



Upper Floor Reuse

A Guidebook for Revitalizing Downtown Buildings

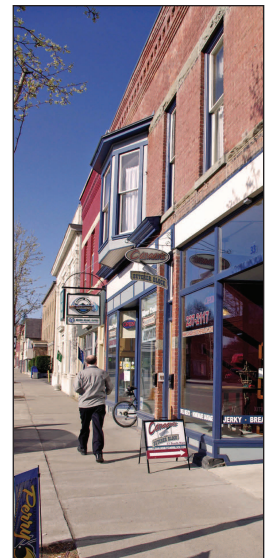
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CHAPTER ONE: BACKGROUND

For years, many of the second, third, and fourth stories of downtown buildings in the Finger Lakes regions' cities, towns, and villages have been deteriorating, further contributing to already high vacancy rates. While vacant upper floors are a major concern and create a number of challenges for communities, they also present tremendous potential for redevelopment and downtown revitalization.

A wide range of topics are presented in this Guidebook associated with upper floor revitalization, including opportunities for reuse and associated benefits; barriers to redevelopment; revitalization methods; community, downtown and waterfront development; planning processes; zoning and historic preservation law; New York State Building Code; design considerations; funding; and case studies.

Guidebook Background

Upper Floor Reuse: A Guidebook for Revitalizing Downtown Buildings was created as a partnership between the Genesee/Finger Lakes Regional Planning Council and the Preservation League of New York State with the Village of Palmyra as the grant applicant. This project was prepared for the New York State Department of State with funds provided under Title 11 of the Environmental Protection Fund.

The Guidebook targets the older, higher density downtown areas of the villages, towns, and cities in the Genesee-Finger Lakes Region, but is also applicable across most of New York State. The term downtown is used throughout the Guidebook to represent a specific type of place: compact, commercial/mixed use districts generally comprised of two- to four-story buildings built up to the sidewalk. The typical example is a 'village main street' district but the term also includes downtowns in the region's small cities and hamlets. It includes dense town centers

and neighborhood commercial/mixed use districts in larger cities like Rochester, but excludes areas with high-rises (defined as more than six stories), such as Center City Rochester.

The intent of the Guidebook is to introduce and simplify a variety of complex issues and concepts related to upper floor revitalization to a wide audience of stakeholders. This audience could include: mayors; supervisors; municipal boards; code enforcement and zoning enforcement officers; other government officials; building owners; business owners; developers; investors; downtown stakeholders; community leaders; advocates; and other professionals.

Upper Floor Decline

Suburbanization and decentralization have had a negative impact on downtowns and their upper floors. Development trends shifted people, jobs, businesses and investment from cities and villages to outlying, less-developed areas. Some downtowns fared better than others, but many suffered significant economic disinvestment.

Decentralization accelerated after World War II. More and more Americans moved from cities and villages to the surrounding low density towns with the desire to build new homes and have more space to raise their families. This migration was assisted by the by the Federal Housing Authority and the Veterans Administration, who issued low interest construction loans to veterans and other Americans.¹ The rise in automobile ownership and federally subsidized highway systems made decentralization easier.

As populations moved out of city and village downtowns, commercial development followed. National retailers expanded throughout the county and built new stores in malls and shopping plazas in unde-

Upper Floor Reuse: A Guidebook for Revitalizing Downtown Buildings should foster dialogue between stakeholders and inspire readers to consider the opportunities for upper floor reuse and the positive effects revitalization can have on their communities.

veloped areas, often on farmland. Many small businesses downtown had trouble competing with these retailers who could offer wide selections and low prices. Some downtown businesses followed trends and left as well. Many of the businesses that remained struggled.

Downtown offices and manufacturing spaces were also abandoned for office parks and industrial parks in outlying areas. These development trends, also classified as sprawl, favored the construction of new buildings on open greenspace in outlying low-density areas over development and redevelopment of buildings in downtowns.

Sprawl Defined

“Sprawl is generally defined as the increased development of land in suburban and rural areas outside of their respective urban centers. This increased development of real estate in the outskirts of towns, villages and metropolitan areas is quite often accompanied by a lack of development, redevelopment or reuse of land within the urban centers themselves.”²

This decentralization caused the supply of available upper floor spaces to increase and the demand to decrease, significantly reducing the potential revenue that downtown buildings could earn for rent. Upper floor spaces were traditionally used for many of the types of development that were leaving downtowns such as housing, office space, small manufacturing and commercial (as well as storage for these uses). This left many downtown building owners with vacant upper floors, and often struggling first floor commercial uses. Many building owners, dependent solely on the first floor for revenue, needed to focus their limited resources toward first floor maintenance where customers and the public visited. This resulted in many upper floors being overlooked and falling into disrepair.

Decentralization and sprawl development continued decade after decade in the Genesee-Finger Lakes Region as well as much of Upstate New York. Accord-

ing to the research paper *Sprawl Without Growth*, the Upstate Paradox, land use patterns in Upstate New York became more sprawling in the 1980s and 1990s than they had in previous decades. Cities and villages continued losing population and businesses while surrounding towns were growing, resulting in reduced density overall.³



Vacant upper floor space in a village in the Genesee-Finger Lakes Region. (Photo - G/FLRPC)

“Continued decentralization of people and jobs away from Upstate New York’s cities and villages is undermining the economic health and quality of life of the region. State and local leaders need to understand that these trends are not inevitable.”⁴

Obstacles

In some downtowns vacancy and lack of reinvestment has led to poor building conditions, crime, demolitions, low walkability, and blight. Downtown upper floor redevelopment can become even more of a challenge in an area lacking a supportive context; strong and popular downtowns have a greater demand for space, particularly housing. National surveys have shown a large spatial mismatch between the kinds of neighborhoods buyers and renters want and what's available for purchase or rent. There is high demand for downtowns with a mix of houses, shops, and businesses.⁵ “A 2013 National Association of Realtors survey on community preference found that 60 percent of respondents would rather live in neighborhoods with a mix of houses and stores that are easy to walk to than ones in which they must drive almost everywhere.”⁶ Chapter 3 focuses on overall community and downtown development including methods to enhance priority assets and key groups that contribute to these revitalizing efforts.

Another barrier to upper floor revitalization is the extent of repairs and renovations required for deteriorated buildings to make them usable again. Years of vacancy and neglect in the upper floors of old buildings have created a number of problems that can be very expensive to mitigate.

In many communities the cost to repair these spaces is high, and the demand for space is low. Owners have to consider the cost to renovate vs the potential return on investment through rent or building sale. Owners also need to take into account property tax increases associated with building assessment increases after renovation. However, there are a number of incentives available for revitalization and energy efficiency improvements.

If renovation and reuse is financial viable, financing can still be difficult through traditional bank loans. Chapter 9 focuses on financing and funding including information regarding grants and tax credit programs.

Other obstacles to upper floor reuse are based on state and local laws. Many municipalities have zoning regulations in their downtowns that can make reuse more difficult. Chapter 6 examines a number of these regulations and options for revision. Upper floor rehabilitation also has to be done in accordance with NYS Building Codes to ensure renovations are safe and the type of use is appropriate for the specific building in question. Buildings must be safe for use, and their uses must be appropriate for the specific building. Chapter 7 of this guidebook reviews NYS Building Code considerations for reuse.

Upper Floor Reuse Opportunity

Development and population trends have been shifting both nationally and within the state and region. Numerous downtowns are experiencing new investment and redevelopment due to a renewed interest from visitors and residents. Many people find the charm and individuality that traditional downtowns have over the generic feel of suburban type development. Downtowns have a number of exceptional assets that are not generally found in conventional suburban development such as historic architecture, walkability, diversity, and locally-owned businesses, all of which add to a downtown's unique sense of place.

Many downtowns are characterized by their two- to four-story late 19th - early 20th century buildings; many of these have details such as cast iron storefronts, ornate cornices, and other architectural details unique to the time period. The presence of these historic structures in traditional downtowns is a tremendous physical asset that should be capitalized on to create and strengthen the unique feel of downtown.

The conditions of historic buildings vary in downtowns; some have their historic features intact, while others have been compromised. Some buildings have architectural features hidden behind false façades. Many downtown business owners tried to compete with shopping malls and strip plazas by imitating

their physical design through the addition of aluminum façades, and faux historic themes.⁷ In some cases these methods inadvertently preserved the historic façade.

Historic preservation methods and strategies are present throughout many of the chapters of this Guidebook including portions on regulatory protections (Chapter 6), building code considerations (Chapter 7), design considerations (Chapter 8), and funding opportunities (Chapter 9).

Downtowns undergoing revitalization have an exciting pulse, which can be attractive to visitors and potential residents. Young professionals, retirees, and empty nesters are moving to downtowns for their convenience and walkability as well as entertainment, dining, shopping, and cultural resources. Upper floors can also provide truly unique spaces for reuse. Some of the most interesting spaces are those converted from an original use that is no longer needed; for example, loft apartments in the upper floors of old warehouses and manufacturing buildings have become very popular in downtowns.

There is investment potential in downtowns. Those interested in purchasing a building or opening a business may find it more profitable to purchase early in the revitalization stages while property values are still reasonable. These entrepreneurs who bring needed investment when an area is just beginning to turn around are essential to the revitalization process. They often bring new ideas and energy, and may take the necessary risk because of their optimistic vision for the future of downtown. All it takes is one visionary to begin to see the unmet demand.



Main Street, Village of Perry (Photo - In. Site: Architecture, LLP, "Perry Project")

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CHAPTER TWO:

BENEFITS OF UPPER FLOOR REVITALIZATION

There are a number of benefits that come from upper floor reuse. Upper floor reinvestment can have a positive effect on other revitalization movements downtown; the local economy; building conditions; historic preservation; the environment and the overall unique character of a downtown.

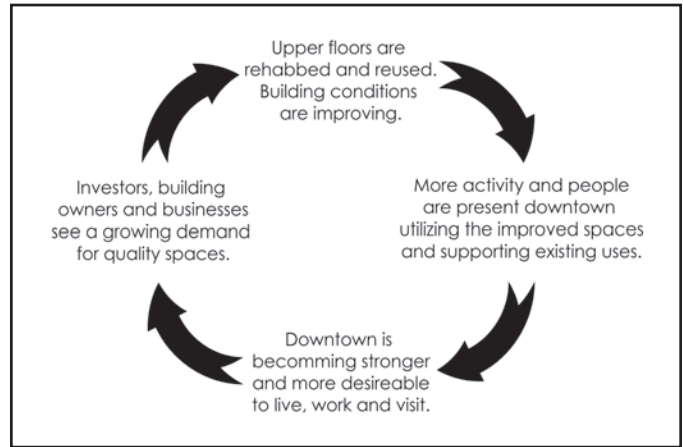
Investment and rehabilitation downtown can create momentum and spur more investment and rehabilitation. When a dilapidated building is repaired and rented out successfully people take notice. Other building owners or investors may see this success and want to make similar improvements.

This upper floor revitalization helps kick off a cyclical process. The graphic to the right greatly simplifies the revitalization process but illustrates the cycle of upper floor revitalization improving downtowns, and strong downtowns creating a demand for more upper floor reuse.

Upper floor revitalization can create excitement in a community. Initial renovations help people see the potential that is embodied in their downtown. New and existing residents, business owners and stakeholders may be inspired and motivated to get involved in a revitalization movement and make a difference themselves, which can be a catalyst for further improvements, or even influence people to participate in downtown advocacy or neighborhood groups.

Active Downtowns, Creating a Critical Mass of Users

When long-term vacancies are eliminated in a downtown, many of the associated negative effects of those vacancies can be reduced or eliminated as well. Occupied upper floors can increase the critical mass of people in the downtown living, working and visiting. These additional users increase street activity which can include more people walking to and from destinations downtown. “Human activity is also closely related to the image a commercial district projects:



Upper Floor Revitalization is a cyclical process. The process can start at any point on the graphic. Many of these processes occur concurrently.

small numbers of people translate into the perception of a lifeless, undesirable place.”¹ Increased street activity – ‘eyes on the street’ – and occupied buildings can reduce crime associated with vacancy.

Mixed use buildings and districts are often the most suitable for upper floor reuse. The types of use appropriate for a first floor are not necessarily the best uses for the upper floors. Some owners change the use of the building because the existing use is no longer viable in the current market. *Adaptive reuse* is often highly desirable because of how unique these buildings can be (loft apartments in historic warehouses are a good example).

Mixed use buildings and districts have a number of advantages which include: increased activity; diversity of users; and mutually beneficial uses. For example, upper floors reused as residential units or offices will help maintain a critical mass of daily downtown users who will inevitably spend money supporting surrounding businesses. These upper floor uses benefit from a first floor use that provides needed services or products such as a delicatessen or restaurant for example. The first floor businesses also benefit from having customers nearby. Chapter 6 discusses mixed use districts in more depth.

Economic development

Revitalizing upper floors has positive economic impacts for building owners, businesses, and the community as a whole. Development and investment in general can, of course, add to the tax base in a municipality and increase property values. Yet upper floor reuse can be especially beneficial to struggling building owners. When a vacant upper floor is reused it shifts from being a financial burden requiring maintenance and utility costs to a potentially profitable asset. These additional building revenues can help fund needed building maintenance and upgrades. For a building owner who also owns a first floor business, this extra income may be the difference between being profitable and going out of business.

The additional users and activity that upper floor reuse brings to a downtown – including residents, workers and visitors – can help to support existing businesses and create demand for new businesses and commercial space. Much of the commercial development in downtowns in the Genesee-Finger Lakes Region consists of local businesses, which have a stronger

effect on the local economy (see *The Local Multiplier Effect* below). A strong commercial base in a downtown is not only attractive to local residents, but can also bring people from outside of the area to visit and spend money in the local economy.

Upper floor reuse can also help meet an unmet demand in the market. This is often the case with upper floor residential development, as many downtowns do not have quality residential space available (some don't have any residential space available). In these instances there are people interested in living downtown that don't even have the option to do so. Successfully redeveloped downtowns throughout the state have illustrated this “pent-up consumer demand for walkable, vibrant places in which to live and work.”²

Avon Opera Block - facade, and second floor Town Court after rehab. The historic Avon Opera Block in the Village of Avon underwent a significant renovation including its upper floors. The project, lead by Bero Architecture PLLC and contractor Frank Marianacci, was completed in 2009. The building now houses the Avon Town Hall and the Avon Preservation and Historical Society. (Photos - Bero Architecture PLLC)



THE LOCAL MULTIPLIER EFFECT - BUY LOCAL!

Expansion and creation of additional local businesses in downtowns can have a huge effect on the local economy. The Local Multiplier Effect illustrates how a larger percentage of money spent at local businesses is recirculated within the local economy, vs the same amount of money spent at a national chain.

“Because locally owned businesses keep their profits in the local community and are more likely to purchase goods and services from local sources, their local spending has a multiplier effect on the local economy.”³

A higher percentage of a local businesses’ expenses and profits are invested in the local economy vs a national chain. Local businesses are more likely to hire other local businesses for certain services such as accounting, legal work, etc, and purchase local products for use or sale. In addition, much of the business profits made by a local owner will inevitably be reinvested into the local market on goods, services, and living expenses. The initial money spent locally has a *multiplier effect*, because it contributes to the local economy a number of times rather than leaving the local economy.

While national chains do support local economies, they do so at a lower rate. Employees from national chains still reinvest their wages locally, but this is no different from the employees at local businesses. However, profits from national chains immediately leave the local economy and are sent to an out-of-town owner, or spread thin across thousands of shareholders’ stock portfolios.

The reinvestment differences between local businesses and national chains vary. A study in Portland conducted by the Maine Center for Economic Development Policy found that \$100 spent at national chains resulted in an average of \$33 worth of additional economic activity locally; \$100 spent at the 28 locally owned businesses resulted in an average of \$58 worth of additional economic activity in the local economy (76% more economic impact).⁴ Some studies show a much larger difference. An Austin, Texas study comparing independent book and music stores to national chains found that every \$100 spent resulted in \$14 additional economic impact from the national chains, versus \$48 additional local impact from the local stores (three times as much additional local economic activity!).⁵ The extent of the impact varies based on the local area, the industry, and even the specific businesses in question, but the overall trends remain the same. Money spent at local businesses is reinvested into the local economy at a higher rate and therefore has a greater local economic impact. And more money reinvested into the local economy can result in business and job creation.

Local Multiplier Effect Example

Consider money spent at a local gift shop. Some of this money ends up as profit for the owner who will reinvest a portion into the local economy on goods, services and living expenses. Some of the money is reinvested in the local economy by the gift shop by purchasing inventory from a local artist. The artist then takes a portion of profits and spends them at a local restaurant, thus a portion of the inventory purchase is once again reinvested within the local economy. The local restaurant owner also spends some profits locally as well, and the process goes on and on. The initial money spent at the gift shop has made an impact on the economy a number of times.

Environmental benefits

Focusing investment toward already developed areas is more sustainable and environmentally friendly than low-density development in outlying areas. This type of development can degrade wildlife habitats, consume open space, and threaten agricultural land.⁶

Downtown redevelopment increases density, which improves walkability and reduces private automobile use. Residents, workers, and visitors in a downtown may not need to drive as many miles as they would in a low-density sprawling area. Dense downtowns are also more likely to have the necessary population and demand to support alternative transportation options.

Growing concerns for energy use and the environment have made sustainable development practices a priority for municipalities and developers. Reusing an existing building “is a fundamental green building strategy rewarded in most LEED rating systems, including LEED-ND. In addition to eliminating waste and reducing the energy and resources needed to produce building material, reusing or adapting buildings reinforces a neighborhood’s existing character.”⁷ Redevelopment in downtowns requires less new infrastructure such as roads, water, sewer, and electric facilities.

“**LEED, or Leadership in Energy & Environmental Design**, is a green building certification program that recognizes best-in-class building strategies and practices. To receive LEED certification, building projects satisfy prerequisites and earn points to achieve different levels of certification. Prerequisites and credits differ for each rating system, and teams choose the best fit for their project. LEED certified buildings save money and resources and have a positive impact on the health of occupants, while promoting renewable, clean energy.” LEED-ND (neighborhood development) “applies to new land development projects or redevelopment projects containing residential uses, nonresidential uses, or a mix. Projects can be at any stage of the development process, from conceptual planning to construction.”⁸

Building Conditions, Preservation and Sense of Place

Reuse can have a great impact on building conditions. Each building that is able to use its upper floors becomes more sustainable financially and is more likely to support building maintenance and upgrades. Buildings that are rehabbed or even just maintained have much more longevity, and the threat of demolition is diminished.

Upper floor rehab is important for preserving historic buildings which often give a community its own unique character. Façade improvements such as replacing boarded-up windows or repairing damaged architectural features can have a huge impact aesthetically and help to improve a community’s image. Historic buildings often have unique interior spaces as well that can be very popular for reuse. Reuse and renovation of historic buildings create momentum and influence other owners to do the same.

Historic buildings and resources in a downtown can add to its *sense of place*. Spaces that have a distinct identity, character, and evoke interest from users have a strong sense of place. “A sense of place invites people to stay longer than is necessary to conduct their business. People will be tempted to linger if a place is comfortable, safe, attractive, and interesting. The longer people choose to stay downtown, the more establishments they will visit, thereby providing an economic benefit as well. Lingering, by increasing the level of human activity in a place, will help enhance the image of downtown.”⁹

A downtown with improving building conditions, historic character and a strong sense of place will attract visitors, and create excitement and instill pride in the local community. Community members may be even be driven to get involved with neighborhood groups or downtown redevelopment groups to help with revitalization efforts.

