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By email to jcomerford@city-buffalo.com, nmarrero@city-buffalo.com

James Comerford, Jr., Commissioner
City of Buffalo Dept. of Permit & Inspections Services
324 City Hall
Buffalo, NY 14202

Nadine Marrero, Zoning Administrator
City of Buffalo Division of Planning
901 City Hall
Buffalo, NY 14202

**Re: Request for Written Interpretation/Reconsideration of Determination of Completeness
- Chason Affinity's "1111 Elmwood" project**

Dear Commissioner Comerford and Ms. Marrero:

I am writing to you regarding Chason Affinity's "1111 Elmwood" project at the southeast corner of Elmwood and Forest avenues.

If this project is to proceed in a lawful and expeditious fashion, I believe that questions raised in the project's Final Environmental Impact Statement [FEIS] require a written interpretation of certain provisions in the Uniform Development Ordinance [UDO] and/or a reconsideration of the Determination of Completeness.

Issue No. 1 – Combination of lots

Pursuant to Section 3.2.1(J) of the UDO ("Elmwood Village Standards"), "no more than two lots in the Elmwood Village, existing at the time of the adoption of this Ordinance, may be combined for the purposes of new construction in an N-2C or N-2E zone." [UDO §3.2.1(J)(3)]

Chason Affinity's project site initially consisted of 12 lots – ten on Elmwood Ave. (1091 through 1121 Elmwood), and two on Forest Ave. (605 and 607 Forest). The FEIS treats the Elmwood Ave. parcels as having been combined into one parcel with a width of 321.5 feet. [See FEIS, p. 100, which states: "...Affinity's current Elmwood Avenue Parcel width of 321.5' as previously combined in 2016;" and, p. 101, which says: "Note, however, that Affinity's N-2C lot width is 321.5' following parcel combination in 2016."]

It is my opinion that, pursuant to the City of Buffalo Zoning Ordinance in effect throughout 2016, there was only one lawful way for Chason Affinity to consolidate its lots¹: obtain approval of such consolidation from the City Planning Board after a public hearing. More specifically, Chapter 421 (Subdivision of Land) included the following pertinent provisions at § 421-4:

Chapter 421, SUBDIVISION OF LAND

...

§ 421-4. Applicability.

No person shall, whether by conveyance, ground lease, use of air rights or otherwise, except in compliance with the provisions of this chapter:

A. Divide or further divide land.

B. Otherwise alter the boundaries of lots or parcels of land, whether residential, commercial,

industrial or otherwise, or dedicate land, whether by formal cession, private reservation or otherwise, for use as streets, alleys, sidewalks or for other public purposes.

C. Consolidate more than one (1) existing lot or parcel of land with another, under common ownership, for future use or development for a common purpose, whether residential, commercial, industrial or otherwise. [Emphasis added.]

...

It appears from publicly-available records that Chason Affinity failed to take the requisite steps in 2016 pursuant to Chapter 421 of the former Zoning Ordinance to combine its Elmwood and/or Forest parcels. Additionally, Ms. Marrero advised Elmwood Village resident Gretchen Cercone by email on May 18, 2017 that, *“These properties consolidations were not completed through the Planning Department, I believe this went through Assessments.”*

In light of the above, it appears that the “1111 Elmwood” project must comply with the UDO’s two-lot limitation for the combining of lots in the Elmwood Village. I request that Commissioner Comerford issue a written interpretation regarding this issue, and that Ms. Marrero, as Zoning Administrator, treat the project application as incomplete pursuant to UDO §11.2.1(D).

Issue No. 2 – Chason Affinity’s treatment of its one building as both a “Commercial Block” and “Stacked Units” building

The UDO is clear: *“An applicant must select which allowed building type corresponds to the building he/she is proposing to construct or alter, and must comply with the standards for that building type as it related to new construction or alteration.”* See UDO § 3.2.1(A). Chason Affinity has failed to comply with this requirement. Instead, the project sponsor is attempting to have its building treated as both a Commercial Block building where convenient, and Stacked Units building where a Commercial Block building is inappropriate:

¹ Please note that the “subdivision approval” process under the UDO also regulates the “orderly division or consolidation of lots.” See UDO Section 11.5.1.

