



USDO Comprehensive Edits

Article I

§375-102. Purpose.

This USDO is adopted in order to:

- (1) Implement the policies of the adopted Comprehensive Plan, as may be amended from time to time;
- (2) Promote economic reinvestment in the City;
- (3) **Protect and preserve the City's residential neighborhoods and promote racial equity throughout;**
- (4) **Promote energy conservation, ~~and~~ low-impact development, and environmentally sensitive development;**
- (5) Secure safety from fire, floodwaters, panic, and other dangers;
- (6) Facilitate the provision of adequate transportation, water, sanitary and storm sewers, schools, parks, and other community facilities needed to serve new and existing development;
- (7) **Promote, ~~preserve, and encourage the aesthetic quality~~ and reinforce the historic urban form and fabric of the City; and**
- (8) **Promote, preserve, encourage, and improve the aesthetic quality of buildings and environments throughout the City.**
- (9) Promote the public health, safety, and general welfare.

§375-104. Applicability.

- (1) This USDO shall apply to all land, buildings, structures, and uses of land, buildings, and structures in the City, unless an exemption is provided by or granted pursuant to the terms of this USDO.
- (2) Unless otherwise provided in this USDO, no building or land shall be used or occupied, and no building or structure or part of a building or structure shall be erected, moved or altered, except in conformity with the USDO regulations for the district and any overlay district in which it is located.
- (3) **No building shall be erected or altered to exceed the height, accommodate or house a greater number of families, accommodate a larger or more intense land use than is permitted, occupy a greater percentage of lot area or have narrower or smaller rear yards, front yards, or side yards, ~~inner or outer courts~~ than is permitted by this USDO for the district and any overlay district in which the building is located.**
- (4) **Unless otherwise provided in this USDO, no ~~No~~ part of a yard or other open space around any building required for the purpose of complying with the provisions of this USDO shall be included as a part of the yard or other open space similarly required for another building.**

§375-105. Effective Date and Transition.

- (1) Effective date. This USDO shall be effective on June 1, 2017.
- (2) Violations continue. Any violation of the previous City of Albany Zoning Ordinance shall continue to be a violation under this USDO and shall be subject to the penalties and enforcement set forth in § 375-507 (Enforcement and penalties), unless the use, development, construction, or other activity complies with this USDO. Payment is required for any penalty assessed under the previous ordinance, even if the original violation is no longer considered a violation under this USDO.
- (3) **Uses, structures, and lots rendered conforming. A use, structure, or lot that was legally nonconforming at the time of the adoption of this USDO will be deemed lawful and conforming as of the effective date of this USDO if it conforms to all requirements of this USDO.**
- (4) Uses, structures, and lots rendered **nonconforming**.
 - a) When a building, structure, or lot is used for a purpose that was a lawful use before the effective date of this USDO, and this USDO no longer classifies such use as an allowed use in the zoning district in which it is located, such use shall be considered nonconforming and shall be controlled by § 375-506 (Preexisting development and nonconformities).
 - b) Where any building, structure, or lot that legally existed on the effective date of this USDO does not meet all standards set forth in this USDO, such building, structure, or lot shall be considered nonconforming and shall be controlled by § 375-506 (Preexisting development and nonconformities).

Nonconformities: General Rules

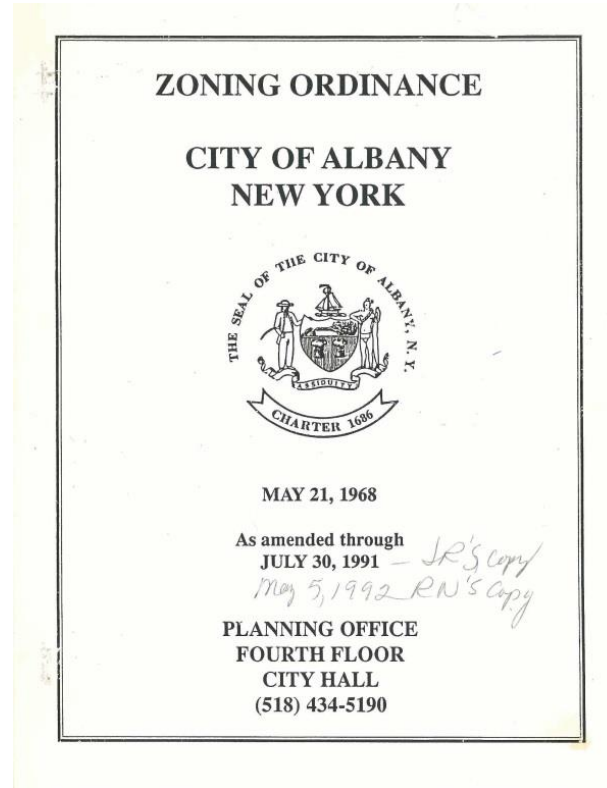
A condition that was legally established prior to the effective date of this USDO, but that does not conform to the current regulations of the USDO.

