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ATTN: Nadine Marrero, Zoning Administrator
City of Buffalo Zoning Board of Appeals
65 Niagara Square
Room 901
Buffalo, NY 14202

Re: 983 Michigan Ave. – Construction of Multiple-Unit Residential Building

Dear Zoning Board of Appeals:

I will be unable to attend the scheduled March 18, 2020 public hearing for the proposed apartment development on Michigan Ave. and Maple St. (“The Lawrence”), but I ask that this letter, as well as the accompanying 2-page enclosure, be made an official part of the record of the 03/18/20 public hearing. I also ask that the letter that I submitted at the 01/15/20 public hearing regarding The Lawrence also be made part of the record for the 03/18/20 public hearing.

I respectfully ask that this honorable body consider the following comments:

1. It should not matter to this board how many times the applicant revises its plans to, purportedly, satisfy the neighborhood residents. [In reality, what the applicant is trying to do is satisfy you, the decisionmakers.] The original proposal was so monstrously out of scale and character with the Maple Street side of the project that the repeated tweaking of the dimensions, setbacks, and façade still leaves a proposed development grossly out of compliance with the standards in an N-2R zone. What matters legally and practically is not the number of revisions, but the extent to which the current proposal is in non-compliance with the UDO requirements (in particular, for the N-2R district) and incompatible with the existing neighborhood character.
2. Our state’s highest court, in *Pecoraro v. ZBA of Town of Hempstead*, 2 NY3d 608, 615 (2004) - a case involving an area variance to reduce the minimum requirements for lot size (from 6,000 to 4,000 sq. ft.,) and lot width (55’ to 40’) - made the following observation: “[T]he Board is entrusted with safeguarding the character of the neighborhood in accordance with the zoning laws.” I respectfully ask each member of Buffalo’s Zoning Board of Appeals to keep this quote in mind when determining the pending application. Your duty is to safeguard, not the profits of the developer, but the character of the neighborhood.
3. In the above-quoted *Pecoraro* decision, our state’s highest court affirmed the ZBA’s denial of the requested variances, which would have allowed a 33.3% deficiency in lot area, and 27.3% deficiency in frontage width. The ZBA ruled that the requested variance “would have a negative impact on the character of the neighborhood,” basing its conclusion on the contrast between the proposed lot area and width, and that of parcels within 200 feet of the subject parcel. I

respectfully ask this Board to take a similar approach to “The Lawrence” application: that is, acknowledge the stark contrast between its lot size, lot width, and density, and that of the nearby residences on Maple Street, when you assess the adverse impact of the applicant’s proposed project on the character of the existing neighborhood. [Please see the information in the 2-page attachment which provides the numbers detailing the contrast between the proposed project and both the UDO standards in N-2R zone, and the 15 closest houses on or adjacent to Maple St.]

4. As you are well aware, one of the five mandatory “*balancing test*” criteria when considering an area variance is whether or not the requested variance is “*substantial*.” While the term “substantial” is not defined in our zoning laws, our state’s highest court, in well-known area variance decision, *Ifrac v. Utschig*, 98 NY2d 304 (2002), places the requested variances for “The Lawrence” into a realistic context. In *Ifrac*, the landowner asked for a 60% and a 63% lot size variance, and a 7% and 24% lot width variance. The ZBA denied the variances, concluding that “the variances would have a significant impact upon, and change the character of, the neighborhood.” *Our highest court affirmed the ZBA’s determination, and stated the following: “The area variances – of at least 60% - are undisputably substantial.”* [Emphasis added.] The court also ruled that the ZBA’s conclusion that granting the variances would have detrimental impacts on the neighborhood’s character was rational, and noted that both lot size and the architectural style of nearby homes are relevant factors when considering impacts on the character of a neighborhood.

5. If, as our state’s highest court concluded in *Ifrac*, variances of 60% and 63% are “undisputably substantial,” there should be little doubt about how to characterize the following requested variances for The Lawrence:

- **205% variance** from N-2R’s maximum density allowed (64 units/acre rather than 21).
- **333% variance** from N-2R’s maximum lot width (260’ rather than 60’).¹
- **767% variance** from N-2R’s minimum side yard requirement (6’ rather than 52’).
- **67% variance** from N-2E’s maximum stories (5 stories rather than 3).

6. In affirming the ZBA’s variance denials, the *Ifrac* court made the following observation of relevance to the pending application: “[T]he benefit [the landowner] seeks to have weighed against the detriment to the neighborhood is his realization of a profit...”

7. In both *Ifrac* and *Pecoraro*, our highest court held that the “*difficulty was self-created*” where, as here, the applicant knew of the zoning requirements when purchasing the property.