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CHAPTER THREE:

COMMUNITY AND DOWNTOWN DEVELOPMENT

Community and downtown development is integral to the upper floor revitalization process. To create demand for upper floor reuse and rehab communities need to build upon the unique assets that their downtowns possess and create desirable places that people want to visit. As downtown revitalization begins and continues to progress, opportunities for upper floor reuse will increase.

Downtowns with visual character and a variety of uses help bring new users downtown and bolster tourism, a hallmark of community revitalization. With community and business leadership, strides can be made to create a place that people want to be. As a downtown is strengthened, increased desire for commercial and residential space will result in the demand to reuse upper floors.

Communities that want their upper floors to thrive must establish and embrace a comprehensive downtown revitalization strategy aimed at creating and enhancing a place where people want to live, work and visit. Successful downtowns do not just ‘happen’, they are created through years of hard work, citizen participation, community organizing, visioning, and strong leadership.

“Every downtown has unique assets that must be understood and built upon to achieve the turn around. It is a rare downtown that cannot succeed, if there is the intention.”¹

Strong Leadership and Partnerships

One of the most important assets a community and downtown can have is strong local leadership. All downtowns are different and may have different groups acting in this role, both public and private entities. Leadership can come from business organizations, community groups and non-profits, advocacy organizations and local government.

A successful downtown revitalization effort needs strong, viable organizations to build and maintain this long-term commitment. Chances are you have these kinds of civic groups already in your community. A

coalition of organizations providing downtown revitalization leadership will be able to stand together to advocate for the area, market the downtown, create political pressure, strengthen local pride, and work to improve the downtown for businesses, residents and visitors alike.

Business Leadership

Business leadership can take a few different forms in downtowns. Some may use business associations (or merchant associations); while others are able to create business improvement districts (BID) to better fit their needs. The organizational types have typical roles they usually play, which can vary depending on the specific organization and the individual downtown.

Chambers of commerce were traditionally the downtown business development organizations in the first half of the twentieth century; however, many chambers saw market shifts and growth in outlying areas due to decentralization, and the focus shifted out of downtowns. By the 1980s, many chambers had become regionally focused, leaving downtowns to create their own business development organizations.

Business associations (or merchant associations) can be very beneficial in leading downtown revitalization efforts. Business associations are non-profits that assist businesses and advocate for a commercial area such as a downtown or ‘main street’. Their role is often two fold; they focus on business retention, development and attraction and also take a role in enhancing the district’s image and attracting visitors, which can include marketing, promotions and special events. Optional membership fees from businesses, stakeholders, and property owners fund business associations.

A Business Improvement District (BID) is a designated area managed by a non-profit organization funded through a special tax assessment on properties located in the district. The funding is used to provide services and fund projects that the municipality is not able to provide usually related to the district’s maintenance, development, promotion and safety. These

services may include marketing; business development; retention and attraction; parking management; public safety/security; and streetscape improvements such as planters, benches, and lighting. Many business associations take on similar roles as funding allows.

In order for a BID to be created legislation is required because BIDs are funded through a special tax. BIDs are also known as special improvement districts, special assessment districts, business assistance districts, business improvement zones, or special services districts.²

Downtown Non-Profits, Community Groups and Advocates

Many downtowns have additional groups (non-business focused) that are focused on revitalization in various other ways. Some of these groups have specific revitalization goals and expertise (for example housing development), while others may have a more broad missions.

Some of the organizations that fit this broad category could include downtown advocacy groups, neighborhood associations, ‘main street’ associations, community development corporations, or special interest community groups. They represent a diverse constituency of residents, land owners, businesses and stakeholders which is important for building partnerships, creating consensus and community buy-in, and advocating for downtown priorities. These groups often depend on volunteers who are truly passionate about revitalizing their downtown.

Volunteer contributions are invaluable to the success of a downtown revitalization effort.

These community organizations serve a variety of roles often defined by the needs of the downtown which could include advocating for: police presence and safety, improved building maintenance, quality/affordable housing, historic preservation, or a number of other important priorities. They often house community development programs and activities

such as community cleanups, farmers markets, community gardens and community information and outreach meetings.

Some groups act as ‘watchdogs’ taking a role in public safety and advocating for police presence, or putting pressure on the municipality to address problem properties and issues with their owners. Others take more of a ‘cheerleading’ role, being involved in promoting the area through special events, or marketing.

Some downtown groups are community development corporations (CDC) who work on real estate development such as creating affordable housing, or providing assistance with building repairs. Advantages of a CDC in a downtown can include providing real estate expertise and targeting resources towards specific problem properties, or strategic redevelopment properties.

A few ‘Main Street Programs’ operate within the GFL Region that are affiliated with the National Main Street Center, Inc.³ These organizations utilize the Main Street Four-Point Approach which is an established comprehensive commercial district revitalization strategy that focuses on four key revitalization priorities: organization, promotion, design, and economic restructuring.

Government Leadership and Support

Local governments should also be involved with downtown revitalization, but they cannot provide the only leadership. Partnership with the private sector is essential. Government leaders should be committed to revitalization and contribute to initial planning/visioning processes.

Government support politically and financially is most important at the beginning of the revitalization process when investments are scarce due to the higher risk of the unproven downtown market. Local governments should provide assistance and incentives when possible to developers and businesses willing to invest downtown. Governments can also prioritize capital improvement spending downtown

for infrastructure improvements, investment in parks and public spaces, and street and sidewalk repairs.

Industrial Development Agencies (IDAs) can also contribute to downtown revitalization. All of the counties in the G-FL Region have IDAs which are legally empowered to buy, sell, or lease property and provide tax exempt financing for approved projects. IDA properties are exempt from property taxes and purchases related to IDA projects can be exempt from state and local sales taxes. The value of these exemptions can be passed on to the businesses they are assisting. While IDA properties are tax exempt, businesses occupying IDA-owned properties usually make payments-in-lieu-of-taxes (PILOTs) that are shared with the local municipality.⁴

Investors and Developers

Investors and developers are key players in downtown revitalization especially those that are present early in the revitalization stages. Revitalization requires money and someone to take a risk because they believe in the potential of a downtown. Investors and developers can include those who take on major construction and renovation projects, or local building owners who spend money to repair and upgrade their properties.

These early investors are important because they take on projects that have potential market demand, but are not being considered because they are still an investment risk. These investments are essential to further revitalization because the completed projects become physical evidence that the market can support redevelopment projects and reuse. Successful projects usually influence other investors and developers who were a little more wary of the market, or who had trouble securing financing due to the unknown market demands.

Downtown Visioning and Plans

Downtown revitalization is a long term process that takes planning and commitment. It is important for a downtown and its many groups and stakeholders to have a shared vision for what the district should be

in the future, as well as implementation strategies to work towards that vision. This can be accomplished through a number of different processes including the creation of a downtown master plan which is discussed in more detail in Chapter 5.

Not all downtowns will create a traditional master plan but they should at minimum take part in strategic visioning process in order to guide revitalization. Regardless of the form the process takes, a wide range of public and private sector participation is essential. Public engagement and consensus building will help determine priorities and create solutions that meet the common needs of the downtown as a whole.

A downtown's over arching goals may include increasing safety; maintaining and improving walkability; attracting and retaining businesses; and marketing downtown to visitors and potential residents. Other portions of the vision should be more specific to the assets and opportunities of the specific downtown. "To best enhance its distinct qualities, a downtown should build upon its intrinsic historic, economic, natural, and cultural amenities."⁵

Strategies should be created to address specific goals, which may include creating residential development on upper floors or attracting key businesses to locate downtown. Market studies may be conducted for either of these goals to determine what the current market will support and what it could potentially support in the future due to recent trends.

The entire process should result in the creation of a shared, realistic vision of what the downtown should be like in the future, as well as goals and strategies for implementation. A vision and supporting strategies that have built consensus will be well supported and have the momentum needed to push downtown projects such as upper floor redevelopment toward implementation.⁶

Creating a Critical Mass of Users

Downtowns need to create a critical mass of daily users. More users walking the streets and visiting destinations can help to create a safe, popular downtown and continue to create demand for additional uses and reuse of vacant spaces. “Just as a crowded restaurant is the best recommendation that it is a good place, crowded sidewalks recommend downtown, signaling a safe environment, and providing an excitement and spectacle that draws people to the area.”⁷ If an area is desirable to live, visit, and do business, demand for space can increase which can create demand for reinvestment in upper floor rehab and reuse.

Safety

Safety is one of the most important concerns in downtowns in order to attract visitors and future residents. Public perception over the years has hurt many downtowns which are sometimes perceived to be unsafe, whether they are or not. It can take a significant amount of time and effort to change people’s perception if they feel it is unsafe. An increased police presence on the streets can help improve safety, and reduce crime and apprehension. Public safety improvements can also come from strong community groups who strengthen community pride, ownership and involvement. People involved in their communities are more likely to watch out for crimes and report them.

Reducing vacancies and bringing more users on to downtown sidewalks can also have a positive impact reducing crime as well. Many marketing strategies and special events planned in downtowns are aimed at reducing the perception that downtown may not be safe. If people are drawn to downtown for a specific reason like a special event and have a quality experience without any issues, they are likely to come back.

Mixed Use/Activity

Mixed use districts can have a major impact on generating users as they have a variety of uses in a downtown that complement each. This can be beneficial

People are drawn to vibrant places.

to the strength and popularity of the district and businesses, and can strengthen walkability. A mix of uses can also attract a diverse group of users. Mixed use districts are covered in depth in Chapter 6.

Downtowns with a number of functions, attractions and amenities will create more reasons for people to visit and stay. It is important to have this street activity all times of the day and night on weekdays and weekends. Downtowns developing their upper floors will add more activity to the street which can in turn attract additional users.

Clean and Well Maintained Downtowns

Downtowns should be clean and well maintained. Volunteer groups can have an impact on cleanliness by hosting frequent clean up events which can also serve to build community between neighbors.

Buildings that are maintained and repaired can have a major effect on the feel of an area. Improvements as simple as new paint or even a moderate renovation are often the first visible signs that something positive is happening downtown, signaling to the community that exciting changes are taking place.⁸ Public art and murals have also been used successfully to aesthetically enhance downtowns, and also add to an area’s sense of place.



Wall mural being painted at the 224 Mt. Hope, Rochester. The South Wedge Planning Committee’s neighborhood office was chosen as one of the many canvasses for “Wall Therapy” - a city-wide mural project that attracted artists from around the world.⁹ (Photo - G/FLRPC)

Walkability and Transportation Amenities

One of the key advantages that set downtowns apart from many other areas is their walkability.

Walkability is enhanced by density along with plenty of activity, which creates destinations and places to walk to and from. Walkable districts enhance quality of life and public health. Walkability and safety go hand in hand as well. “People will choose to walk if...pathways and sidewalks are sufficiently wide, well lit, and perceived as safe and comfortable; and if the routes offer interesting, attractive amenities, such as building facades, window displays, landscaping, and open spaces.”¹⁰ More pedestrians on the street can improve safety as well.

Fostering walkable urbanism is the key to the revival of a struggling downtown.¹¹

Walkability can be enhanced by the addition of pedestrian amenities and safety features such as wide sidewalks; street furniture; planters; pedestrian scale street lights; and traffic calming features like brick crosswalks, reduced speed limits and curb bump outs. Some municipalities have been able to incorporate these concepts into their schedule of infrastructure repairs and capital improvements that are required every few decades for upkeep.

It is important for a downtown to have a variety of transportation options. Bicycle amenities such as bike lanes and racks can also enhance a downtown and provide additional alternatives to automobile use.

Creating and maintaining the right amount and quality of parking downtown is also important (see Chapter 6 for more information regarding parking). Automobiles will be present downtown but they should not be prioritized over all other forms of transportation like they often are in low density development areas. Striking a balance between various forms of transportation is ideal.

Great downtowns are pedestrian friendly.

Quality of Life

Many of the factors above can be categorized as quality of life amenities and are important to creating a great downtown. Building upon the current amenities is important for retaining existing downtown users – residents, businesses and visitors – and attracting new people, especially residents. Additional quality of life factors not mentioned above can include employment opportunities; access to quality food; available and affordable housing options; availability of businesses and services; quality schools; cultural amenities; and public spaces, parks and recreational opportunities.

Sense of Place

Downtowns tend to have a strong sense of place, especially due to their history and traditionally dense development patterns and building styles. Sense of place includes all of the things that give a location a unique identity and feel.

Upstate NY’s village and small city downtowns were often the first places to be settled and as such they have quite a history. They served as central gathering places and areas of commerce. Downtowns are blessed with historic buildings and architecture, and opportunities to build upon these assets to strengthen the area. In addition to contributing to an area’s unique character and authentic feel, historic buildings offer opportunities for economic growth through commercial building rehabilitation such as reuse of the upper floors and cultural heritage tourism. The economic benefits of historic preservation should not be overlooked in downtowns.

Downtown’s history and sense of place should be embraced and used to create unique places that people not only visit, but *experience* as well.

Preserving historic character and encouraging appropriate building rehabilitation should be a top priority for downtown revitalization. Preservation projects such as restoring façades or rehabbing upper floor spaces can be expensive, and owners may not see a return on investment right away, but revitalizing

even one building can have a significant impact on a block. When preservation and rehab is more widespread, it can have a transformative effect on the image and feel of a downtown.

Traditional dense downtown development trends have created pedestrian friendly streets and spaces perfect for walking. Walkable active streets help create a sense of place. Pedestrians experience downtowns differently because at a walking pace they have time to look around and observe things like buildings and architecture.

Sense of place can also be strengthened by features that define a specific district such as pedestrian lighting or street banners that give an area a cohesive feel. Some downtowns have gateways signs that signal to visitors that they are entering the downtown.

Downtowns with a strong sense of place should be able to better attract local visitors and tourists looking for an authentic experience.

“A strong sense of place is vital to the health and prosperity of a downtown.”¹²

Marketing and Promotion

Marketing can be an excellent way to get visitors into a downtown, and showcase its positive or improved conditions and unique assets. The image of a downtown is often negative prior to revitalization which requires continual marketing and promotion techniques to attract visitors.¹³ Both local visitors and tourists can have a huge economic impact on small downtowns through consumer spending on food, entertainment, and lodging as well as through job creation and investment from the tourism industry.

Shared Marketing

Many business organizations and businesses participate in shared marketing strategies which can be effective in enticing visitors to come downtown by illustrating the variety of businesses that can be visited in one trip, much in the way that malls market themselves. Shared marketing can be cost effective because marketing fees are split between multiple groups.

Promotion

Promotion strengthens the downtown’s image and marketability in several ways: by instilling community pride and excitement; by creating a unified image; by strengthening the downtown as the center of community activity; and by improving perceptions of the downtown. Promotional programs such as activities that encourage downtown retail sales, holiday celebrations and other special events, and image-building promotions that reverse negative perceptions of the downtown, can communicate positive change.



North Main Street, Village of Albion. (Photo - Albion Main Street Alliance)

Special events

Special events have been used successfully to promote downtowns across the country. Many different types of special events are possible including parades, festivals, concerts, art shows and farmers markets.

Marketing, promotion and special events can be organized and hosted by any number of downtown organizations. These strategies can attract visitors from outside of the area to come downtown, and ideally help improve the image of and convince people to come back at a later date.

Development Progression

While the revitalization process is different in every downtown, some common lessons can be learned from other successful downtowns in terms of land use and reinvestment trends.

Revitalization usually starts with getting new people to visit a downtown. Attracting new people into a downtown and increasing its popularity can improve people's views of downtown which could be negative from years of neglect. New visitors will often spend money which helps strengthen the downtown businesses. Downtown draws could include retail such as specialty stores or retail that serves the basic needs of residents for example small grocery stores or drug stores. Other activities could include urban entertainment such as restaurants, theaters, bars and nightclubs; and special events/festivals.¹⁴ Having a concentration of these attractions in a dense walkable area can give visitors a number of reasons to come downtown. A critical mass of users visiting downtown will enhance the area even more and create demand for more development. As downtowns gain in popularity, businesses begin to thrive and rents are increased, renovation of upper floors will become more financially viable.

When a critical mass of people are using downtown, people may begin to want to live there and the demand for apartment space may increase. Early renters are often young people and students looking for a unique exciting place to rent. Upper floors are prime locations for conversion into apartments. "The reno-

vation of existing buildings offers some of the most exciting new housing options, as they are unlike other rental products in the regional market."¹⁵ Empty nesters and retirees, many of whom are looking to downsize their homeownership and maintenance responsibilities, may also be a target demographic for rental units. Renting in a downtown (vs. owning) in the early stages of revitalization is often popular because it takes little commitment/risk. As more people begin to live downtown, demand will increase for business that serve the local residents such as small markets/grocery stores, drug stores, banks, and service providers such as barbers or dry cleaners.

Downtowns that lack available residential space should prioritize future residential development. An influx of people living downtown will increase the amount of daily street activity to support businesses. Residential neighborhoods on the border of downtown are also very beneficial. These residents who could be within walking distance will likely increase downtown activity and support businesses.

Demand for residential ownership downtown usually comes after the demand for rental housing as ownership requires much more commitment. Residents looking to purchase may be more weary of areas that may be on the verge of revitalization because of the unknown vs. a renter who has only a one year commitment. Increasing residential ownership is also dependent on the available building stock. A downtown made up entirely of three to four story mixed use buildings may have a harder time developing the owner occupied market as these buildings may have to be split up and converted to condominiums. Other downtowns with a mix of townhouses, multifamily, and single family residential buildings may be able to attract owner occupants sooner.

Office space may already be located in a downtown in its early phases of revitalization (especially government offices) but not always. Regardless, as more residential and commercial comes back to downtown, more office space will follow. Upper floors are also prime uses for office space as they do not require display windows like many retail businesses that may prefer first floors.

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CHAPTER FOUR:

WATERFRONT DEVELOPMENT

The Genesee-Finger Lakes Region is blessed with a great deal of natural water bodies, including nine of the NYS Coastal Waterbodies and Designated Inland Waterways. Many of the municipalities in the region are located on an inland or coastal waterbody (90 municipalities out of 190, or 47%).

Waterfronts are places used for commerce, tourism, housing and provide natural habitats for plants and animals. “The fact that many downtowns are built near a body of water is a tremendous asset that should not be wasted.”¹ These downtowns could incorporate their waterfronts into local revitalization strategies and capitalize on these great resources.

Waterfronts played a key role in the development of New York municipalities and downtowns. The availability of water for transportation routes and waterpower prompted the formation of many cities, villages, and hamlets which developed into centers of commerce, trade, industry, recreation, culture, and government. Waterfront communities took advantage of their location to develop industries such as shipping, processing, and warehousing.

Business districts that established around waterfront industries thrived until decentralization shifted people and industry away from downtowns and previously developed industrial areas. Industrial sites and warehouses no longer considered economically viable were abandoned, leaving vacant deteriorating buildings behind, often on contaminated sites. Known today as brownfields, these contaminated sites – if remediated – have a unique opportunity to be reused and potentially bring businesses and people back to waterfront communities.