- There are various types of nonconformities each requiring their own considerations: uses, lots, structures, signs, hours of operation, parking and site improvements.
- It is the responsibility of the property owner to substantiate and provide proof of the legality of a nonconformity.
- The Chief Planning Official may issue a Certificate of Legal Nonconformity.
- Nonconforming use expires if not continuously maintained or abandoned for period in excess of one year; or, if the structure is destroyed to the extent of more than 50% of the cost of replacement
- A nonconformity generally may not be expanded in scope (nonconforming uses may expand within an existing structure)
- Not affected by a change in ownership or normal maintenance and repairs

See §375-506 (Preexisting development and nonconformities) for additional details.

Albany's Zoning Ordinances

- ❖ April 21, 1924
- ❖ May 21, 1968
- ❖ September 9, 1993
- ❖ May 1, 2017



§375-105. Effective Date and Transition.

~~(5) Applications commenced or approved under previous ordinances.~~

~~a) Pending applications.~~

- ~~i. Any complete application that has been submitted for review, but upon which no final action has been taken by the appropriate decisionmaking body prior to the effective date of this USDO, shall be reviewed in accordance with the applicable provisions of the Albany Zoning Ordinance and Subdivision Regulations in effect on the date the application was deemed complete. If the applicant fails to comply with any applicable required period for submittal or other procedural requirements, the application shall expire and subsequent applications shall be subject to the requirements of this USDO. Any reapplication for an expired project approval shall meet the standards in effect at the time of reapplication.~~
- ~~ii. An applicant with a complete application that has been submitted for approval, but where no final action has been taken prior to the effective date of this USDO, may submit a written request to the Chief Planning Official to have the application reviewed under this USDO.~~

~~b) Approved projects.~~

~~Permits, development plans, building permits, and variances that are valid on the effective date of this USDO shall remain valid until their expiration date. Projects with valid approvals or permits shall be completed pursuant to the development standards in effect at the time of approval. If the approval or permit (including any extensions of time permitted and approved under the prior Zoning Ordinance and/or Subdivision Regulations) expires, future development shall comply with the requirements of this USDO.~~

§375-107. Interpretation.

The Chief Planning Official shall be authorized to interpret the provisions of this USDO, including but not limited to the location of zoning district boundary lines, unless a different City official is specifically designated in this USDO to make a particular interpretation. ~~The decisions~~ Interpretations of the Chief Planning Official are subject to appeal to the Board of Zoning Appeals. ~~An applicant may request that a formal written interpretation of this USDO be made by the Board of Zoning Appeals.~~

- The last sentence of §375-107 allows Applicants to directly seek an interpretation from the Board of Zoning Appeals, which contradicts the appellate functions of the Board of Zoning Appeals.
- The Board of Zoning Appeals should be interpreting decisions made by city officials through administrative appeal cases pursuant to §375-504(12)(b).

The interpretation power is part of the appellate jurisdiction of the board of appeals, and cannot lawfully be exercised unless an appeal has been taken from an enforcement officer's decision.²⁹ In its simplest terms, an appeal seeking an interpretation is an appeal to the board of appeals claiming that the decision of the enforcement official was incorrect.

Interpretations: More Work is Needed

- Define limits and applicability.

Add a definition that convey the purpose and intent of an interpretation. Clearly distinguish from an administration appeal.

- Ensure a clearly defined process for interpretations.

Interpretations made by the Chief Planning Official shall be posted within “X” days of the Chief Planning Official making the interpretation and shall be posted on the City’s website for “Y” days.

- Ensure that process does not result in extraordinary delays for minor projects.

Interpretations come in all shapes and sizes. The process should ensure that small projects are not subject to extensive delays as a result of the USDO providing insufficient clarity.