Based on the above, I respectfully urge this honorable body to deny the requested variances, at a minimum, for the N-2R/Maple Street parcels. Thank you.

Respectfully submitted.
/s/ Arthur J. Giacalone
Arthur J. Giacalone
Attachment

¹ I respectfully urge the ZBA to apply the UDO’s actual dimensions, and not be seduced by superficial changes to facades and setbacks the applicant calls “more in line with *the spirit*” of the UDO. Neighbors won’t be fooled.

ADVERSE CHANGE TO THE CHARACTER OF THE NEIGHBORHOOD:

**** Sharp Contrast in Scale/Density ** [Updated 03-09-20²]**

COMPARISON: UDO/GREEN CODE vs. THE LAWRENCE

UDO: <u>Maple St. (N-2R zone):</u>		<u>“The Lawrence” (12-23-19)</u>	
Max. density allowed:	@21 units ³ (1 unit/1,250 sf)	Proposed: 64 units	[205% variance]
		(@ 1 unit/406 sf of lot area)	
Max. lot width allowed:	60’	Proposed: 260’	[333% variance]
Min. side yard total:	52’	Proposed: 6’	[767% variance]
Maximum height allowed:	3 stories 40’	Proposed: 4 stories 44’	[33% variance] [10% variance]

UDO: <u>Michigan Ave. (N-2E zone):</u>		<u>“The Lawrence” (12-23-19)</u>	
Maximum height allowed:	3 stories 44’	Proposed: 5 stories 55’ (est.)	[67% variance] [25% variance]
Max. lot width allowed:	120’	Proposed: 181.5’	[51% variance]

	<u>15 Closest Residences</u>	<u>“The Lawrence”</u>	<u>% Change</u>
Number of Units:	27 units (total)	133 units	477% >
Number of stories:	1.67 stories (ave.) [All 2 stories or less]	4-5 stories	240-300% >
Building’s square footage:	33,343 s.f. (total) 2,222 s.f. (ave.)	136,800 s.f. ⁴	410% >
Lot Size:	1.459 Acres (total) 15 parcels [63,576 s.f (total)]	1.014 Acres 15 parcels [44,170 s.f.]	30.2% <
Density:	18.5 Units/Acre	113.16 Units/Acre	709% >

Note: The greatest deviations from the UDO’s standards are on Maple Street, in the N-2R “residential” zoning district, where the increased scale and density will have the greatest adverse impacts on the neighbors and existing neighborhood character.

² Due to the unavailability on-line on March 9, 2020 of the latest version of “The Lawrence,” this chart is based on information in the March 3, 2020 Buffalo News article at BuffNews.com.
³ UDO provides a standard for “Residential density” in only 2 zones, including N-2R (one unit/1,250 sf of lot area).
⁴ This is the sq. ft. prior to the latest revisions. The addition of a 5th floor on Michigan likely increases the total.

From City’s “Property Information” for 15 CLOSEST RESIDENCES

<u>Address</u>	<u>Yr. Built</u>	<u>No. of Units</u>	<u>No. of Stories</u>	<u>GFA (sf)</u>	<u>Lot Size</u>
241 Maple	2007	3	2	4,512	85’ x 100’
235 Maple	1880	2	1.5	1,010	30’ x 100’
231 Maple	1880	1	1.7	1,410	25’ x’100’
227 Maple	1870	2	2	2,555	55’ x 100’
221 Maple	1900	2	2	1,880	25’ x’100’
217 Maple	1900	2	2	2,080	51’ x 75’
215 Maple	1900	2	2	2,419	34’ x 104’
188 Maple	2007	2	2	3,056	55’ x 100’
184 Maple	1890	1	1.3	1,144	27’ x 100’
183 Maple	1900	1	1.3	1,474	30’ x 100’
179 Maple	1900	1	1.3	1,357	50’ x 100’
173 Maple	1895	2	2	2,672	25’ x 100’
168 Maple	2007	3	2	4,512	80’ x 100’
167 Maple	1880	2	2	2,064	25’ x 100’
172 Carlton	2007	1	2	1,520	51’ x 98’

APPLICANT’S MAPLE STREET PROPERTIES (Total area of 9 lots = 26,000 sf):

<u>Address</u>	<u>Lot Size</u>	<u>Lot Area</u>
228 Maple	28.53 x 100	2,853
230	26.47 x 100	2,647
232	25 x 100	2,500
234	30 x 100	3,000
240	50 x 100	5,000
242	25 x 100	2,500
244	25 x 100	2,500
248	25 x 100	2,500
250	25 x 100	2,500