Today the demand for waterfront land is less based on industrial and manufacturing needs and more on commercial, residential, and recreational uses. People want to live near water or visit waterfronts to shop, explore and walk along the water’s edge. Many people enjoy waterfront recreation such as swimming, fishing and boating. Unfortunately, years of disinvestment have resulted in limited public access points and few recreational facilities. Communities



Kershaw Park, City of Canandaigua. (Photo - G/FLRPC)

are now shifting their focus to capitalize on water-related opportunities such as the area’s environmental assets, recreation, and tourism potential.

Access

Waterfront access is very important for downtowns that want to leverage waterfront assets to influence revitalization. The layout and orientation of many historic central business districts and residential neighborhoods have been defined by waterways, but “over the years, downtowns have been cut off from the water by parking lots, railroad tracks, busy streets, and industrial buildings.”²

For waterfront communities, creating and improving the connection between downtown and the water is essential for pedestrian and bicycle activity. “Public access is essential. The design of waterfront buildings and open spaces must make it easy to get to and view the water.” Roads, sidewalks and trails can successfully link a downtown to its waterfront and improve access. Residents and visitors also value places that preserve the view of the water. Orienting the built environment to the water can improve public access and increase use.

By visually and physically connecting (or reconnecting) streets, buildings, and public spaces with the water, the downtown can capitalize on its waterfront location and strengthen its sense of place.⁴ Upper floor redevelopment of historic buildings and

enhanced maintenance of docks and other structures that are historically connected to the waterfront can create cultural experiences not only for the local resident, but for visitors and tourists who consider such factors when making their destination and spending choices.

Environment

Waterfronts are often rich with environmental assets, from scenic views, to public greenspace, to natural vegetation and animal habitats. These assets can be major selling points to attract residents and visitors who value unobstructed views of the water and surrounding natural areas.

Many waterfronts still have contaminated brownfield sites from their past industrial uses. Revitalization of nearby downtowns can increase the demand for this land and the need for brownfield remediation. Some remediation might be aimed at cleanup in order to create new development; other remediation may focus on restoring natural environmental assets such as shoreline vegetation and natural buffer areas. Another option for remediated brownfields is to create public parks, providing greenspace and public

access. These areas give residents and visitors additional opportunities to enjoy the natural, scenic, and recreational assets of the waterfront.

Recreation

Shoreline communities have the potential for significant recreation resources that can be an essential part of the character of their downtown districts, and an integral part of their revitalization.

Waterfronts provide the potential for a number of recreational activities, both in and along the water, which can include walking, hiking, fishing, boating, and paddling and are often great places for parks, festival sites, and trails. Waterfront recreation is a great community asset, and can be used to leverage investment in downtowns.

Upper floor revitalization in downtown commercial waterfronts will most likely increase demand for recreational opportunities, which in turn support economic activity. The 2006 report, “The Active Outdoor Recreation Economy,” revealed that the total economic activity from outdoor recreation (bicycling, camping, fishing, hunting, paddling, snow



Small boat harbor on Canandaigua Lake. (Photo - G/FLRPC)

sports, hiking, climbing and wildlife viewing) in the United States is \$730 billion a year and generates 6,435,270 jobs. This includes \$46 billion in gear retail sales, \$243 billion in trip related sales, and nearly \$88 billion in federal and state taxes.⁵ The popularity of waterfront recreation creates demand for related businesses such as product sales and services which can have a positive impact on the local economy.

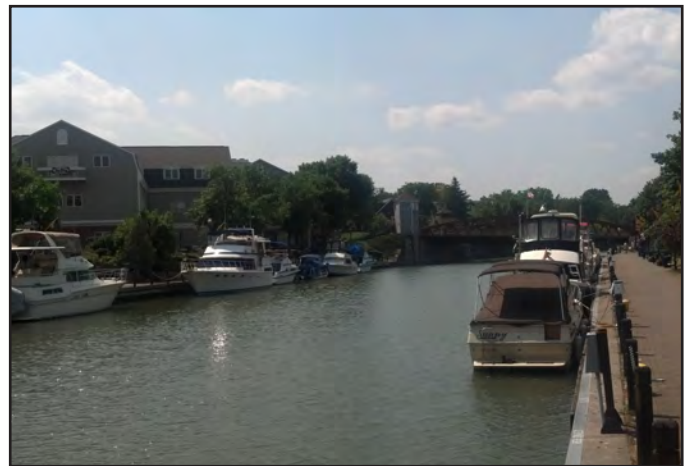
Tourism

Communities that have prioritized the quality of the environment around their waterfronts and have created quality recreational opportunities attract visitors within the region as well as tourists from hundreds of miles away.

The popularity of heritage travel makes preservation a powerful tool for downtown revitalization, especially for municipalities with a connection to the waterfront.⁶ Travelers who enjoy heritage travel or cultural tourism activities tend to visit places such as historic areas, architecturally significant sites, festivals, art galleries, museums, and ethnic neighborhoods. A 2009 research study for the U.S. Cultural & Heritage Tourism Marketing Council reported that 78% of all U.S. leisure travelers participate in cultural and/or heritage activities while traveling (about 118.3 million adults each year). On average, cultural and heritage travelers spend \$994 per trip, which contributes over \$192 billion to the U.S. economy each year. Cultural and heritage activities identified by travelers in the study included: “visiting historic sites (66%); attending historical re-enactments (64%); visiting art museums/galleries (54%); attending an art/craft fair or festival (45%); attending a professional dance performance (44%); visiting state/national parks (41%); shopping in museum stores (32%); and exploring urban neighborhoods (30%).”⁷ Sixty-five percent of the travelers sought experiences where the “destination, its buildings and surroundings have retained their historic character.”⁸

Waterfront communities have many different types of historic resources, from waterworks to lighthouses to piers and docks. Redevelopment that affects historic resources should aim to preserve, protect, and appropriately reuse these resources. The preservation and renovation of boatyards and marinas, public piers, and warehouses support a community’s maritime heritage. Old warehouses and factories can often be renovated to serve new needs of residents and visitors.

Waterfronts and their unique assets can be leveraged to strengthen the quality of nearby downtowns. Preserving historic structures, enhancing a pedestrian friendly atmosphere, and improving access to waterfronts helps create a place that appeals to both residents and visitors. These features not only contribute to the community’s sense of place, but can also be the stimulus to further drive revitalization and strengthen the local economy.



*Boating activity on the Erie Canal in the Village of Fairport.
(Photo - G/FLRPC)*

LOCAL WATERFRONT REVITALIZATION PROGRAM⁹

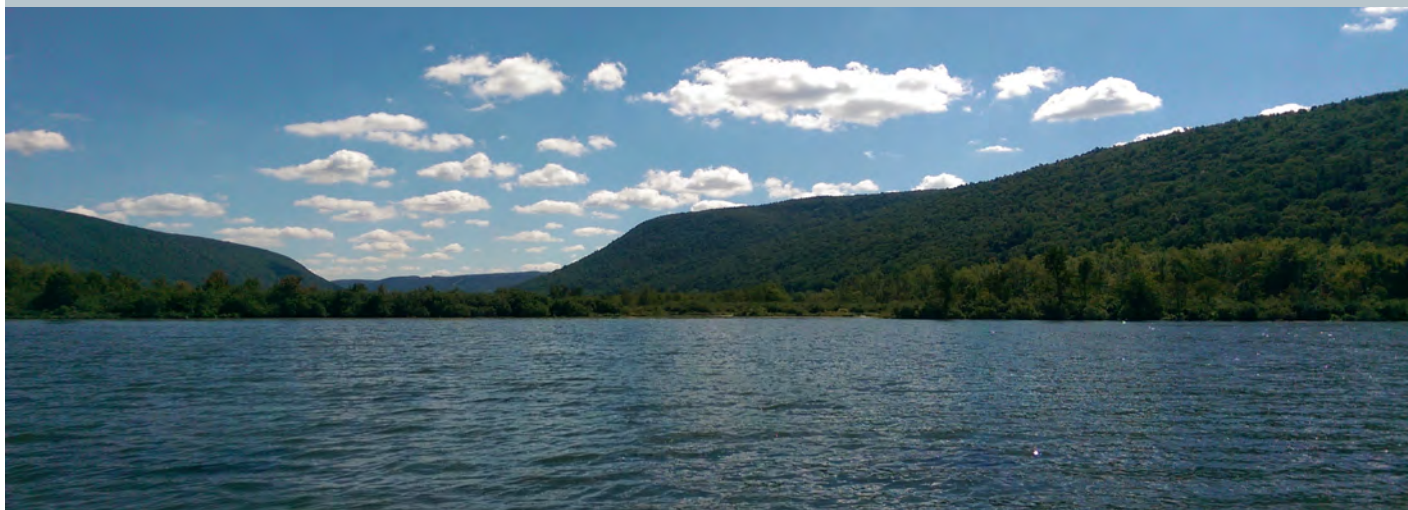
To protect the economic vitality of downtowns in waterfront areas, the New York State Department of State has taken the lead in providing professional expertise and financial assistance to municipalities to develop and implement community revitalization plans through the Environmental Protection Fund's Local Waterfront Revitalization Program (LWRP). The Department of State recognizes that the redevelopment of waterfronts and strong connections between downtowns, neighborhoods, and the waterfront are essential for the economic vitality of communities. Funding is awarded for plans and projects that are intended to expand public access, revitalize waterfronts, restore habitats, and strengthen local economies.

Making the Most of Your Waterfront: Enhancing Waterfronts to Revitalize Communities is a guidebook produced by the Department of State that provides an introduction to waterfront revitalization. It is a step-by-step guide that shares lessons learned, successful techniques, and sources of information and assistance. The guidebook provides information on the benefits and requirements for participation in New York State's LWRP and shows how a community can use an LWRP to help achieve its vision.

The Local Waterfront Revitalization Program provides grant funding to projects that fall within the following categories:

- Preparation of Implementation of a Local Waterfront Revitalization Program
- Redeveloping Hamlets, Downtowns, and Urban Waterfronts
- Planning or Constructing Land and Water-based Trails
- Preparing or Implementing a Lakewide or Watershed Revitalization Plan

When the LWRP is complete, the municipality must formally adopt the plan and submit it to the Secretary of State for approval. Adoption clearly signifies that the plan will be a policy document which guides development over successive administrations. Many state and federal partners view formal adoption as a reflection of the community consensus on the LWRP.¹⁰



Honeoye Lake. (Photo - G/FLRPC)

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CHAPTER FIVE:

**INTEGRATION
WITH PLANNING
PROCESSES
AND PLANS**

Planning is a process that works to improve the quality of communities, in their built and natural environments, by assisting citizens in creating a vision for their future and determining what strategies and actions are needed to address obstacles and implement the vision. “Good planning helps create communities that offer better choices for where and how people live. It helps them find the right balance of new development and essential services, environmental protection, and innovative change.”¹

Planning Processes

Many plans begin with identifying experts, stakeholders, and citizens to form a committee to help determine project priorities and provide feedback throughout the process. Data collection, research, and analysis of current conditions related to the topic are also important at the beginning of the planning process.

Involving the public and identifying the right stakeholders in a planning process is essential to ensuring that the plan reflects the needs and priorities of the community or group it is intended for. Holding public meetings, workshops and presentations; creating surveys; and providing information and project updates on websites are common ways to keep the public and stakeholders informed and gather input. A good outreach process can help build consensus and support for the plan as well as its implementation strategies and recommendations.

Many plans include the creation of a shared vision followed by corresponding goals that help reach that vision. Goals should be general statements that elaborate on the vision and help identify priorities for the plan to strive for. Actions and strategies are then created that will help fulfil the goals. An implementation strategy elaborates on ways to complete the actions such as assigning responsible parties, identifying costs or funding, established timeframes, etc.

The Comprehensive Plan (or Master Plan)

A comprehensive plan serves as the guiding document for decision making regarding land use issues in a cities, towns and villages. It usually follows a

general planning process similar to the one illustrated above. A comprehensive plan should use current conditions, issues, and municipal priorities to create an agreed upon vision for the future. The plan should also provide specific goals and objectives as well as strategies and action recommendations which usually include future public and private investment; policy development; and identification of land uses and the type of development that the community desires. By clearly articulating the municipalities land use policies, a comprehensive plan assists municipal officials in shaping their communities’ future.

Community participation and support is essential. The best plans are typically those with the greatest amount of public participation and usually include community surveys which are a great way to get ideas and feedback from a large portion of the population. Additional participation can include public meetings, workshops, and web-based feedback. Citizens can be helpful with identifying concepts that the plan should address such as community: priorities, issues, strengths, and weaknesses. At the very least, citizens are entitled to comment on the plan at a formal public hearing before it is officially adopted. Municipal representatives and stakeholders should be involved in the process as well. Ensuring everyone voices are heard builds consensus and helps gather support for approval/adoption.

Municipal officials and boards must consider the comprehensive plan when making land use decisions, as comprehensive plans provide the basis for a municipality’s zoning law (see Chapter 6 Local Laws for more information). NYS Law states that “all village land use regulations must be in accordance with

<p style="text-align: center;">Essential Parts of a Comprehensive Planning Process</p> <ul style="list-style-type: none">• Citizen/Stakeholder Involvement• Data Collection and Analysis• Agreeing on a Vision• Determining Goals and Objectives• Creating Actions / Policies• Formulating an Implementation Strategy

Vision Statement

- Agreed upon future or direction for a municipality
- Highlights a municipality's priorities and values
- Guides growth and land use
- Is based on research, current conditions, and committee and public input

a comprehensive plan”² (identical laws apply to cities and towns).

It is crucial for municipalities to develop and maintain comprehensive plans. Plans should be updated periodically to review current conditions, as well as municipal and citizen needs and priorities. Updates should incorporate these changes, and include adjustments to the plan's goals and action strategy.

Municipalities interested in upper floor revitalization should include the concept in their comprehensive plan by identifying it as a priority and incorporating corresponding goals and action strategies within the plan. Some plans have subsections and committees that focus on specific topics which could include a focus on downtowns and upper floor reuse. The resulting downtown/upper floor section of a comprehensive plan might prioritize downtown redevelopment, walkability, historic building rehab, quality design, upper floor reuse, and a mixture of different land uses.

Incorporating upper floor reuse priorities and actions is especially important when the time comes to update the zoning code or create new local regulations. These laws need to be consistent with the comprehensive plan, thus including upper floor reuse priorities in the plan will help justify related regulations. More information about zoning and local laws can be found in Chapter 6: Local Laws

Standalone Plans

Standalone plans (sometimes called strategic or district plans) can be created that focus on specific geographies or topics. These types of plans might target downtowns, historic districts, industrial parks, agricultural areas, and sensitive environmental areas.

The narrower focus can encourage participation by key stakeholders such as property owners, residents, and businesses.

Downtown Plans

Downtown plans are useful because they have a more narrow focus and can go into much greater detail than a municipal comprehensive plan could for the same area. For example, a downtown plan could specifically target very specific goals like the importance of revitalizing buildings on a specific block.

A downtown plan should have three core components: a physical plan, an economic plan, and a regulation/implementation plan. The physical plan deals

Examples of Comprehensive Plan Goals, Objectives, and Strategies Related to Upper Floor Reuse

Goal:

A. Encourage the growth and redevelopment of downtown

Objectives:

A.1. Prioritize walkability downtown

A.2. Encourage the redevelopment of upper floors downtown

A.3. Review the zoning code and examine regulatory barriers to upper floor reuse

Strategies:

A.1.a Improve sidewalks and pedestrian amenities

A.1.b Encourage quality streetscape and building design through additional design regulations

A.2.a Provide incentives to businesses and building owners to reuse and/or renovate vacant upper floors downtown.

A.3.b. Review the list of allowable uses in the downtown zoning district. Expand the code to allow for a variety of potential uses.

A.3.c. Review minimum parking standards and consider adjusting requirements

with all of the public and private spaces, buildings, infrastructure, and land use issues. For example, the physical plan could include a statement about design goals for streetscape improvements; parking and signage inventories; or recommendations to encourage the preservation of historic commercial buildings through zoning or the development of design guidelines.³

An economic plan may include a commercial, office and/or residential market study that identifies current and future market demands and the effect they may have on land use decision-making in the downtown. This can help determine where to locate new uses for example within existing buildings or compatible new development. Policies that guide the preservation and development of the downtown should also be included the plan.⁴

Data gathering and analysis of the physical and economic components help steer the specific actions of the implementation plan. These actions can range from changes to zoning in order to remove barriers for revitalization, to suggestions for incentives, such as revolving loan funds or tax incentives. Public participation is also important in this type of plan and public input strategies can be similar to those previously identified.

Historic Preservation Plan

A historic preservation plan typically includes a description of the community's preservation efforts and sets out the goals, policies, and specific actions related to identification, protection, and enhancement of historic resources. It may also include an explanation of the legal basis for preservation and supporting information such as National and State Register listings, architectural styles, and various preservation organizations. A historic district plan is a separate plan for a specific historic area to serve as the basis for creating regulations to protect it, whereas a historic preservation plan is a planning document for an entire community's historic and architectural character.

In order to plan for the preservation and enhancement of a community's historic environment, it is impor-

tant to undertake an inventory of historic resources. A historic resource survey gathers information about a community or particular area. This data can be the foundation for establishing policies, procedures, and strategies for those places and characteristics that the community believes are worth preserving for future generations. Once resources have been identified through the survey and documentation process and the community decides which resources are most significant and worthy of preservation, a historic preservation policy could be established to formally recognize the resources and afford protection against degradation or destruction.⁵ The development of local preservation laws is discussed further in Chapter 6: Local Laws.

Economic Development Plans

Economic development plans are intended to ensure that future economic growth occurs in a manner that is acceptable and suitable for the municipality and its residents. These plans seek to prioritize what development is most appropriate and then determine potential ways to attract that type of development through an implementation plan.

Economic development plans are often created at the municipal, county and regional levels. They include a review of data, trends, economic development programs and activities as well as recent development projects. Economic development plans often outline the existing land use, zoning, and demographic conditions and incorporate goals from community documents that identify future growth and development priorities, such as a comprehensive plan. The plan process usually includes meetings with a committee of stakeholders and citizens which can include prioritization of future projects. Each of the goals and recommendations of the economic development plan are used to create tasks, responsible parties, and priorities to help guide the implementation process and bring substantive economic development to the municipality.

Transportation Plans

In the past, transportation planning in the United States has traditionally been focused on roads, highways and parking, but more recently communities have been evaluating transportation systems including pedestrian and bicycle travel, bus systems, subway lines, and other fixed rail systems.

Transportation plans are becoming more intermodal, meaning that multiple forms of transportation are reviewed as part of an integrated system. Cities, towns, and villages may also choose to develop individual pedestrian and bicycle master plans or Active Transportation plans that help to “connect people to where they need to go—such as work, school and to access essential services using “active” modes such as walking, bicycling, and taking public transit.”⁷

Pedestrian and bicycle master plans and active transportation plans can be beneficial to upper floor revitalization by helping enhance the types of downtown areas this Guidebook focuses on. These plans emphasize local street designs that encourage pedestrian and bicycle use, discourage high speed traffic, and support/enhance access between neighborhoods and downtowns. Strategies like these that can enhance downtowns can help increase the demand for upper floor spaces in downtown.

Smart Growth and Sustainability

“Smart Growth is the term used to describe well-planned, well-managed growth that adds new homes and creates new jobs while preserving open space, farmland, and environmental resources.”⁸ Smart

The NYS Smart Growth Public Infrastructure Policy Act

The NYS Smart Growth Public Infrastructure Policy Act was signed into law in 2010. One significant impact is the requirement for all state funding agencies to meet ten Smart Growth goals when awarding grants and low-interest loans, such as strengthening existing developed areas and communities to reduce greenhouse gas emissions. This provision means that funding agencies will give preference to infrastructure projects that are located in “priority growth areas.” These are areas where planned or existing infrastructure can support a high degree of additional new development and redevelopment. Such targeted investments include sewer and water systems and local stormwater management.⁹ Projects aimed at redeveloping downtowns with upper floor vacancies fit the goals of this law perfectly.

