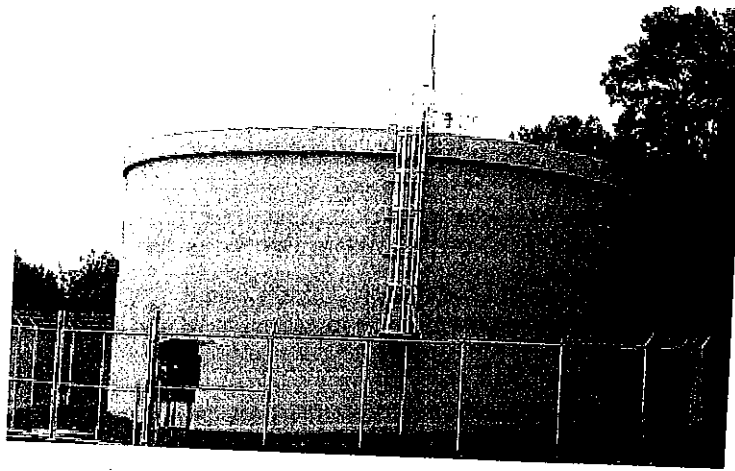
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nificance of the property.<sup>7</sup>

This is just one example of sign standards that have been upheld. But local officials must take care that any sign regulations they adopt are content-neutral and do not invest the administering official with overly broad discretion in enforcing the sign regulation. Moreover, whether a regulation is reasonable will depend in part on a variety of factors including the government's rationale for imposing the regulation and whether the authorized methods of expressing the speech are sufficient alternatives.

### Religious and Educational Signs – An Added Twist?

Schools and churches have joined the ranks of property owners installing LED signs. Regulating signs used by schools and religious institutions can, at first blush, appear to be even more complicated because New York's courts have granted religious and education institutions substantial, although not absolute, immunity from local land use regulations.

New York's courts have held that, because churches and schools "singularly serve the public's welfare and morals" and are "inherently beneficial" to the public, they are entitled to a substantial exemption from local zoning and land use regulations.<sup>8</sup> This exemption is not absolute, however, although schools and churches frequently interpret the rule established by the courts as granting a complete exemption for all educational and religious uses from all land use regulations. But the Court of Appeals has noted that neither New York case law nor common sense mandate such an interpretation.<sup>9</sup>

To the contrary, in *Diocese of Rochester v. Planning Bd.*, the Court of Appeals, "rejected any conclusive presumption of an entitlement to an exemption from zoning ordinances." The Court also rejected the "argument that 'appropriate restrictions may never be imposed with respect to a church and school and accessory uses' or that 'under no circumstances may [such uses] ever be excluded from designated areas.'"<sup>10</sup>

The Court of Appeals recognized the need to balance the needs and benefits of churches and schools with the potential negative impacts of their uses on the surrounding community, reasoning:

Although the special treatment afforded schools and churches stems from their presumed beneficial effect on the community, there are many instances in which a particular educational or religious use may actually detract from the public's health, safety, welfare or morals. \*  
 \* \* There is simply no conclusive presumption that any religious or educational use automatically outweighs its ill effects.<sup>11</sup>

The burden of rebutting the presumed benefits of the educational or religious use, however, falls on the shoulders of the municipal officials seeking to exclude or regulate the proposed educational or religious use. The Court noted that "presumed beneficial effect may be rebutted with evidence of a significant impact on traffic congestion, property values, municipal services and the like."<sup>12</sup>

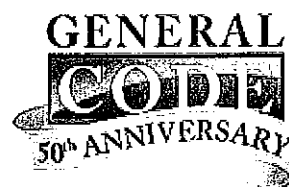


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This approach can be applied to incidental activities of a church or school, such as signs. The Court of Appeals reasoned that "[l]ess extreme forms of expansion that are nonetheless obnoxious to the community's residents, of course, require a more balanced approach than total exclusion." In addition, the Court acknowledged that "A special permit may be required and reasonable conditions directly related to the public's health, safety and welfare may be imposed to the same extent that they may be imposed on noneducational applicants."<sup>13</sup>

The *Cornell* Court expounded on how this relationship between a community's land use regulation and educational or religious institution can play out:

Thus, a zoning ordinance may properly provide that the granting of a special permit to churches or schools may be conditioned on the effect the use would have on traffic congestion, property values, municipal services, the general plan for development of the community . . . . The requirement of a special permit application, which entails disclosure of site plans, parking facilities, and other features of the institution's proposed use, is beneficial in that it affords zoning boards an opportunity to weigh the proposed use in relation to neighboring land uses and to cushion any adverse effects by the imposition of conditions designed to mitigate them . . . . These conditions, if reasonably designed to counteract the deleterious effects on the public's welfare of a proposed religious or educational use should

be upheld by the courts, provided they do not, by their cost, magnitude or volume, operate indirectly to exclude such uses altogether . . .<sup>14</sup>

Applying this standard to the context of lighted signs, local governments may require schools and churches to comply with municipal sign regulations, such as setback requirements designed to address traffic and pedestrian safety and aesthetic and design guidelines so that the sign fits in with the surrounding community's historic and architectural fabric. Moreover, and perhaps most importantly for LED signs, local governments may impose reasonable regulations on the brightness of LED signs and their hours of operation. While outright prohibition of such signs would likely run afoul of both First Amendment protections and New York's rebuttable presumption allowing religious and educational uses, reasonable regulations that seek to address valid community concerns can be imposed on schools and churches.