FEIS, p. 13:

Response: The portion of the project in the N-2C District meets the definition of a Commercial Block building § 3.2.5(A). The portion of the building in the N-2R District meets the definition of a Stacked Unit under § 3.2.11(A). The Mitigation Design incorporates both commercial and residential uses meeting UDO setback standards...

Given this project's status as the first (or, one of the first) major proposals falling within the newly-enacted UDO, it is critical that Commissioner Comerford provide a written interpretation regarding the intent of UDO § 3.2.1(A), and provide an authoritative application of the UDO's intent to specifics of the "1111 Elmwood" proposal. Project sponsors, the public, City Hall staff, and Common Council members all need to know whether – as currently written – a project sponsor will be allowed to circumvent a district's "building type" restrictions by claiming that portions of a building comply with one form, and other portions with a different form.²

Additionally, if, as I believe, the approach being taken by the project sponsor (and, to date, allowed by the City of Buffalo) contradicts the letter and intent of the UDO, there must be a reconsideration of the prior Determination of Completeness, and a determination whether a rezoning and/or other approvals are required.

Issue No. 3 – Conflicts with “Commercial Building” and “Stacked Units” requirements

Commissioner Comerford and Ms. Marrero, whether or not you agree with the position I express in “Issue No. 2” regarding Chason Affinity's attempt to make its one building both a Commercial Block and Stacked Units building, the following issues appear to need a written interpretation of the applicable UDO provisions, and/or a reconsideration of the Determination of Completeness:

(a) If the portion of the building situated on 605-607 Forest Ave. is a “Stacked Units” building, it appears to violate the following requirements for such form:

(i) there appears to be no “shared entry” [see UDO § 3.2.11(A)];

(ii) it lacks a second side yard, as required by UDO § 3.2.11(D) Building Setbacks; and,

(iii) all or a portion of the “Stacked Units” building appears to lack the required rear yard [see UDO § 3.2.11(D) Building Setbacks].

If my interpretation is correct, a variance would be required for each non-compliant feature.

² It should be noted that Chason Affinity's original application included a rezoning request for 605 and 607 Forest Ave. so that the entire parcel would be zoned N-2C. Two property owners filed a protest petition against the rezoning, triggering the need for a supermajority vote by the Common Council. It appears that Chason Affinity is attempting to avoid rezoning complications by claiming that the portion of its one building that encroaches upon the two Forest Ave. parcels – which are zoned N-2R and, therefore, prohibit a Commercial Block building – comply with the Stacked Units requirements. As “Issue No. 3” will address, as proposed, the project is not in compliance with all of the Stacked Units provisions.

(b) If the “condominium portions” of the building on Elmwood Avenue is a Commercial Block building, as purported, it currently violates the requirement that the ground floor consist of “retail or service uses.” See UDO § 3.2.5(A). A variance would be required for this non-compliant feature.

(c) If, in fact, the “condominium portions” of the building on Elmwood Avenue should be treated as a “Stacked Units” building, it violates the following UDO requirements:

(i) Stacked Units are not allowed in the N-2C District;

(ii) there appears to be no “shared entry” as required for a Stacked Units building [see UDO § 3.2.11(A)]; and

(iii) it lacks a second side yard, as required for a Stacked Units building by UDO § 3.2.11(D) Building Setbacks.

If my interpretation is correct, a variance would be required for each non-compliant feature.

Thank you for your consideration of this request for a written interpretation of the above-identified provisions in the UDO, and/or a reconsideration of the Determination of Completeness.

If this request should have been transmitted in a different manner, please advise me of that fact at your first opportunity so that I may promptly comply with your instructions.

Respectfully yours,

/s/ Arthur J. Giacalone
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