Growth principles include mixed land uses, vacant building/property reuse, infill development, pedestrian and bicycle friendly community design, energy-efficient buildings, sustainable economic and social development, and strategic farmland and open space preservation.

Upper Floor Reuse *is* Smart Growth!

Many communities have been integrating these principles into their comprehensive plans to support sustainable growth. Certain sections of a comprehensive plan can be devoted to the discussion, such as open space preservation or downtown redevelopment. Smart Growth may also be an overarching theme where all of the sections embrace sustainability goals.

The New York Cleaner, Greener Communities Program empowers regions to create more sustainable communities by funding smart growth practices. To implement the Cleaner Greener Communities Program, \$9.6 million was made available to municipalities for regional sustainability planning. Regional sustainability plans and consortiums were developed within the ten economic development planning regions in NYS. The sustainability plans were required to develop a greenhouse gas emissions inventory and set an emissions reductions target; they also outlined actions for energy efficiency improvements and use of renewable energy sources in transportation, housing, energy supply, water and waste management, land use, agriculture, and economic development. The plan, which was completed in 2013, has been used to guide funding awards for specific sustainability projects during the second stage of the Cleaner, Greener Communities Program. Funding has been awarded during the first two years of this phase, in 2013 and 2014, and a third round is anticipated for 2015.⁶

The Finger Lakes Regional Sustainability Plan can be viewed at <http://sustainable-fingerlakes.org>.

A local sustainability plan is appropriate for a city, town, or village that wants to raise community awareness about how to protect the health of the environment and assure future generations of the resources they will need to survive and progress. Planning for sustainability usually begins with an assessment, using a tool such as LEED for Neighborhood Development. A municipality should research and assess a range of environmental, economic, and social equity challenges within its jurisdiction, such as housing costs, air quality, and infrastructure capacity. Based on this assessment, clear and measurable goals that address the key issues are then defined. All sustainability initiatives and programs can be addressed under one overarching plan that provides implementation timelines, responsible organizations, key benchmarks for each measure, and available funding.

Upper Floor Reuse *is* Sustainable Development!

Upper floor redevelopment in downtown areas can support the reduction of greenhouse gas emissions by:

- increasing density development that minimizes the need to drive
- providing housing near places of employment and public/alternative transit
- minimizing development in outlying, undeveloped areas
- guiding development to existing developed areas, reducing the need for new infrastructure
- reusing existing buildings reducing the need to build new structures

Projects that support upper floor revitalization throughout New York State may be excellent candidates for New York State's Cleaner, Greener Communities Program.

ENDNOTES

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CHAPTER SIX:

LOCAL LAWS

This chapter describes the variety of local laws that affect upper floor revitalization. It is divided into two main parts: the first portion focuses on zoning and related land use laws, and the second portion describes municipal historic preservation ordinances and provides guidance regarding the July 2014 Model Landmarks Preservation Local Law for New York State Municipalities.¹

Zoning

Cities, towns, and villages in New York State are authorized by state statutes to enact laws to regulate land use and development, the most common of which are zoning laws. Zoning serves as an important means of implementing a community's comprehensive plan (see Chapter 4) as it is binding legislation, having been passed by a municipality's governing council or board. Municipalities enact zoning by designating geographic areas with rules prescribing the form, use, and positioning of a building on a given property.

Large municipalities may have hundreds of zoning districts; many rural communities have just a few zones. Zoning prescribes what property owners are permitted to build 'as of right' (i.e., what can be built with exact compliance with each requirement in the zoning code). A developer – or home or business owner – with plans to exceed or substantially deviate from these limitations must receive a variance, granted after a hearing by the municipality's Zoning Board of Appeals.

An integral part of zoning is the zoning map. This delineates what areas of the municipality are included within each zone (see Village of Geneseo Zoning map example below under Mixed Use).

This zoning overview focus on three topics²: **Use** – commercial, residential, industrial, mixed use, etc.); **Density** – how much development is allowed on a certain amount of land (minimum or maximum lot sizes, units per acre, floor area ratios, etc.); and **Siting** – relating to the positioning of individual buildings and amenities on a parcel (height, setbacks, parking, signage, etc.)

Code Organization: Zoning Codes vs. Standalone Laws

Many of the land use laws discussed in this chapter could either be written within a zoning code, or in a stand-alone law. This is usually just a matter of municipal preference. Examples include site plan review, subdivision regulations, sign regulations, etc.

Zoning can have a positive effect on an area by helping to maintain a specific type of development already present, limiting negative impacts to the community. This can be especially important in preserving small traditional downtowns. Zoning can also be used to shift the type of development that has occurred in the past in a new direction. Density, setbacks, and other regulations can require a new infill building to fit within the form and context of the existing built environment. Consider a downtown where development over the years has become low-density and auto-centric. Zoning regulations can help new development better fit the traditional context of the area.

In other ways, zoning regulations can have a negative effect on development by either lacking adequate regulation or being too restrictive. Many municipalities have zoning with excessive separation of similar uses in downtowns; this can have detrimental effects on the possibilities for upper floor reuse (see *Mixed Use Zoning Districts*).

Zoning Code and Local Laws vs. NYS Building Code

All content in this section focuses on zoning and local laws, not NYS Building Codes. Any mention of allowable uses or changing uses in this chapter relates to the feasibility within the local zoning code or law. While a certain use may be allowed in an area according to the zoning code, it may not be allowed in a specific building according to the NYS Building Code, and vice versa. See Chapter 7: New York State Building Codes for more information.

Types of Use

Zoning became important during the industrial revolution to geographically separate noxious or potentially dangerous uses from infringing on neighboring uses; heavy industry or a slaughterhouse might not be appropriate next to homes or schools. Zoning districts have traditionally consisted of similar uses within broad categories such as residential, commercial, industrial, or agricultural.

Zoning's regulation of uses evolved and expanded beyond the logical examples above. Over the years many uses have been separated from each other simply because they are different, not because they are a nuisance or pose a threat to one another. Commercial, residential, and public spaces have often been segregated into respective zones even though they could instead complement each other within the same zone. Even uses in the same category have been zoned away from each other; most municipalities separate single family residential use into its own zone, excluding multi-family residential uses as diverse as condominiums, townhouses, row houses, senior living, and apartments.

While separation of uses may be appropriate in many instances, municipalities should consider the reasons for doing so rather than just following conventional zoning, which often outlaws walkable neighborhoods that people enjoy. Creating a variety of specially permitted uses in a specific zone can be an encouraging step for small businesses, families wishing to be more connected to neighborhoods, and seniors with limited mobility. Special permitted uses must be identified and listed by name within the zoning code. Ideally, municipalities should consider creating 'mixed use' zoning districts for their traditional downtowns that allow multiple types of uses by right.

Permitted Use

A type of use that is allowed within a district by right. The use is identified specifically in the code and does not need any special approval by a Planning or Zoning Board. Example: a single family home in a low-density residential district.

Special Permitted Use

A use that is not allowed as of right in a district, but is identified as potentially appropriate under certain circumstances. To be granted a special use permit, the development must fit within a special permitted use category and may have to adhere to additional criteria identified in the zoning code. Some discretion can be involved in approval. Example: a bed & breakfast in a residential zone could be allowed if it fits within a special permitted use category and it meets certain criteria (which may include site location and features, stormwater drainage, effect on the surrounding neighborhood and transportation network, etc).

Use Variance

A use variance (different from an area variance) can be granted to allow a use that is typically not a permitted use or special permitted use. Use variances are usually difficult to obtain because a number of requirements must all be satisfied to receive approval from a Zoning Board of Appeals. (See Variances.)

Mixed Use Zoning Districts

Mixed use districts are comprised of a variety of land uses in one zone. Allowable uses, which are still identified by name within the zoning code, often include a mix of residential (single family, apartments, condos, etc.); commercial (retail stores, restaurants, services, entertainment); civic and cultural uses; recreation; and other uses.

While separation of certain incompatible uses can still be important (separating heavy industrial from residential, for example), maintaining and re-creating areas with buildings of a diverse vintage and a mix of complimentary uses can provide the basis for a strong local economy. Some people prefer to live within single use residential areas while others would like the option to live in a traditional mixed use downtown, perhaps above a restaurant, store, or office. Without a mixed use zoning district this housing choice is illegal.

Mixed Use - Development Opportunities

Simply having a mixed use district does not automatically spur upper floor redevelopment, as evidenced by many downtowns with still-vacant upper floors that already have mixed use zoning. However, it can reduce barriers to redevelopment by providing more flexibility and options for use.

While commercial, retail and other uses traditionally occupy the ground floor, they may not be viable on upper floors. Instead, downtowns may reuse this type of space for housing, offices, live/work space, etc. The flexibility inherent in a mixed use district can also help reduce future vacancy. If one use is not successful, upper floors can be converted to another permitted use to take advantage of market demands.

Residential uses are often the key land use excluded from downtown districts. Allowing residential units downtown is very important to having a mix of complimentary uses. “Downtown residents provide key activity and life to shops, restaurants and entertainment venues. Their presence helps to strengthen their downtown marketplaces.”³

Ensuring downtowns are zoned for mixed use

It’s often helpful for downtown areas to have their own zone separate from the surrounding areas. This way, downtown development conforms to specific regulations customized for it. Municipalities should review the list of allowable uses in their downtown zone to ensure a wide variety are



Mixed Use Example - 527 Main Street, Medina. The English Rose Tea Shoppe is located on the first floor with possible office and meeting space on the second floor in the future. In 2007, the zoning in downtown was changed to mixed use. See Case Study - How Zoning Can Impact Upper Floors, Medina, NY for more information. (Photo - Christopher Busch)



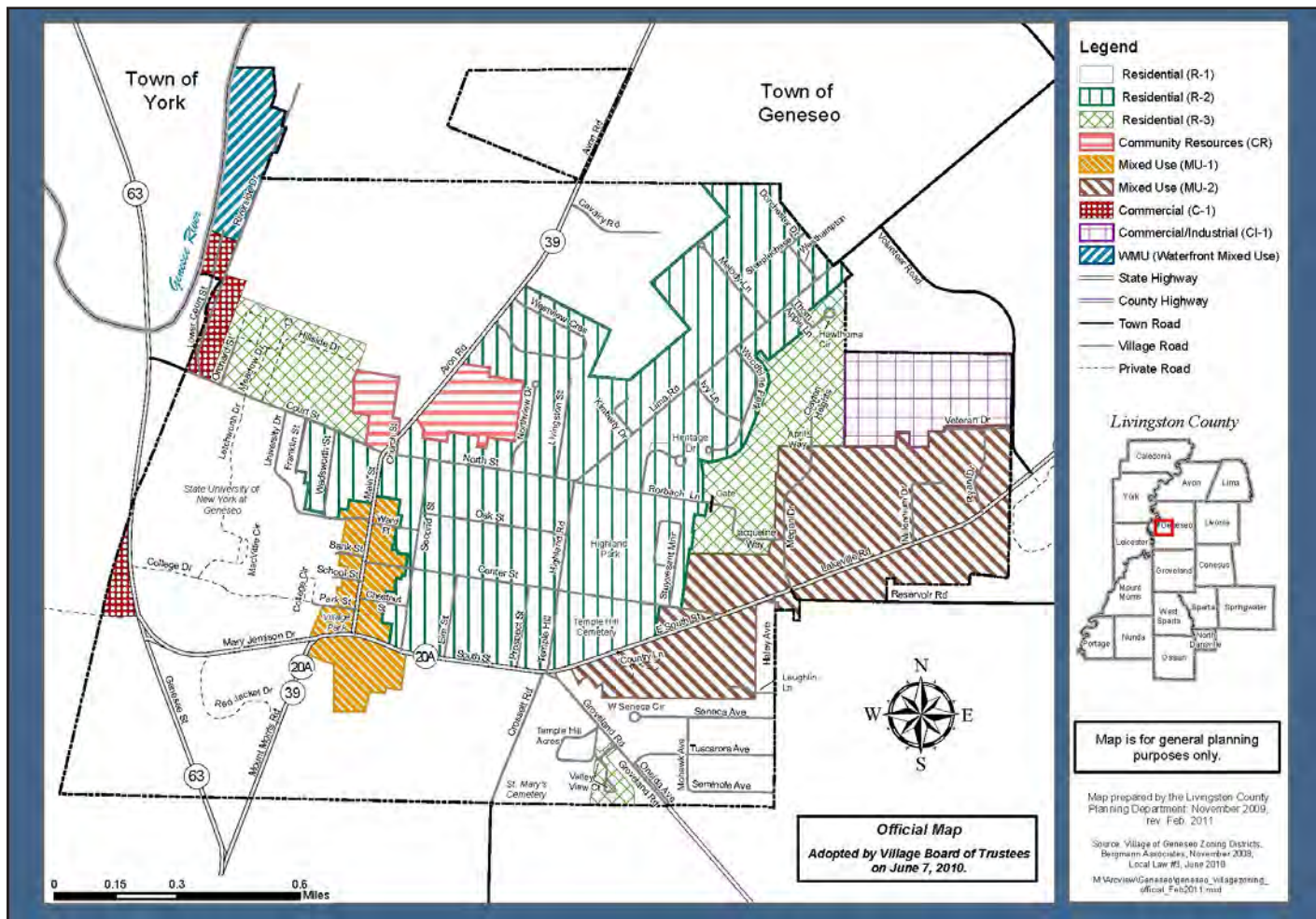
Row houses on East Main Street in the Village of Palmyra’s downtown. (Photo - G/FLRPC)

permitted. These uses can include various types such as residential, retail, office, entertainment, recreation, service, government and institutional uses, cultural, live/work space, etc. (The name of the zone does not necessarily define whether it is mixed use or not. Many zones are titled ‘commercial’ or ‘business district’ but still allow other uses).

See the Appendix 6.A. City of Canandaigua-List of Permitted Uses and Special Uses in Mixed Use Zones and Appendix 6.B. American Planning Association’s Model Mixed-Use Zoning District Ordinance.

Utilizing the Local Zoning Code Officer or Administrator

Understanding a municipality’s zoning code and trying to determine if a project is possible can often be difficult and intimidating for building owners (or prospective owners). In most municipalities, the easiest way to determine project feasibility within the zoning code is to meet with a local zoning code officer or administrator. Owners may find it helpful to read the code, but it is important to get a professional interpretation before a project gets too far along. Architects, engineers, and builders can also take care of this along with any additional approvals needed.



Village of Geneseo Zoning Map, 2011. Note the mixed use zoning district (orange stripes) that comprises the traditional downtown area on Main Street. Two additional mixed use districts are also present in the Village, along the waterfront and Route 20A.

Density of Use

Development density relates to the number of buildings or units within a standard area such as an acre (i.e., 5 units per acre). Zoning codes often regulate density in order to create or maintain uniform development and/or ‘protect’ existing uses. Regulations can be created to both influence a higher density or a lower density.

Higher densities are appropriate in the types of small traditional downtowns that are the focus of this guidebook. Regulating density in a downtown can help maintain the traditional development pattern, even when new buildings are constructed within the district. It can also allow for more residents and businesses to be present and help encourage an active vibrant downtown.

Municipalities have become accustomed to creating regulations that to prevent density by requiring large minimum lot sizes or by setting a limit to the maximum density. For example, a single family residential district may require 15,000 square foot minimum lot sizes, or set a maximum density of 3 units per acre. Some municipalities have districts with huge minimum lots sizes of an acre or even more. These methods of preventing density might be appropriate in outlying areas of a town to maintain rural and agricultural settings, but when applied the same way in downtowns these regulations can have unintended negative consequences.

Municipalities should review their codes to ensure that density regulations downtown are

appropriate for the area and not too restrictive. Downtowns should allow more units per acre than the outlying areas to maximize tax value per square foot and to facilitate walkability. Reducing minimum lot sizes and increasing maximum lot coverages are two options. Maximum lot coverages need to be carefully considered in downtowns because many buildings are built to the sidewalk and both side lot lines. A maximum lot coverage requirement in this instance essentially regulates how large the backyard needs to be, which is probably not the actual intent of such a regulation.

Strict density limits are sometimes imposed to prevent certain types of development that a municipality may deem inappropriate for their downtown, such as a high-rise. Instead of setting an aggressive density limit, a municipality should consider regulating the specific issue of concern, which in this example would be height. Focusing instead on strict density limits could prevent other development that may be very desirable.

Consider the costs of not considering density of use; smart growth practices like adaptive reuse save an average of 38% on up front costs for new construction of roads, sewers, water lines and other infrastructure.⁴ These measures generate 10 times more tax revenue per acre than conventional suburban development. Smart growth and adaptive reuse can reduce costs simply by reducing the miles service vehicles must drive. The savings on services in rural areas are higher, as much as 75-80%.

Before Updating a Zoning Code

- Zoning code updates must be in accordance with the intent of the comprehensive plan; otherwise it should be updated before the zoning code.
- In general, single small parcels cannot be rezoned at will; this could be considered spot zoning which is illegal. Spot zoning “refers to the rezoning of a parcel of land to a use category different from the surrounding area, usually to benefit a single owner or a single development interest.”⁵ There are few exceptions to this rule, so it is prudent for a municipality to instead consider whether the area around the parcel in question is zoned adequately, and potentially rezone a group of properties so long as this does not go against the goals and intent of the comprehensive plan.

ADVANTAGES OF MIXED USE ZONES

Mixed use downtown districts offer a variety of advantages that can positively affect a community and help make upper floor reuse more feasible and attractive.

- *Promoting alternative transportation* - Decreasing the need to travel far for goods, services, or work can promote walking, biking, and public transit use, especially in dense, mixed use areas.
- *Encouraging diversity of users* - A variety of uses can attract a diverse group of users, including people who do not or cannot drive.
- *Synergy from complementary uses* - Examples include residents traveling from their home to a store for needed groceries; or office employees walking to a café for lunch who notice an art studio and return downtown to visit a different day.
- *Walkability* - Dense, mixed use districts encourage walking for a number of reasons. The variety of uses located near each other allow people to walk from their primary use to neighboring uses. Pedestrians include both visitors as well as residents and workers. Single use, low-density areas can be entirely auto-dependent, limiting the mobility of seniors, the disabled, and others who cannot drive. People often drive into this type of area for one purpose, then get back into their car and leave when they are done.
- *Safety* - A mix of uses and users can create an active and vibrant street, which can also improve safety, especially when the area attracts users all hours of the day. More users with “eyes on the street” plays a role in deterring criminal activity.⁶
- *Diverse housing choices* - Mixed use downtown districts often offer a range of housing that may be scarce in other zones. Apartments and studios could be available that may not exist in single family residential areas, which could provide affordable housing options.⁷ Lofts or live work spaces are well-suited to adaptive reuse buildings. Diversity in housing choices attracts a diverse group of residents in terms of age and income, which includes students, seniors, couples, families, etc.
- *Promotes a sense of place* - A mix of uses “tend to support each other and reinforce a sense of neighborhood character.”⁸
- *Flexibility of upper floor reuse* - More allowable uses give more options for potential reuse.