### Conclusion

Grappling with First Amendment issues requires a clear understanding of the law. When educational and religious entanglements are added to the mix, local officials need to proceed cautiously and are strongly advised to consult with their municipal attorney. However, contrary to common perception, schools and churches can be subject to land use regulations, including sign regulations. Municipal officials may still address the negative impacts that signs may have on the surrounding community in general and neighboring properties in

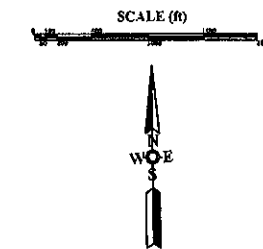
particular. Sample sign regulations are available upon request by emailing Wade Beltramo at [wade@nycom.org](mailto:wade@nycom.org).

### Endnotes

1. See Bendak, S. & Al-Saleh, K. (2010), "The role of roadside advertising signs in distracting drivers," *International Journal of Industrial Ergonomics* 40(3), 233-236; See also Edquist J, Horberry T, Hosking S, Johnston I. (2011), "Effects of advertising billboards during simulated driving," *Applied Ergonomics* 42(4), 619-626; and Young, M. S., Mahfoud, J. M., Stanton, N. A., Salmon, P. M., Jenkins, D. P., & Walker, G. H. (2009), "Conflicts of interest: The implications of roadside advertising for driver attention," *Transportation Research Part F: Traffic Psychology and Behavior*, 12(5), 381-388.
2. 475 F.3d 480, 493 (2d Cir. 2007), citing *Beal v. Stern*, 184 F.3d 117, 124 (2d Cir 1999) (quoting *Forsyth County, Ga. v. Nationalist Movement*, 505 U.S. 123, 130 (1992)).
3. In *Ladue v. Gillette*, 512 U.S. 43 (1994), the Supreme Court held that a local government could not prohibit residential signs because that medium is so unique that adequate and inexpensive alternative means for expressing the same ideas do not exist.
4. "Free-standing signs may be limited in number, and a variance to add free-standing signs will be denied unless the landowner demonstrates unnecessary hardship." 2 N.Y. Zoning Law & Prac. § 17:06, citing *Mangold v. Lynch*, 60 A.D.2d 884 (2d Dep't 1978) and *Sokoloff v. Zoning Bd. of Appeals of Town of Huntington*, 74 A.D.2d 868 (2d Dep't 1980).
5. See 2 N.Y. Zoning Law & Prac. § 17:06 for multiple references.
6. See *Lisa's Party City, Inc. v. Town of Henrietta*, 185 F.3d 12 (2d Cir. 1999). See also, 2 N.Y. Zoning Law & Prac. § 17:06, citing *Smithtown LLC v. Planning Board of the Village of The Branch*, 7/7/99 N.Y.L.J. 35, (col. 4) (Sup. Ct. Suffolk Co.).
7. *Lusk v. Village of Cold Spring*, 475 F.3d 480, 494 (2d Cir. 2007).
8. *Cornell University v. Bagnardi*, 68 N.Y.2d 583, 597 (1986).
9. *Id.* at 594.
10. 1 N.Y.2d 508 at 526.
11. *Cornell University* at 595.
12. *Id.*
13. *Cornell University* at 595, citing *Jewish Reconstructionist Synagogue v. Village of Roslyn Harbor*, 38 N.Y.2d 283, 291-292; *Summit School v. Neugent*, 82 A.D.2d 463, 466; and *Diocese of Rochester v. Planning Bd.*, 1 N.Y.2d 508, 526.
14. *Cornell University* at 596.



- C-1 LIMITED COMMERCIAL DISTRICT
- C-2 GENERAL COMMERCIAL DISTRICT
- C-3 CENTRAL COMMERCIAL DISTRICT
- H-O HISTORIC OVERLAY DISTRICT
- I-1 INDUSTRIAL DISTRICT
- I-2 INDUSTRIAL DISTRICT
- I-3 INDUSTRIAL DISTRICT
- L LAND CONSERVATION DISTRICT
- P-1 PLANNED DEVELOPMENT-INDUSTRIAL
- P-2 PLANNED DEVELOPMENT-MEDICAL
- P-3 PLANNED DEVELOPMENT-SERV. COMMER.
- P-4 PLANNED DEVELOPMENT-RESIDENTIAL
- R-1 RESIDENTIAL DISTRICT
- R-1A RESIDENTIAL DISTRICT
- R-2 RESIDENTIAL DISTRICT
- R-3 RESIDENTIAL DISTRICT



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Updates  
April 5, 2006  
August 15, 2005  
October 11, 2006