Siting of Development

Site design considers many aspects of a building and the parcel it is on, as well as how the two relate. This could include building height, setbacks, location on the parcel, plus a multitude of other considerations such as parking, drainage, landscaping and topography, lighting, signage, etc. Many of these requirements can be dealt with during site plan review (see below).

Setbacks

Many downtown structures have no front setbacks and are built right to the sidewalk creating a visually cohesive streetwall. Maintaining this type of development preserves the street wall and traditional feel of downtowns and strengthens walkability. In order to build an environment that supports pedestrians, municipalities can require maximum setbacks, for example 0-5 feet. Another option is to vary maximum setbacks based on the average setback of existing buildings on the block or within the district.

Downtown zoning districts should not require side yard setbacks in most cases. Many traditional Main Street buildings are built to side lot lines and touch or are connected to the adjacent structures. Some buildings will inevitably have side yards, but they should not be required.

Height

Regulating height (or the number of stories) is another way to maintain a traditional downtown feel. Most village downtowns have buildings between two and three or four stories. Municipalities can require new or renovated buildings to adhere to this standard by setting minimum and maximum heights and stories depending on the specific height of the existing downtown buildings. For example: ‘minimum building height shall be 2 stories or 20 feet; maximum building height shall not exceed four stories or 70 feet.’ As mentioned above, this is an option for a municipality that wishes to prevent a high-rise from towering over a small downtown.

Off-street Parking Area Variances

Area variances for minimum off-street parking can be common during upper floor reuse and redevelopment. In 2011, the City of Rochester granted Solera Wine Bar a variance which waived the minimum off-street parking requirements to allow the business to expand to the second floor of the building. The owners wanted to create a vintage cocktail lounge on the second floor (which was vacant), but no space was available to add any additional off-street parking spaces. Neighbors believed that the expansion of the business and redevelopment of the second floor would be a positive for the neighborhood and the need for a few on-street parking spaces (mostly at night) would not have an adverse impact on the neighborhood or negatively affect its character.



Solera Wine Bar, South Ave, Rochester. (Photo - G/FLRPC)

VARIANCES

Zoning codes are intended to apply to most development and land use situations that arise in a municipality, but it is impossible for codes to address every possible development scenario. When a property owner or developer seeks an exception to what is normally permitted, they apply for a zoning variance, granted by a Zoning Board of Appeals. There are two types of variances: area and use.

Area Variance⁹

An area variance deals with the physical or dimensional requirements of a building and site, such as height limits, setbacks, parking requirements, etc. In order to receive an area variance, the applicant must show that the benefit of the variance will outweigh any burden the project could cause to the health, safety and welfare of the community. A Zoning Board of Appeals is required by state law to consider the following factors in its decision:

- Whether an undesirable change will be produced in the character of the neighborhood, or a detriment to nearby properties will be created by the granting of the area variance;
- Whether the benefit sought by the applicant can be achieved by some method which will be feasible for the applicant to pursue but would not require a variance;
- Whether the requested area variance is substantial;
- Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- Whether the alleged difficulty is self-created.

Use Variance¹⁰

A use variance is needed to allow a use that is not permitted in a zoning district. An applicant must prove “unnecessary hardship” in order to be granted a use variance. State law requires the applicant to prove the following four factors:

- That the property is incapable of earning a reasonable return on initial investment if used for any of the allowed uses in the district (actual “dollars and cents” proof must be submitted);
- That the property is being affected by unique or highly uncommon circumstances;
- That the variance, if granted, will not alter the essential character of the neighborhood;
- That the hardship is not self-created.

Site Plan Review

Site plans illustrate the proposed layout and design of a development on a parcel of land.¹¹ Site plan review is a process of greater municipal scrutiny and review for certain uses and/or structures, and is used in addition to other land development guidance regulations. The intent is to ensure a development meets the planning goals of a municipality and does not have a negative impact on the area or neighborhood where development is proposed.

Planning Boards are usually assigned the authority to administer site plan review, although other entities can have this responsibility. Through site plan review, a municipality could also empower an historic preservation commission or architectural review board to review projects in historic areas such as a downtown to determine approval based on certain architectural requirements.

The standards for review should be established and described in the site plan review ordinance. Many of the considerations allow for a good deal of discretion on the part of the review board. From time to time the board may wish to seek advice from municipal and county representatives or outside consultants.

Municipalities can include any number of different development considerations and requirements including some of the following:

- Regional and Local Concerns
 - o access – pedestrian, auto, etc.
 - o environmental impacts
 - o economic impacts
 - o compatibility with and impact on the surrounding area or neighborhood
- Natural Features
 - o topography, slope, soils, geology
 - o stormwater drainage
 - o erosion potential
 - o preservation of open space
 - o flood hazards
- Circulation
 - o road layout
 - o location of parking
 - o ingress/egress
 - o pedestrian concerns
- Design and Aesthetics
 - o design of structures
 - o site layout
 - o landscaping and screening
 - o signage
 - o architectural features and building materials

Planning Boards and Zoning Boards of Appeals

Planning Board – A Planning Board is made up of 5 or 7 members, usually volunteers, that typically meet monthly (depending on the volume of applications). The board reviews development projects requiring approval including special use permits, subdivision approval, or site plan approval. Planning boards also serve in an advisory role and are able to give recommendations to the local legislative body, and are often involved in comprehensive plan updates and zoning law revisions.¹²

Zoning Board of Appeals (ZBA) – A Zoning Board of Appeals is required for any municipality with a zoning code, and is made up of 3 or 5 members, usually volunteers, that typically meet monthly (depending on the volume of applications). As a quasi-judicial body, ZBA reviews typically hear appeals to decisions already made by the zoning officer. The board usually hears one of two arguments: 1.) The decision made was an incorrect interpretation of the code, or 2.) A variance should be issued to give an exception to allow the project. A ZBA has the power to overturn a zoning officer's decision, and can approve variances, depending on the details of the case.

Subdivisions

One of the most common land use activities is the subdivision of land, which occurs anytime a parcel is split into two or more smaller parcels. Subdivision regulations attempt to maintain a municipality's land-use objectives and prevent a number of issues that can arise through improper subdividing and development. These concerns can include streets and lot placement, availability of open space, adequate drainage, infrastructure upgrades, etc.

Subdivision regulations typically pertain to new development, rather than the type of upper floor reuse focused on in this guidebook.

Parking

Parking is an essential component of the transportation system in downtowns. While an inadequate number of parking spaces can hurt a downtown district, too much parking and excessive minimum parking requirements can be just as damaging. Excessive minimum parking standards have prevented some upper floor redevelopment opportunities in downtowns throughout the region. Ensuring reasonable parking requirements and focusing on parking design and quality, not only quantity, is essential for upper floor redevelopment and creating walkable, vibrant downtowns.

Minimum Off-Street Parking Requirements

Zoning codes primarily regulate parking by requiring a minimum number of off-street parking spaces based on specific types of use. Examples from within the region include: 2 spots per residential unit; 1 spot per 200 square feet of office space; 1 spot for every 25 square feet of patron space for a restaurant or bar. These are likely too restrictive for a dense downtown. Parking standards should not be applied the same way in higher density downtown areas as they are in low density, auto-oriented areas. While motorists do need a place to

park, minimum parking requirements assume that all users are drivers, and do not consider downtown residents, visitors close enough to walk, bicyclists, or people using public transit (where available).

Excessive minimum parking requirements are particularly damaging to upper floor reuse in areas where no extra land is available to create new required surface parking lots. Off-street parking requirements often ignore the fact that parking could be readily available on the street, perhaps in front of the building or just a block away. Many existing building uses in downtowns do not adhere to the current parking minimums, but fortunately are grandfathered in. These are often the same buildings that make the downtowns great, yet they would not be allowed today under the existing zoning.

Worse, some vacant upper floors remain vacant because they don't have the required amount of parking to adhere to the current code (unless they can obtain a variance, which usually isn't easy). This is especially difficult when an owner is trying to change the building's use. These regulations not only keep upper floors vacant, but they can also prevent buildings from being rehabilitated and squash burgeoning investment and potential economic development in downtowns.

Minimum off-street parking standards are often based on the notion that every structure should be able to meet peak parking demand all at the same time. In reality, different uses have different peak parking times. One of the best and most efficient off-street parking solutions is shared parking. Uses with different peak parking needs can easily share parking spaces with little interference (for example, a bank with traditional Monday to Friday, 9 to 5 hours and a bar & grill with night and weekend parking needs). Shared parking should be encouraged and allowed to count toward off-street parking requirements. Municipalities should also consider counting on-street parking and public lots toward parking requirements.

Conducting a parking study is a great way for a municipality to determine whether there is actually a shortage and to analyze whether there is a need for additional parking. A study should include an inventory of spaces (on-street and off-street); use; and turnover at different times on different days (especially night vs. day and weekends vs. weekdays).

Excessive minimum off-street parking requirements may be mitigated simply by reducing the required number of spaces for specific uses in a downtown.

The appropriate reduction can be determined through a parking study and evaluation of strategies for reducing parking demand. It's crucial to consider specific factors in a downtown that can be reviewed to reduce the required number of spaces such as:

- Off-street parking availability
- Shared parking agreements and presence of municipal lots
- Uses that cater to neighbors (who can walk)
- Public transit availability
- Presence of bike lanes and bike racks

The City of Rochester has an “Alternative Parking Plan” option, which allows a building owner to apply for credit to satisfy minimum parking requirements based on factors similar to those listed above. See Appendix 6.C. City of Rochester Zoning Code Chapter 120-173 E. Off-street Parking - Alternative Parking Plans (APP).

Parking location, design, and signage

On-street parking is extremely important in downtowns and should be maintained (or created) wherever possible. It supplies a base of flexible parking spaces to be shared between all users and has the added benefit of creating a barrier between pedestrians and the flow of street traffic, which increases both actual and perceived safety for sidewalk users.

Many downtowns will have some off-street surface parking based on market forces; most municipalities cannot support demand for parking garages. However, a number of municipalities regulate design and placement of parking through design standards, site plan review, or stand-alone parking requirements in order to ensure that new parking is an asset to the downtown. Poor off-street parking placement (especially in lots situated in front of buildings) can have a negative effect on downtowns by breaking up the streetscape, clashing with historic character, and discouraging walkability.

The best location for off-street parking in small downtowns is usually behind buildings. This limits the number of curb cuts and breaks in the streetscape. Maintaining a continuous streetscape



Screened Parking – Park Ave Neighborhood, Rochester: A wrought iron fence, decorative stone columns and landscaping separate this shared parking lot from the sidewalk. (Photo - G/FLRPC)

Parking variances help by allowing exceptions but they are not a solution to excessive minimum parking requirements. Instead of developers or owners having the right to reuse an upper floor, they have to fulfil a number of requirements and convince both the Planning Board and Zoning Board of Appeals that this merits approval.

encourages walkability and entices pedestrians to keep walking and discover additional businesses and amenities in a downtown. Where rear parking lots are not possible, side yard lots adjacent to buildings are a secondary option. Side lots should be screened from the sidewalk with landscaping, fencing, or walls to maintain the streetwall. Ideally, off-street parking in front of buildings should be limited or even prohibited in downtowns.

Without signage there could be a perception that parking is not available. Standardized, easy to read parking signs are very helpful, especially in downtowns with shared public parking. Alerting drivers that parking is public for anyone to use is also important. Wayfinding design and implementation should be strategic; the Village of Fairport does an excellent job directing people toward shared lots with clear parking signage so that visitors know that if street parking is unavailable there are multiple lots to park in.

Reducing parking demand

Parking issues may be eased by reducing demand. Methods could include:

- Carsharing programs
- Increasing public transit options
- Bike lanes and bike racks
- Bikeshare programs
- Paid/metered parking to encourage alternative transportation and efficient use of high demand spots
- Ticketing and enforcement of on-street parking rules to also encourage efficient use of high-demand spots

A Comprehensive Parking Management Strategy Includes:

- Reviewing existing requirements and regulations
- Inventorying available parking and use
- Reducing minimum off-street requirements
- Encouraging shared parking and on-street parking
- Creating uniform signage and wayfinding for shared/public parking
- Requiring quality design and placement of off-street lots
- Reducing parking demand



Public Parking Signage - Village of Fairport. Fairport has a number of shared municipal parking lots for downtown users and visitors. The signage is uniform, easy to see/read and alerts drivers that parking is nearby and available. (Photo - Preservation League of New York State)

Signage

Regulating commercial signage within a downtown area is an important consideration for municipalities and can be used to promote quality design that fits within the traditional context of the district (but cannot be used to regulate content). Signage regulations can be integrated into law in a number of ways including: a municipality's zoning code, site plan review, standalone laws, or through design standards.¹³

Sign regulations are often intended to protect or enhance the appearance of a downtown and can be essential to maintaining a pedestrian-friendly atmosphere. Too often, the signage present in auto-oriented, low-density areas creeps into walkable downtowns when not regulated properly. Oversized signs, poor materials, excessive illumination, and improper placement can detract from the unique characteristics of a downtown. These types of signs may not be an issue in outer lying areas where people are driving by at 55 miles per hour, but their presence in downtowns can detract from the neighborhood character and pedestrian walkability.

Signage can be regulated in a number of ways including the following:

- Size/scale – height and width sizes could be set or the size of the sign allowed could relate to the size of the building facade. Some size regulations relate to speed limits in the area.
- Location – flat against the building; projecting out from the building over a sidewalk; awning signage; window signs. Free-standing signs (pole or other support structure) are often restricted. Signs should not cover architectural features of building facades.



Auto-oriented/poor quality signage: Sign 1 - plastic, internally lit pole sign; Sign 2 - oversized billboard. Neither of these examples fit well in a dense walkable district. (Photo - G/FLRPC)



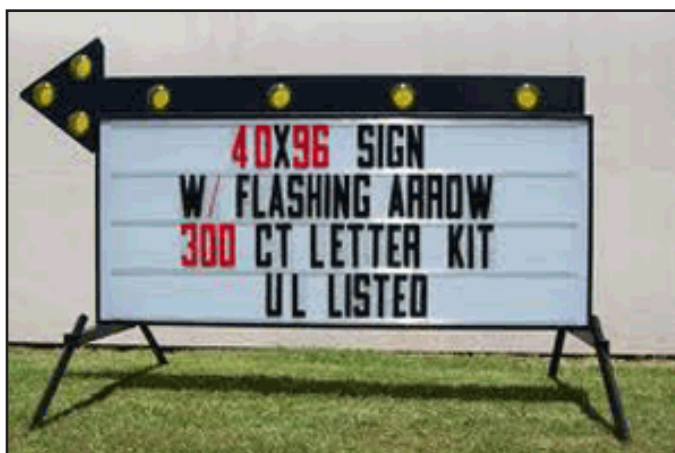
'Sandwich' boards can be a way to entice pedestrians to enter a business. (Photo - G/FLRPC)



Quality signage design - Mise En Place and Coffee Connection, South Wedge Neighborhood, Rochester. Signage is: appropriately sized; externally lit; appropriate materials; doesn't detract from the historic building; and design is uniform between two separate businesses within the same structure. (Photos - G/FLRPC)

- Number of signs allowed per building – one sign; one sign per side of building; one main sign and additional window signs; etc.
- Material – quality; relationship to district; traditional feel of painted wood vs. plastic
- Lighting – intensity; direction of light; type - external light aimed toward sign is usually preferred vs. internally lit plastic signs Additional signage – window signage; ‘sale’ or product signs
- Allowing or restricting temporary signs - ‘sandwich’ boards on sidewalks could be appropriate; portable roadside display signs are not.
- Restricting other types of signs – billboards; animated or flashing signs; signs causing a distraction to motorists; etc.
- Requiring removal of signs on vacant buildings
- Requiring signs be maintained and repaired when needed

Before creating or amending a signage law, a municipality may start by creating an inventory of existing signs including details about their location, size, materials, lighting, etc. The inventory should consider historic signs painted on building walls and period neon signs. Some communities value and retain older signs for their cultural importance even when the advertised business is long gone. The results of the inventory and input from the community can help form the basis for a sign regulation.



Portable roadside display signs are not appropriate in downtowns. (Photo - www.signwire.com)



Lack of sign regulation (or enforcement) can result in businesses competing for attention by creating more signs that are bigger or brighter than those of their neighbors. This can result in overall visual clutter. Corner stores like the one above are often guilty of this, while the corner store below has a limited amount of signage which is more inviting to pedestrians who can see into the store. (Photos - Jason Haremza)



For more information, see NYS Department of State's Municipal Control of Signs - Part One: Legal Aspects of Sign Regulation and - Part Two: Developing Sign Regulations. http://www.dos.ny.gov/lg/publications/municipal_control_of_signs.pdf

Form-based Code

Form-based code is a smart growth method and an alternative to a traditional zoning code.¹⁴ According to the Form-Based Codes Institute:

A form-based code is a land development regulation that fosters predictable built results and a high-quality public realm by using physical form (rather than separation of uses) as the organizing principle for the code. A form-based code is a regulation, not a mere guideline, adopted into city, town, or county law. A form-based code offers a powerful alternative to conventional zoning regulation.

A form-based code does not place emphasis on separating uses, but instead focuses on buildings and their context within a district as a whole. The facades, scale, and placement of buildings are all considered in relation to public spaces like the street and sidewalk, which may also have design guidelines established within the code.

Form-based codes still identify zones, but these consist of areas with similar density, architecture, scale, pedestrian/vehicular environment, etc. “The emphasis in a form-based code is on building type, form, and design, with a greatly simplified use list. Setbacks and other design standards are then applied to the building rather than to the use. This is not to say that form-based codes totally ignore use; rather, it is one element among many, and less important than form.”¹⁵

Form-based codes can include a number of building form standards such as building height, setbacks, window size, building entrance location and location of parking, as well as public space standards relat-

ed to street size and street connections, block size, sidewalks and bike lanes. Form-based code can be beneficial in encouraging upper floor reuse because a wider variety of potential uses can be allowed.

Creating a form-based code could require a full zoning code update/rewrite. Interested municipalities can find more information on the topic at <http://formbasedcodes.org>.

Incentive Zoning

An additional zoning method that can be used to encourage upper floor reuse is incentive zoning. This technique rewards a developer by giving flexibility in certain requirements, for example a developer may be allowed to exceed density limits, in exchange for creating a public amenity for the community such as providing open space or affordable housing.¹⁷ Incentive zoning can be especially helpful in small downtowns if density limits are preventing upper floor redevelopment.

Incentive zoning cannot be applied anywhere; a municipality must include specific regulations within their zoning code in order to allow it. These should include:

- Identification of zones eligible for incentives
- Conditions necessary to allow incentives (which should include consistency with the goals of the comprehensive plan)
- Specification of what incentives could be granted
- Identification of what amenities could be provided by the developer

The Town of Clarkson’s Incentive Zoning Law is included as an example in Appendix 6.D.

Review of Zoning and Related Land Use Laws

The local laws discussed herein should be reviewed with a focus towards how they can be customized and amended in order to better serve downtowns and their unique redevelopment potential. Further details on land use law including adoption procedures can be found in the New York State Department of State (NYS DOS) publication “Adopting Local Laws in New York State”:¹⁶

A number of additional resources and guides for planning and land use regulations are also available from NYSDOS at <http://www.dos.ny.gov/lg/publications.html>.

Historic Preservation Overlay Zones

An overlay zoning district can be created by a municipality to provide extra measure of protection for resources targeted within the district which could for example focus on environmentally sensitive areas, or an historic district. The standards in the overlay zone apply in addition to those of the underlying zoning district.

An overlay zone can be created in a downtown with historic buildings to protect. This type of overlay could potentially require review and approval by the local historic preservation commission, which could determine whether a new project fits within the character of the district, retains architectural features, or uses appropriate historic construction styles (see *Local Historic Preservation Laws* below)

The overlay could also be an architectural design control district where an architectural review board is established. A downtown may have a blend of historic and non-historic buildings where the concern is the impact of new buildings on the character of downtown and existing buildings.

“The architectural review board should be able to offer guidance on design issues to other boards, such as the planning board or zoning board of appeals. Often a community chooses to link design review to historic preservation controls, with a focus on the design of new buildings and alterations to existing buildings within historic districts.”¹⁸

Demolition Review

The creation of a demolition review law can also offer some degree protection for historic buildings. Demolition review laws include a procedure to ensure historic structures are not demolished without notice. For example, all structures built before a certain date, or all buildings within a certain geographic area (such as a downtown) could require evaluation before demolition is approved. The review can be conducted by a historic preservation commission or other special committee. If the building is deemed significant, then the demo-

lition permit could be delayed for a certain amount of time in order to pursue landmark designation. This delay also gives additional time for alternative preservation solutions to be created such as finding funding for rehab or a buyer to purchase the building to save.¹⁹

SEQRA

Municipalities will need to comply with the New York State Environmental Quality Review Act (SEQRA) when creating or updating local laws like the ones discussed throughout this chapter. Additional information on SEQRA can be found at the NYS DEC’s website.²⁰

Historic preservation SEQRA exemptions

Designation of local landmarks or their inclusion within historic districts are considered “Type II” actions (no significant impact) and do not require SEQRA review.

Under the authority of a local preservation law, historic preservation commissions have the duty of approving or denying applications to demolish, relocate, or alter designated historic properties. Certificates of Appropriateness (COA) are not subject to SEQRA (see *Local Historic Preservation Laws* below for information on COA). Based on the controlling SEQRA statute, regulations and subsequent court decisions, a commission decision regarding a certificate is considered ministerial and non-discretionary and thus exempt from SEQRA. Other state or local agencies may have a formal review role regarding the same project, however, and for their purposes, the proposed project could be considered an action that triggers SEQRA. An informative overview of the relationship between local historic preservation review and SEQRA is available in an article in OPRHP’s fall 2009 issue of the Local Landmarker.²¹

When a project is contiguous to a property listed on the National Register it could be subject to greater scrutiny under SEQR and a review will have to consider the projects effect on the historic property.

Local Historic Preservation Laws

The historic buildings and resources present in many of the traditional downtowns of small cities, towns, and villages throughout the region are tremendous assets that should be preserved and protected.

An array of federal, state and local historic preservation laws and designations are available for municipalities to utilize in order to offer degrees of protection and development opportunities for historic properties. The regulations and designations provided by the National and State Historic Preservation Acts and incentives offered by other federal and state programs can be helpful tools when evaluating opportunities or implementing programs for downtown revitalization, including upper floor redevelopment.

Local historic preservation law can also play important regulatory and incentive roles for historic properties. Local laws are the strongest legal protection against inappropriate exterior remodeling, new construction, or demolition within a historic downtown.

A municipal preservation law (sometimes referred to as a local landmark law) is local legislation established to protect and enhance historic architecture and attributes of a community's historic downtown, industrial area, and residential neigh-

Process for Adopting a Local Historic Preservation Law

In New York State, the process for adopting a local preservation law follows the requirements for any other type of local law. Regardless of who drafted the law (volunteer committee, business group, town official or attorney, etc.), the proposed law must be introduced by a member of the local governing body and is subject to a public hearing before a vote to adopt into law. Given the implications of the proposed law for local planning and zoning, advisory review by the municipal and county planning boards will also be required.

Model Local Preservation Law for New York State Municipalities

The 2014 Model Law is available online from the Preservation League of New York State and the State Historic Preservation Office at:

<http://nysparks.com/shpo/certified-local-governments/documents/ModelLawForLocalGovernments.pdf>

In conjunction with the release of the 2014 Model Law, PLNYS has also prepared "So Our Past Has a Future: A Supplemental Guide to Model Historic Preservation Law for Municipalities in New York State," which provides a detailed section-by-section overview to the structure and content of the Model Law. The guide can be found at:

<http://www.preservenys.org/downloads-ct/PLNYSSupplementalGuidetoModelLaw-Final.pdf>

The OPRHP Press Release for the Model Law can be found at:

<http://nysparks.com/newsroom/press-releases/release.aspx?r=1121>

borhoods. These laws protect individual properties and historic districts (with contributing and non-contributing buildings) through locally controlled designation and a permitting process. They provide community residents with an opportunity to review proposed projects in advance of any work to determine impacts on historically significant buildings, structures and features as well as to nearby historic properties.

The economic benefits to communities and downtowns have been extensively documented. Studies indicate that not only can local and national historic designation increase property values by 5 to 35% per decade, but the value of newer construction within those districts has also been shown to increase. In New York State, historic designations can also lead to eligibility for possible tax abatement and tax credit incentives at the local, state and/or federal level (see Chapter 9 for additional funding information). Simply put, landmark designation under a local preservation law helps ensure that private and public investments in a project are of lasting value and quality.

New York State's Model Historic Preservation Law

To support municipal historic preservation initiatives in New York, the Preservation League of New York State (PLNYS) and the New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP) jointly published a model preservation law that serves as template for municipalities seeking to establish or enhance their local historic preservation law. First published in the late 1980s, the Model Law was substantially revised in 2014 to reflect legal developments, new approaches and over three decades of community-based, “real-life” experience with this form of landmark protection.

Core powers and duties of a historic resource commission established by a local landmark law include:

- Survey and identification of historically and architecturally significant buildings and structures (and possibly landscapes and/or public interiors);
- Maintenance of an inventory of such designated resources;
- Establishment of standards and procedures for review and designation of historic resources;
- Creation of a defined process for the review of applications for alteration or demolition of historic resources, as well as new construction within historic districts;
- Enforcement of affirmative maintenance requirements for designated resources.

While the Model Law provides a template for the core features of a municipal historic preservation law, it also offers options for municipalities to pursue landmarking of public interior spaces (such as building lobbies), and/or landscapes (such as parks or cemeteries). The Model Law also notes what language is needed to establish an autonomous commission that self-designates landmarks and historic districts versus an advisory commission that recommends such designations for action by a village, town or city board.

Local preservation laws are now in place in more than 175 communities across New York State and over 2,000 communities nationwide.

Historic Preservation: Potential Steps Towards a Local Law

Some initial steps might be helpful before a community is ready to create an historic preservation law. These could include:

- Undertaking a comprehensive survey of historic and cultural resources
- Writing nominations for properties to be listed on the National Register
- Creating a downtown or historic preservation plan
- Incorporating preservation goals into a comprehensive plan

Certified Local Government (CLG)

Municipalities that participate in the CLG program have qualified Historic Preservation Commissions that perform duties given by the NYSHPO under the National Historic Preservation Act. These duties include the power to designate landmarks and historic districts and the review of exterior alterations, restorations, reconstructions, demolitions and new construction. A CLG must allow for adequate public participation and maintain a system to inventory historic properties consistent with guidelines provided by the NYSHPO. Some benefits of being a CLG include legal and technical assistance as well as exclusive grant opportunities. More information can be found in New York State Historic Preservation Office’s “CLG Introductory Packet Regulations.”²²

Design Guidelines and Standards

Some communities use design guidelines or standards that consider the integrity of local design, setting, materials and workmanship. Many utilize the Secretary of the Interior’s Standards as their foundation. See Chapter 8 for more information.

One key advantage of implementing the Model Law is that its provisions meet the criteria for a community to participate in the Certified Local Governments Program (CLG), a source of technical and financial assistance available from the New York State Office of Parks, Recreation and Historic Preservation. Citizens and municipal leaders should evaluate the Model Law to assess which options or changes are needed to best adapt the law for local circumstances. Communities have different goals for their preservation programs, and the local law that will work best is one that is adapted to serve those local needs.

The Model Law notes (and it's worth added emphasis) that designation of a historic structure or district under a local preservation law is not to be construed as a zoning action under municipal law. The work of the local historic preservation commission is focused on appearance and historic significance, not land use. Only city, town and village boards have the authority to determine land use. A historic preservation law should contain a clear description of the actions which will require municipal review.



In 1990 the Village of Brockport, passed a preservation ordinance that established the Brockport Historic Preservation Board which has designated local landmarks and historic districts including downtown buildings. See Case Study – Local Preservation Laws at Work in the Genesee-Finger Lakes Region. (Photo - Landmark Society of Western New York)

Economic Hardship Relief

A local preservation law must include a process for relief on economic hardship grounds if a commission denies a request to alter or demolish a historic property. A variance can be granted when the owner proves he or she would otherwise be denied all reasonable or beneficial use of the property. This type of provision, however, should include consideration of whether an owner's own neglect has caused the hardship. "Demolition by Neglect" is a situation where an owner intentionally defers maintenance and allows a property to deteriorate self-creating an economic hardship that makes cost of repairs prohibitive.²³

The legal status of historic preservation laws has a long history in the United States and in New York. The public policy and economic benefits of local landmark designations are also well established. Federal and state court decisions clearly support the authority of municipalities to regulate historic properties as a means of enhancing the quality of life and character in a community.

A local preservation law must specify the process for landmark designation and the criteria to be used. A historic resources survey, which the local law seeks to implement, can provide a good foundation for decisions on landmark designations.

Local Preservation Law Adoption and Implementation Resources

The NYS Department of State (DOS) publishes a summary of the main legal components of municipal historic preservation efforts. Legal Aspects of Municipal Historic Preservation provides an overview of programs and practices that can support local historic preservation efforts.

The document can be found at: <http://www.preservenys.org/downloads-ct/PLNYSSupplementalGuidetoModelLaw-Final.pdf>

BENEFITS OF LOCAL PRESERVATION LAWS

Passage of a local preservation law based on the Model Law can provide important benefits and encourage the rehabilitation of downtown buildings. The National Trust for Historic Preservation summarizes an extensive list of attributes for communities that undertake local landmark protection. Some are especially relevant to upper floor redevelopment projects:

- Local historic preservation laws can be tailored to the specific needs and distinct identity of the community, and help to protect and preserve local resources, even while the community is changing.
- Local districts protect the investments of owners and residents. Buyers know that the aspects that make a particular area attractive will be protected over a period of time. Real estate agents in many cities use historic district status as a marketing tool to sell properties.
- Local districts encourage better design. It has been shown through comparative studies that there is a greater sense of relatedness, more innovative use of materials, and greater public appeal within historic districts than in areas without historic designations.
- Local districts help the environment. Renovating an existing building is almost always more environmentally beneficial than demolishing an existing structure and building a new more energy-efficient one. Historic district revitalization can, and should, be part of a comprehensive environmental policy.
- The educational benefits of creating local districts are the same as those derived from any historic preservation effort. Districts can help explain the development of a place, the source of community inspiration, and technological advances in building design and building materials.
- A local district can result in a positive economic impact from tourism. A historic district that is aesthetically cohesive and well promoted can be a community's most important attraction. The retention of historic areas as a way to attract tourist dollars makes good economic sense.
- The protection of local historic districts can enhance business recruitment potential. Companies continually re-locate to communities that offer their workers a higher quality of life, which is greatly enhanced by successful local preservation programs and stable historic districts.

While a local preservation law is a powerful tool for protecting historic resources, it should be one component of a larger program that seeks to identify and protect a community's historic resources. Both incentive and regulatory programs have a place in the mix, along with other local laws. Passage and appropriate use of a local preservation demonstrate that a municipality has recognized the value of historic preservation in its overall effort to promote community well-being and economic development, including the use of upper floors in its downtowns.

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CHAPTER SEVEN:

**NEW YORK STATE
BUILDING CODES**

With the revival of interest in downtowns, the appeal of revitalizing upper floors has also increased. Yet many owners (and potential owners) may be daunted by code requirements associated with improving old buildings.

Without a sense of the scope of work, it is difficult to estimate the cost of construction. And without a firm sense of the cost, it's nearly impossible to decide whether or not to proceed.

The primary focus of this chapter is the New York State's Building Code and its impact on the development of upper floors of downtown "Main Street" buildings. The chapter will explain how building owners should carefully consider the prospect of moving forward with building rehabilitation. This examination of the major building code rules that most affect cost is a good starting place to evaluate the magnitude of the required work.

The beginning of the chapter explains the basic organization of the code and how it deals with existing buildings. The latter portion describes specific provisions that, where applicable, can have substantial impact on your decision to proceed.

Codes other than the NYS Building Code

Regulation of building renovations does not begin and end with the mandatory, statewide 2010 New York State Uniform Fire Prevention and Building Code and the New York State Energy Conservation Code, though these are critical standards to meet for building health, safety and efficiency.

Depending on your location, funding source, or proposed use, you may need a zoning variance, environmental clearance, a certificate of appropriateness in a historic district, an archeological report, or to meet other local or state standards. These regulations have specific definitions and requirements; proving compliance with them means you will be interacting with different agencies and authorities charged with enforcing the state and local rules governing planning, environmental review, and historic preservation. These regulations are not all likely to apply to one project, but in most cases, several of them will.

The following local laws apply to most substantial renovation (provisions vary by municipality):

- Zoning laws identify uses that are permitted in a zone and set area requirements such as lot size, lot coverage, setbacks, massing, use, etc. (For additional information see Chapter 6 Local Laws).
- Site Plan Review addresses the layout and design of development on a given parcel or parcels, setting the criteria for evaluation of the landscaping plan, vehicle and bicycle parking, and other site design standards. Site Plan Review is typically administered by a Planning Board. (For additional information, see Chapter 6 Local Laws).
- Historic, Design, and Archeological Review is conducted by a Board (or Commission) charged with enforcing the guidelines of designated districts, selected for their importance to the historic, cultural, and/or economic character of the community. (For additional information, see Chapter 6 Local Laws and Chapter 8 Design Considerations)
- Local housing or commercial codes – Some municipalities enact their own housing codes, such as the Rochester Property Code. They often contain minimum standards (less than the codes for new construction, or even those of the 2010 Existing Building Code of New York State), but they apply retroactively.

New York State Requirements

- State Environmental Quality Review Act (SEQRA) - Mandatory, but not usually a problem for rehab.
- State Pollutant Discharge Elimination System (SPDES) - Also mandatory, but not usually a problem for rehab. SPDES requirements could be problematic for a project whose site development generates a significant amount of additional stormwater runoff.
- NYS Homes and Community Renewal (HCR) Design Manual - defines design criteria for buildings funded by HCR. Several of these criteria exceed NYS Building Code requirements.
- Various state-sponsored programs provide special needs housing; these have their own sets of requirements.¹

- New York State offers commercial and homeowner tax credits on historic buildings in designated areas. Meeting the Secretary of the Interior's Guidelines for Rehabilitation is the basic standard that must be met.

Federal Programs

- Federal Low Income Housing, Historic and Economic Development Tax Credits. Tax benefit programs always come with a variety of criteria that must be met to qualify. As with State Historic funding, meeting the Secretary of the Interior's Guidelines for Rehabilitation is the basic standard.

Getting Started

We'll start at the point where you – the owner of the building – have developed a general idea of the extent of rehabilitation planned in your upper floor space. Let's assume that you have a prospective tenant, but the proposed use requires zoning approval as well as a building code analysis of the use and the proposed construction. There are a number of important steps to take at the beginning of this process:

- Ideally, you should work with an architect to develop an initial idea of the work and understand generally what it will cost. If your work will require a stamp on the building permit drawings, the sooner you have the architect and/or engineer on board, the better.
- It is important to determine if a project is financially feasible as soon as possible. You should have an idea of how much the project will cost, whether you can afford it, options for financing, and if the finished product will be profitable.
- Ideally, you could begin the financing process at the same time you are working through the zoning approval process. Municipal approvals prove the viability of the concept and can strengthen your applications for financing.
- Once you have conceptual plans and a general idea of cost, you can bring your information to the building/zoning department to see if you need approval(s) from the Zoning Board of Appeals and/or the Planning Board.
- Local approvals should be sought at the begin-

ning of the project timeline. You will need to develop a site plan which shows setbacks, parking layout, and landscaping. Completing this design process should be done before detailed construction drawings are developed. If your project requires a use variance, it is important to get this approval early. Thus, if the variance is not approved your efforts can be directed towards other ideas or proposals.

- Even if you obtain approvals, the approved plan might require changes you did not anticipate. Don't go too far with architectural drawings until you have obtained zoning approvals. (See Chapter 6 Local Laws for more information) The Planning Board may approve your plan pending changes in order to better fit the neighborhood character and/or the long-term goals of the municipality, or they may request a modified proposal. It's possible the Board's decision could increase the cost of the project, which is another reason to get approval done as early as possible.

After Zoning and Planning Approval

After zoning and planning approval it's time to discuss your project and all the details with a local code official, as well as your architect and builder if you have selected them. Your local official has no authority to waive the Building Code except in a very few situations where his or her decision is specifically permitted by the code. In actual practice, however, there are many gray areas, and the local official is called on numerous times to exercise judgment in determining which rules apply. Code interpretation is not a job for a novice. Owners are better off working cooperatively with their code official and not trying to interpret the code on their own.

The New York State Building Code

The New York State Uniform Fire Prevention and Building Code is comprised of nine books, eight of which apply to upper floor rehabilitation. While all eight books contain rules applicable to a main street, multi-use building, we will be focusing on only one: the Existing Building Code of New York State, the prime source for existing buildings. (This study excludes the Residential Code of New York State, as it applies only to one- and two-family buildings. See Appendix 7A for a description of the other eight books).

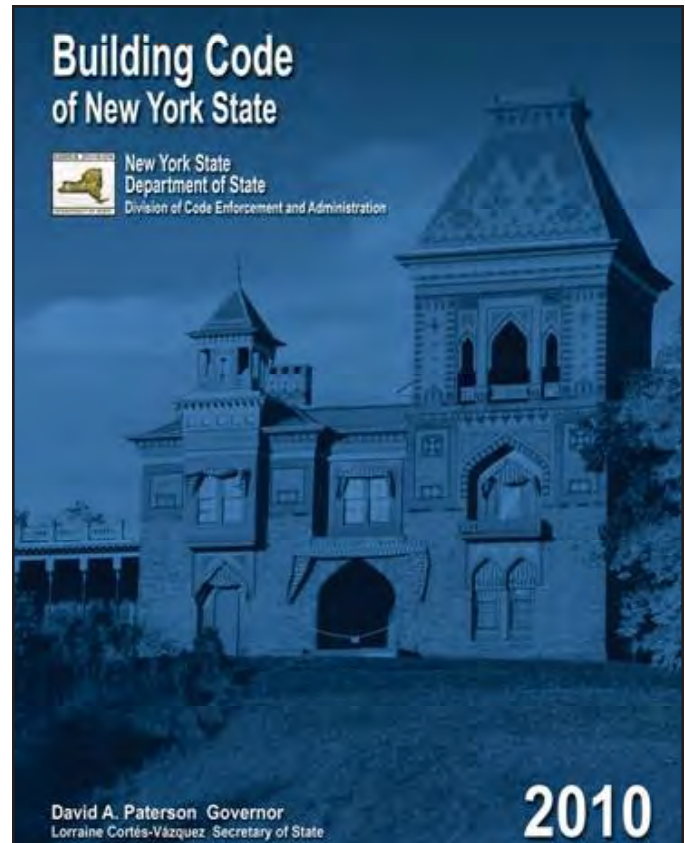
The 2010 Building Code of New York State is the current, primary book for new construction projects. Occasionally people assume that the provisions of the biggest book always take precedence. This is not correct. If your building is an existing building, the primary code book that governs the work you are planning is the 2010 Existing Building Code of New York State.

When your project is an existing building, begin your analysis with the Existing Building Code. The provisions of the Building Code book do not apply to existing buildings unless the Existing Building Code refers you to it, which it frequently does. When it doesn't, the rules of the Existing Building Code apply.

The 'Grandfather Clause'

When the Existing Building Code does not specifically require work, the existing situation can continue because the 'grandfather clause' supersedes the main code book. To be 'grandfathered' is to say that work previously completed, legally, need not be changed just because the law has been changed.²

The grandfather clause is at the heart of the Existing Building Code. It recognizes that a rule which makes sense for new construction may not make sense if retroactively applied. For example, a newly constructed main street building built with brick walls and wood floor structure, housing a store on the first floor and two apartments above, cannot be built more than four stories tall. That is a reasonable

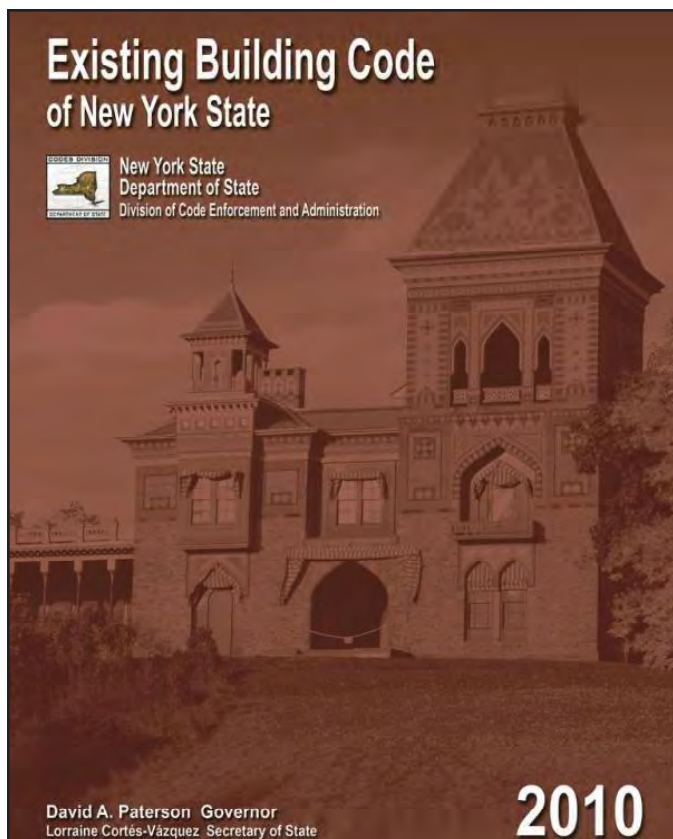


rule for newly constructed buildings, but it does not make sense to require all existing five-story buildings of this type to remove or abandon their uppermost floors simply because a new law goes into effect.

The difficult question that the code has to answer is, 'when is an existing building required to conform to the rules of new construction'? In 2002, New York State adopted the International Code Council's format. That code revolutionized the way work on existing buildings was regulated, but it complicated the issue. It is a better way to regulate work on existing buildings because it sets up a system that links the scope of the work to the amount of regulation. It also has alternative ways to analyze the project, so if one system pushes the project beyond your reach, you have alternative code paths to reach your goal.

Three Paths to Compliance

The 2010 Existing Building Code of New York State contains three paths to analyze buildings: (1) the Prescriptive Compliance Method; (2) the Performance



Compliance Method; and (3) the Work Area Compliance Method.

1. *Prescriptive Compliance Method* – Chapter 3 of the Existing Building Code paired with the Fire Code of New York State is the most basic method for complying with the code.

Prescriptive Compliance is not necessarily the easiest method. In essence, it allows you to comply by doing all work in compliance with new construction standards. This may be a very quick and easy path to conformance if the work is very small in scope. But it can be the hardest of the three methods if the work is very substantial.

2. *Performance Compliance Method* – Chapter 13 of the Existing Building Code is the other extreme, which is the most complex of the three methods. To use this chapter, you must provide extensive information about the building. This is intended to evaluate the overall safety of your building. The evaluation will be used to rate safety in three areas: Fire Safety,

Means of Egress, and General Safety. To comply with the code, you must score positively in all three.

While difficult to use, a Chapter 13 analysis can be used as a design tool. If your building is a few points short, you can evaluate alternative ways to add safety features to reach the necessary score. This is the best method to use to find an alternate path to a safe solution when faced with an otherwise unachievable code requirement.

Unfortunately, the cost and complexity of the analysis and the uncertainty of the outcome until the analysis is complete make this method the second or third choice in many instances.

3. *Work Area Compliance Method* – This is the code path most often used. It is more complex but more forgiving than the Prescriptive Method and more comprehensible but less sophisticated than the Performance Method. It's found in chapters 4 through 12 of the Existing Building Code of NYS, and classifies work by its scope. The greater the scope of the project, the greater the level of compliance required.

The Work Area Compliance Method is commonly used as a primary tool for building officials, architects, and contractors to evaluate a project. The other two methods are typically used only when the Work Area Compliance Method literally prohibits the project, or requires such extensive additional work that the project becomes infeasible. For that reason, the Work Area Compliance Method is the main focus of this chapter.

What does “up to code” mean?

People often discuss bringing an existing building “up to code.” Frequently, by “up to code,” they mean new construction standards.

This is an admirable goal, and certainly not one that should be discouraged. Yet an existing building in good condition that conforms to the requirements of the Existing Building Code, is also “up to code,” whether it meets new construction standards or not.

Classification of Work Levels

The classification of various levels of work is an important part of the idea behind the Work Area Compliance Method. A larger scope of work will trigger a larger number of code requirements. To make this next section more readable for those not familiar with the Code, this chapter will use informal terms for the various construction levels.

The four classifications of work are:

- Repairs – Self-explanatory. An example of a “Repair” is fixing a door.
- Alterations Level One – will be called “Replacements,” e.g., Replacing a door with a new one.
- Alterations Level Two – “Floor Plan Change,” e.g., rearranging the location of doors.
- Alterations Level Three – “Substantial Floor Plan Change.” Level Two alterations become Level Three alterations when the project includes rearranging more than 50% of the floor area of a building.

(These categories have been renamed to make the rules more understandable. The new names should help, but are not precise. Appendix 7B includes the text from the Existing Building Code which defines the classifications of work.)

The Five Most Common Existing Building Code Problems

The following section illustrates parts of the code that can substantially add to the cost of a project. The sooner you are aware of these requirements, the better you can accommodate them in your planning. However, the NYS Building Code is not an easy book to read; it’s not simple to skim through to find a section on expensive requirements. A footnote in an appendix might trigger as much expense as an entire chapter of the code. Of course, this article is not a substitute for having a qualified professional analyze your building plans.

1. Change of Occupancy

The Grandfather Clause is not applicable if your project changes the use of a space. Chapter 9 of The

How the Existing Building Code and the Main Building Code interrelate

Will your upper floor project require a sprinkler system? If you are changing the use of the space, and the new use would require a sprinkler if it were a new building, then sprinklers will be required. The Existing Building Code of New York State refers you the main code book to determine if a sprinkler is required.

Existing Building Code outlines the process (see Appendix 7B for a list of occupancy classes and subdivisions).

Severe code problems are most often the product of a proposed use for a building that was designed for a different purpose. It is important to understand what a change of occupancy is. The code’s definition is “A change in the purpose or level of activity within a building that involves a change in application of the requirements of this code.” Not terribly helpful! An example might be an existing bookstore on the first floor, with several offices on the upper floors. If the owner wants to have a restaurant on the first floor and apartments upstairs, both the first floor and the upper floors would be considered a change of occupancy by the code. In some cases, the Existing Building Code will require a new use to comply with the requirements for that use in the Building Code as though they were being built new. In other cases, when the new use is not an increase in ‘hazard class’, the requirements are less severe. A change of use involves great code complexity. It is always a good idea to consult early with your code official and to consider working with someone with experience in evaluating the code for these types of projects.

When is a continued use a change of use?

Consider a restaurant that adds additional space by expanding to an upper floor that was formerly used for storage. Although the occupancy class has not changed, the number of occupants has. Therefore, the designer must treat the changed function as a change of occupancy and comply with Chapter 9 of the Existing Building Code even though it remains the same occupancy class.

New Construction vs. Retroactive Rule

New construction standards for electrical outlets in a bedroom require outlets roughly twelve feet apart. The 2010 Existing Building Code of New York State requires that standard to be met when a bedroom is substantially renovated. Local housing codes may also require an absolute minimum of one outlet per bedroom.

Even if you are not proposing to change your occupancy classification, you may still be looking at a change of occupancy.³ Whether or not this applies to your case will be a decision made by your local code official.

The first part of Chapter 9 of the Existing Building Code contains a list of requirements for all changes of use; the second section compares relative hazards in three different categories and defines additional requirements for changes to more hazardous uses.

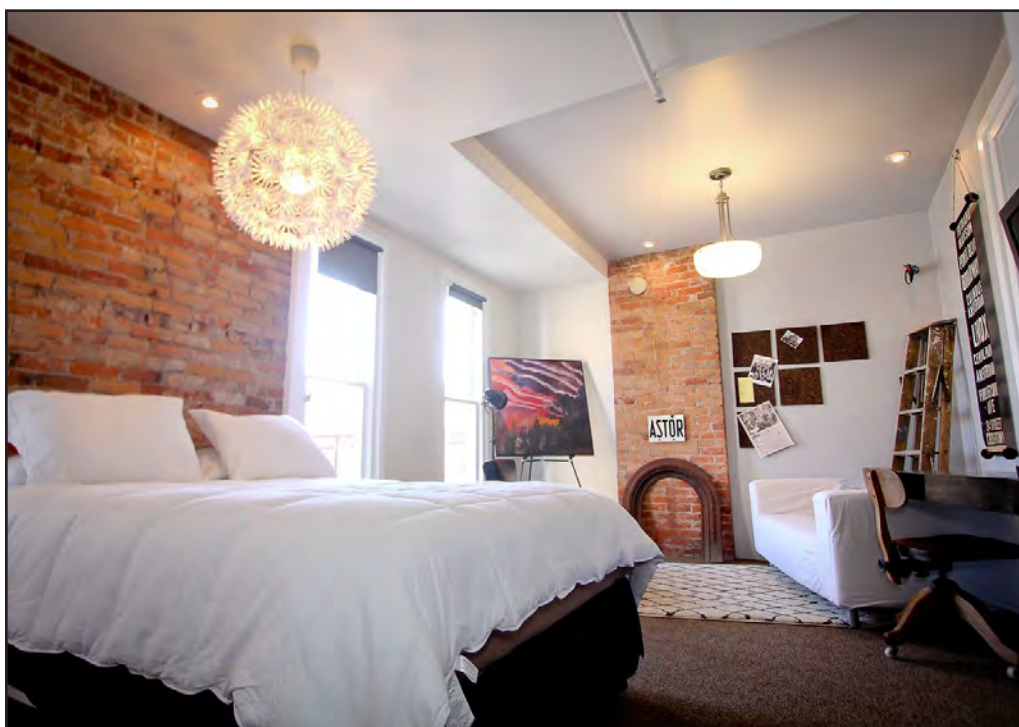
Among the requirements that must be met whenever a use is changed are:

- Section E.B.902 contains a list of special uses. Change your use to any of these, and you have to meet all the requirements of new construction. Among those listed are covered mall buildings,

atriums, stages, platforms, and special amusement buildings.

- Section E.B.907 Structural. There is a bit of forgiveness in this section, but as you would expect, the structure must be capable of carrying the loads imposed by the new use.
- Section E.B.908 Electrical. If your new use is changed to any of the special occupancies listed in E.B.908, the provisions of the electric code for that use must be met. This list is somewhat different than the list in E.B.907.
- Section E.B.910 Plumbing. If your new use increases the plumbing demands of the space, the new demands must be in accordance with plumbing code.

In addition to the basic requirements, Chapter 9 of the Existing Building Code has a section that evaluates the proposed change in each of three hazard categories.⁴ The categories are “Means of Egress,” “Heights and Areas,” and “Exposure of Exterior Walls.” If your new use is a higher hazard category than the existing use in any of those categories, you will be required to make modifications to the systems that deal with that hazard. If your new use is an equal or lesser hazard category, the requirements are much less.



Room 5 in the Hart House Hotel, part of the RH Newell Building mixed use development in Medina. The building has seen a number of occupancy changes over the years. It began its life as an inn in the late 1800's and was later used as a high-end shirt factory. Recent redevelopment includes a café, mead producer, yarn shop, law office, loft apartments, and a boutique hotel. See Case Study – R.H. Newell Building for more information. (Photo - Andrew Meier)

When you review the regulations regarding change of occupancy, the conclusion is simple: good preservation practice and minimizing code consequences are all best served if you are able to continue or resume using the existing space in the same way it was last legally used. If that is not practical for your situation, you should carefully evaluate the options for possible adaptive reuse.

2. Fire Safety Requirements

Sprinklers and Detection Systems

- If your work is just a Repair (or Replacement), you are not required to install sprinklers or detection systems in spaces that do not have them.
- In a Floor Plan Change, sprinklers are required under circumstances explained in Section E.B.704.2. Among the conditions that require a sprinkler are work in high-rise buildings in areas shared by more than one tenant, or that more than 30 people occupy, provided the floor already has sufficient water supply to serve the sprinkler.⁵

Other than high-rise buildings, E.B.704.2.2 applies to 11 different use classes and defines whether to install a sprinkler in a project involving a Floor Plan Change. As with high-rise buildings, projects involving corridors, or spaces serving more than 30 people, sprinklers must be installed provided all three of the following conditions are met:

1. The use would require a sprinkler if newly constructed;
2. The work area exceeds 50 percent of the floor area; and
3. The water supply to the floor of the work area is already sufficient to supply a sprinkler system without the installation of a fire pump.

Exception: “work areas in groups R-1, R-2, and R-4 occupancies three stories or less in height.”

These three occupancies, R-1, R-2 and R-4 all refer to classes of residential occupancy. R-1 is residential occupancy containing sleeping units where the occupants are primarily transient in nature, such as hotels

or motels. R-2 is a residential occupancy containing three or more dwelling units where the occupants are primarily permanent in nature, such as apartment houses or boarding houses. Finally, R-4 is essentially a residential care or assisted living facility including more than five but not more than 16 occupants, excluding staff. High-rises are buildings with an occupied floor located more than 75 feet above the lowest level of fire department vehicle access. One important requirement for most high-rise structures is the need for a standpipe. A standpipe is water piping built into high-rise buildings, usually in stairwells, to which fire hoses can be connected for the application of water to a fire. They can be part of a sprinkler system, or they can stand alone.

Sprinkler systems are sometimes viewed as merely an extra cost when an owner wishes to undertake renovations. While it is true that they do add costs to the renovation of a building, sprinkler systems have been proven to save lives. In addition, if a fire breaks out, restoration costs are much lower in a building with sprinklers. Quite often insurance costs drop dramatically for a building with a sprinkler system compared to one without.

Another concern of building owners of historic properties is how to install a sprinkler system while maintaining the historic character of the building. In some cases, the Existing Building Code⁶ requires their use if other building components are not in strict compliance with the Building Code for the appropriate occupancy. Sprinkler heads themselves are typically the most visible part of the entire system. Fortunately, there are many options for placement and type of sprinkler heads, including concealed heads and piping thereto. Aesthetics need not be a controlling

NYS Building Code online

If you would like to see the text for yourself, the entire NYS Building Code is available on-line at the following address: <http://publicecodes.cyberregs.com/st/ny/st/index.htm>.

factor regarding whether or not to provide sprinkler coverage for a historic building.

In Substantial Floor Plan Change, (changes over more than 50% of the floor area) the requirements are similar. Existing Building Code Section 804.1 refers back to Section 704.2 and adds the following:

High-rise buildings have the same qualifications as 704.2, except sprinklers are required if the Site (not the floor level) has sufficient water supply to serve the sprinkler. It also adds a requirement to provide a sprinkler in rubbish and linen chutes when required in new construction and if sufficient water is already provided to the site.

In a Change of Occupancy, the code requires you to install sprinklers and fire detection systems when the new use would require them in a new building.

Standpipes

If your work is just a Repair, or Replacement, you will not be required to install standpipes in spaces that do not have them.

In a Floor Plan Change, or a Substantial Floor Plan Change, wherever the work area exceeds 50% of a floor area and any work area is located more than 30 feet above or below the lowest level of fire department access, a standpipe system shall be provided. There are exceptions noted⁷.

In a Change of Occupancy⁸, a standpipe is required in the area in which the use is changed, as noted above in a Floor Plan Change, or Substantial Floor Plan Change.

3. Egress

When is the number of existing exits sufficient?

In a Repair, or Replacement the number of existing exits are sufficient - provided the number provided was legal before and they are in acceptable condition.

Chapter 7 defines the number of exits required when the project includes Floor Plan Change⁹.

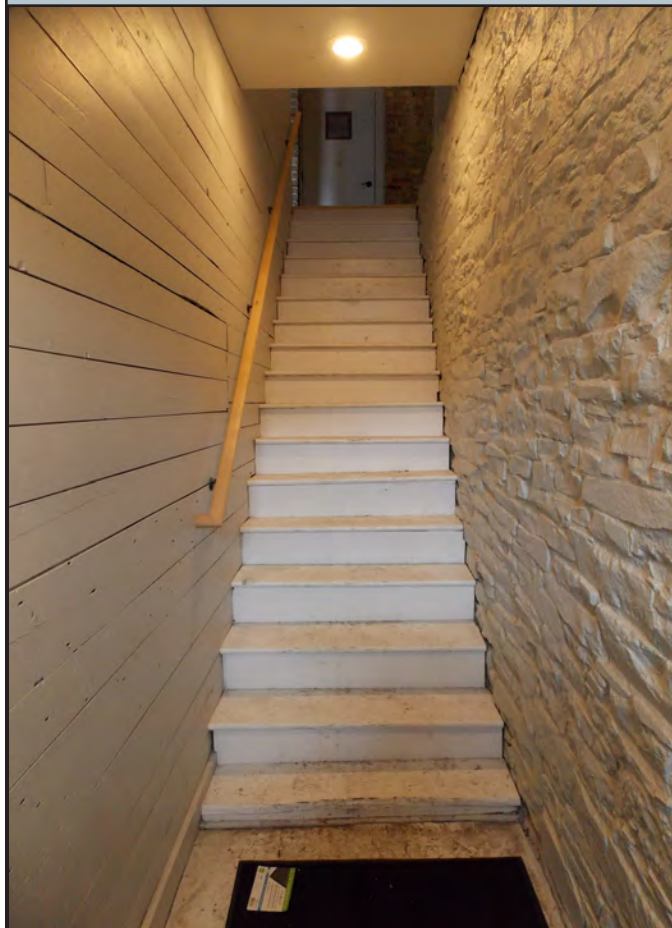
When an exit that serves more than one tenant is part

When are the existing width, tread and riser dimensions of a stair good enough?

In a continued use, the existing width, tread and riser dimensions of stairs are acceptable – provided they were legal before and are in acceptable condition.

In a change of use to an equal or lower hazard category, the existing exit is acceptable provided it meets the new occupant load¹⁰.

In a Change of Occupancy to a higher hazard category, the existing stair can be kept if it meets new construction standards (with some exceptions)¹¹.



Compliant existing stairs. See case study *Fire Safety and Historic Character Work Together* for more information. (Photo - Johnson Schmidt & Associates Architects)

New Stair Exception

Newly constructed stairs must meet new requirements, except “where the pitch or slope cannot be reduced because of existing construction.”

of the work area then that area is required to provide the number of exits required by the Building Code of New York State (the big book that governs new construction) which outlines special conditions under which a single exit building is permitted¹².

Chapter Six outlines requirements that must be met for exits that are shared by more than one tenant within the work area. Exits that are not part of a work area are exempted from those requirements.

The requirements of Floor Plan Change also apply to projects involving Substantial Floor Plan Change¹³. Substantial Floor Plan Change projects are further required to provide emergency lighting and exit signs as required for new construction.

4. Fire Separations

Fire separations are the fire ratings required of walls or ceilings that separate different tenants in a building. If your work is just a Repair, or Replacement, existing fire separations are acceptable. If the old surface has been removed, the new surface has to meet the fire separation required of new construction.

In a Floor Plan Change, fire separations are required to be installed where there are vertical openings between floors. Different ratings of separation are required of different occupancies and situations.

Requirements in Substantial Floor Plan Change are the same as in Floor Plan Change, with additional requirements for stairways and R-3 occupancies.

In a Change of Occupancy, there are provisions for proceeding without providing fire separations and provisions for providing with fire separations¹⁴.

5. Accessibility

(See Appendix 7C for Selected Accessibility Codes)

The rules contained in a building code are generally applicable only to construction or repair of buildings. The laws apply only when there is a “code triggering event.” The Building Code of New York State requires specified accessibility measures in response to specific code triggering events. For example, it does not require a ramp or an elevator when the project is

repainting the building.

- Accessibility requirements in the building code are designed to be proportionate to the scope of work undertaken. Repairs do not trigger any accessibility requirements. However, work at a level as low as Replacement can trigger accessibility requirement “to the maximum extent that is technically feasible”¹⁵.
- All accessibility requirements in existing buildings are tempered by the term “technically infeasible” which is defined in Section 202 and is one of the definitions included in Appendix C of this article. This is one of a limited number of areas in which the Code gives discretion to local code officials to evaluate the situation.
- Unlike other provisions of the Code, accessibility is one of the few areas in which a stated cap is set on the proportion of the budget that must be expended on the requirements. Provisions in The Existing Building Code cap the amount of money that must be spent on accessibility upgrades at 20% of the construction cost¹⁶.
- ADA requirements do not apply to residential buildings as they are not part of the Building Code. The Americans with Disabilities Act is Civil Rights legislation. The provision is concerned with the civil rights of persons with disabilities. If those rights are violated, the disabled party that is the victim has a right to sue. The ADA requires non-residential buildings to have a long term plan for implementing accessibility measures.

Details for computing the 20% cap on required accessibility

What if you are replacing your heating and air conditioning system at a cost of \$100,000. Are you required to expend an additional \$20,000 on accessibility items? No. There are exceptions listed in E.B.605.2. These exempt categories do not trigger accessibility requirements. Mechanical systems are exempted. Among others are windows, signs, electrical systems, and fire protection.

The implementation and enforcement mechanisms of the two laws are very different. However, the design standards are very similar.

The requirement to provide an elevator is typically of keen interest to building owners undertaking renovations, both because of its cost as well as the fact that an elevator can take up usable floor space on every level.

However, for most *Alterations* or *Repairs* to existing buildings without an existing elevator, a new elevator is not required. The code requires only *Alteration* components to meet accessibility standards. Also, for residential buildings undergoing a *Change in Occupancy* rather than just an alteration, the Existing Building Code does not require an elevator if the lowest story containing apartments is not the lowest story of the building (e.g., apartments on the second and/or third floor).

There is also the previously mentioned caveat regarding technical infeasibility of the alteration¹⁷. Essentially, it denotes a situation where an alteration has little likelihood of being accomplished because the existing structural conditions require the removal or alteration of essential parts of the structural frame or because existing physical or site constraints prohibit modification or addition of features that are in compliance with the minimum requirements for new construction and that are necessary to provide accessibility. The Code allows the local building inspector to make this determination. (See Appendix 7C)

Finally, if the cost to provide an accessible route (which would include an accessible elevator) exceeds 20% of the total cost of the alterations then an elevator is not required¹⁸.

Summary

This article is intended to acquaint you with the existence of building code regulations that can have a profound effect on a project's scope of work. It is not intended to explain everything there is to know about building codes and potential issues that could arise. As the inherent nature of the Code is highly complex and technical, it is advisable to prepare a preliminary design and to discuss code approval with a local building inspector before purchasing the building. It is standard practice to make a purchase offer contingent on zoning approvals. Yet it is possible that a project could receive a zoning variance and yet prove impossible due to code requirements that cannot be met. Consider making a preliminary code approval an additional condition of sale.

Many types of projects are possible within the context of the code. Take another look at your upper floor space sitting empty. Your planned use may be just a few steps away from being rentable. Why not consider the investment necessary to bring it back to life?

A Disclaimer and Important Advice

Opinions – including those of local and state Code Officials – differ on what the Building Code requires as applied to specific cases. This article is not the official code of New York State. Even where the code is quoted verbatim, there is a risk that it might not apply to your project the way you think it does. This chapter expresses the understandings of the author and does not supersede the authority of the code or the interpretations of officials.

You should not use this article to make final judgments on specific actions. You should in all cases reference the applicable law and obtain the help of qualified professionals to assess how the law applies to your project.

ENDNOTES

1. Additional information can be obtained from NYS Department of Health, NYS Department of Mental Hygiene, at their Office for People with Developmental Disabilities, Office of Mental Health or Office of Alcoholism and Substance Abuse Services, and at the NYS Division for Youth.
2. The Grandfather Clause is located in The Existing Building Code for New York State, Section 102.8 Existing Structures. The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue without change, except as is specifically covered in this code, the Property Maintenance Code of New York State or the Fire Code of New York State.
3. Section 901.2, Existing Building Code of New York State
4. Section 912, Existing Building Code of New York State
5. Section 704.2.1, Existing Building Code of New York State
6. Section 1103, Existing Building Code of New York State
7. Section 704.3, Existing Building Code of New York State
8. Section 912.1.1, Existing Building Code of New York State refers you to Chapter 8 Alterations Level III, which refers you back to Section 704.3
9. Section 705.3, Existing Building Code of New York State
10. Section 912.4.1.2, Existing Building Code of New York State
11. Section 912.4, Existing Building Code of New York State
12. Section 705.3.1.1, Existing Building Code of New York State
13. Section 805, Existing Building Code of New York State
14. Section 912.1.1, Existing Building Code of New York State
15. Section 605.1, Existing Building Code of New York State
16. Section 605.2, Existing Building Code of New York State
17. As earlier stated, this is defined in Section 202, Existing Building Code of New York State and further noted in Section 912.8
18. Section 308.7, Existing Building Code of New York State

CHAPTER EIGHT:

DESIGN

CONSIDERATIONS

Quality design is important for maintaining and strengthening a downtown. The traditional design and feel of a downtown is often what makes it unique and desirable for residents and visitors.

Encouraging and regulating design can be an important tool to protect an area from poor quality or inappropriate rehabs. While some building owners choose quality design because they understand the effect (positive or negative) that one building can have on an area, not everyone thinks this way. Without design regulations some owners or developers might pick the cheapest or easiest design options. Though some exterior cladding and architectural treatments may be cheaper, the ambiance of a traditional downtown may be eroded as a result.

Design considerations and regulations fall into two main categories: ‘urban design’ standards and historic/architectural standards. Urban design standards (also known simply as design standards) focus on an entire area and how all the various features interact, such as buildings, sites, blocks, public spaces and streets. A major intent of design guidelines is to ensure that sites, new buildings, and substantially rehabilitated buildings fit within and strengthen the physical context of an area. Urban design standards often prioritize maintaining the walkability of an area. In downtowns designated by a local preservation law, historic/architectural design considerations are focused on reviewing and requiring approval for significant rehabilitation and construction to ensure that changes fit within – or do not detract from – the historic and architectural character of buildings and districts.

Urban Design Standards

Municipalities can regulate various aspects of urban design through portions of their zoning laws, site plan review, or stand-alone design standards code chapters. These regulations help to put everyone – municipal officials, building owners, developers, and architects – on the same page.

The word *urban* in the context of urban design, should not be interpreted as *city*. Instead it is meant to represent areas of dense development which includes downtowns in cities, towns, and villages.

Some design regulations are often included within zoning laws such as building height, width, setbacks, density, signage, etc. Other design considerations can be included in site plan review, which can include general goals that recommend what the planning board should consider during their review. The board may ask developers for changes or additions to meet a certain design goal. An example could be to consider the impact of a blank façade on one side of a building or the positioning of mechanical equipment such as air-conditioning grills, ventilation, or exhausts. Other design requirements in site plan review maybe more specific. For example “in parking areas with fewer than twenty (20) parking spaces, adjacent uses and public ways should be protected against emissions, light, and glare from the parking by screening with planting or fences.”¹

Design Guidelines and Design Standards

Municipalities that want to have specific design goals or requirements may wish to create design guidelines or standards. The terms design guidelines and design standards are sometimes used interchangeably depending on the municipality, but the traditional notion is that guidelines are optional, and standards are regulations adopted into law.

Quality design does not necessarily have to be more expensive. For example, locating a new building on a different part of a parcel (up to the sidewalk vs a large setback) might not have any additional costs but could ensure a building fits better within the context of the streetscape. Reasonably priced materials also exist that will not detract from the other buildings in a traditional downtown.

URBAN DESIGN CONCEPTS

The list below outlines a variety of different types of design concepts that can be regulated through design standards. Not all concepts are appropriate for every downtown and some are more important than others depending on municipal priorities. A number of the concepts below are addressed in greater detail in previous chapters of this report.

Building/Site Related:

- Setbacks - zero lot setbacks - requiring buildings to be placed at the edge of the sidewalk to maintain and reinforce the ‘street wall’ (See Chapter 6)
- Circulation – internal interconnects, including pedestrian and bicycle systems
- Parking - requiring parking to be located behind buildings or adjacent to buildings; limited width/size; screening requirements (See Chapter 6)
- Drive-thrus - these uses typically emphasize automobiles over pedestrians and bicyclists. Some may be desired, especially for businesses such as banks and drug stores, and can be limited to the rear of buildings.
- Ingress/Egress and curb cuts – limits on the number of curb cuts and size. Too many (and too wide) curb cuts prioritizes vehicles over pedestrians and breaks up street continuity.
- Review of historic structures - site plan review can be triggered for alterations to structures built on or before a certain date, thus requiring more scrutiny in historic building rehab. (The second portion of this chapter will focus on historic/architecture specific standards associated with local preservation laws).
- Orientation - buildings and main entrances should be oriented towards the street and sidewalk.
- Height – minimum and maximum heights and/or stories to maintain consistency with district (See Chapter 6)
- Windows – size; location; transparency.
- Lighting – intensity; direction; trespass; uplighting; power density
- Building materials and finishes - consistency with district and/or high quality materials that do not detract from the current treatment. For example, municipalities might restrict the use of T-111, vinyl siding, cement cinderblocks, etc.
- Building width – maximum building width limits; requiring breaks in the façade.
- Signage – size, location, amount, lighting, materials, etc (See Chapter 6)
- Landscaping – screening; street trees; rain gardens; planting areas.
- Demolition restrictions (See Chapter 6)

Neighborhood/District/Corridor Considerations

- Street design - street pattern, sidewalk width, bus and transit facilities
- Block length - short to medium length blocks
- Continuous street wall
- Equipment on roof – requiring equipment to be screened or setback out of sight
- Landscaped medians, street trees, and planting strips
- Buffering and pedestrian safety - on street parking, curb bump-outs, crosswalks, wide sidewalks.
- Bike lanes and bike racks

Design Guidelines are intended to recommend and influence good design and can be used as a starting point for the creative design process. Many communities across the country have produced design guidelines in the form of manuals that offer recommendations on preferred design features, often through graphics and diagrams.

Guidelines can also be a means of introducing design concepts and emphasizing their importance to property owners, local business, and other key stakeholders. Some guidelines highlight architectural components of a building (i.e., foundations, roofs, windows, doors, and porches) and explain site design elements that are encouraged in order to provide site-specific context, such as plantings, trees, fences, curb cuts, and accessibility.

In contrast, design standards are specific requirements with development criteria adopted into local law. They can focus on districts, sites, and building massing, siting, and facades. Any new building, or exterior alteration of an existing building (and perhaps landscaping depending on the law) would be required to adhere to these standards by law. The

standards are specific similar to zoning regulations and do not require much interpretation. For example “Windows and Transparency – Renovations of the first floor of existing buildings shall not decrease the area of transparency. Where feasible, renovations shall increase the area of transparency to that required for new construction unless the original historic character of the building requires less transparency area.”² Some standards are focused more on historic and architectural considerations, which will be discussed later in this chapter.

Design Review

Urban design standards are usually part of a zoning code, thus they are treated similar to other zoning requirements and approvals. There is not usually a separate approval process or specific board/committee that reviews these types of design regulations because interpretation is not needed. While a project is reviewed for zoning approval for its use, density, etc., it will also be reviewed using the design standards. Approval authority is usually the same as zoning approval, which could be granted by the Zoning Enforcement Officer (or another official depending on the municipality).

CITY OF ROCHESTER'S DESIGN STANDARDS AT WORK

The City of Rochester's design standards, which are embedded within the zoning code (Chapter 120-158), help ensure new construction or substantial renovation meet a certain level of urban design quality. Remember, urban design is different from architectural style. With this example, 490 Monroe Ave in the Monroe Village neighborhood, a long ago remodel had removed almost all of the windows from the first floor of this 1920s building and replaced them with brick. A new owner renovated the building in 2012 and met the city's requirement for transparency by removing the brick and recreating the traditional storefront windows.



490 Monroe Ave after façade renovations, Monroe Village Neighborhood. (Photo - Brody Real Estate LLC)

The building renovation had to adhere to the City of Rochester's Design Standards, which require 'active building elevations' which include "windows, building entrances and other architectural features that enhance the pedestrian scale and experience of the building façade."³ The standards also require transparent windows covering at least 70% of the wall areas between two and eight feet above the ground.



490 Monroe Ave. before renovation. (Photo - Brody Real Estate LLC)



490 Monroe Ave, 2014. (Photo - G/FLRPC)

Historic and Architectural Design

Many municipalities protect historic and architectural styles and features of individual properties and districts by adopting a local preservation law. These laws are intended to manage and steer construction and renovation not prevent it. Local preservation laws are not appropriate for all municipalities; see Chapter 6 for more detail information on local preservation laws.

Local preservation laws, which place extra focus on the appropriateness of a building's architectural style, are the strongest forms of protections for protecting and ensuring appropriate rehabilitation of historic structures. A local historic preservation law aims to safeguard the heritage of a community by preserving the elements of its cultural, social, scenic, archaeological, and architectural history. The primary goal of this type of legislation is the protection of a community's historic resources by empowering a municipally appointed historic preservation commission (also known as a local landmark commission) to examine proposed changes to locally landmarked buildings and districts. Zoning to preserve historic resources is often achieved with overlay zoning that generally requires any new construction or alteration to be compatible with existing structures of historic or architectural value and maintains the district's character. The commission can approve the proposed work as well as provide information and design guidance to make the property owner's goals consistent with the local preservation law.

Regulating historic features and architecture is very subjective and requires review of each individual property, structure, and style to determine appropriateness. The standards used for review are not specific regulations but rather guidance on what to consider when determining the appropriateness of a project. There are too many nuances to all the different types of architecture and historic character to have specific list of all of the potential types of changes and what would be appropriate.

Historic Preservation Commission vs. Architectural Review Board

A historic preservation commission oversees proposed alterations to properties within a local historic district in addition to individual landmarks (which could also include commenting on new construction adjacent to historic properties in a district).

An architectural review board may have historic resource oversight granted by some communities, but would typically be focused on overseeing design of new construction in a municipality, or designated area within a municipality.

The Secretary of the Interior's Standards for the Treatment of Historic Properties

Many municipalities, especially those with historic preservation laws and districts adopt the Secretary of the Interior's Standards for the Treatment of Historic Properties as their basis for regulation and review.

The use of the Secretary's Standards ensures that every project is evaluated using the same principles and methodology, providing sound philosophy for local commissions and board members reviewing proposed work on historic properties. The Standards represent the "best practices" in preservation projects and put all involved parties – property owners, commission members and the public – on the same page. Applicants have a better understanding about how to

In 1976, the Secretary's Standards were developed as general principles to govern work on historic resources. The National Park Service (or NPS), has since developed principles for most types of preservation project, including Preservation, Rehabilitation, Restoration, and Reconstruction. Each of these four treatments has its own set of Standards and Guidelines that provide an overview of how a property and its character should be reviewed and maintained. The Secretary's Standards are used by nearly everyone who works on historic properties—from federal agencies and state and local officials to local historic preservation reviewers.

THE SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION⁵

Rehabilitation may be considered as a treatment when repair and replacement of deteriorated features are necessary; when alterations or additions to the property are planned for a new or continued use; and when its depiction at a particular period of time is not appropriate. Prior to undertaking work, a documentation plan for rehabilitation should be developed.

1. A property shall be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces and spatial relationships.
2. The historic character of a property shall be retained and preserved. The removal of distinctive materials or alteration of features, spaces and spatial relationships that characterize property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, shall not be undertaken.
4. Changes to a property that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive material, features, finishes and construction techniques or examples of craftsmanship that characterize a property shall be preserved.
6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture and, where possible, materials. Replacement of missing features shall be substantiated by documentary and physical evidence.
7. Chemical or physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials shall not be used.
8. Archaeological resources shall be protected and preserved in place. If such resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations or related new construction shall not destroy historic materials, features and spatial relationships that characterize the property. The new work shall be differentiated from the old and shall be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.
10. New additions and adjacent or related new construction shall be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

successfully obtain a Certificate of Appropriateness for their proposed changes and improvements. The Standards also ensure consistent decision-making through the years.

The Secretary's Standards may be applied to one historic resource type, such as a mixed use downtown building or a site that has a variety of historic resource types such as buildings, paths, monuments, and an important landscape.⁴

The Secretary's Standards feature Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings. There are four types of preservation practices, or treatments: Preservation, Rehabilitation, Restoration, and Reconstruction.

Preservation

Preservation as a treatment emphasizes protection, maintenance, and repair while replacement is minimized. The goal of Preservation is to retain a building's existing form, features, and detailing as they evolved over time. The options for replacement are limited because it is assumed at the outset that the building materials and character defining features are essentially intact and that more of the building's fabric has survived unchanged over time. This may be as simple as basic maintenance and repair or may involve preparing a historic structures report, undertaking laboratory testing such as paint and mortar analysis, and hiring conservators to perform sensitive work such as reconstituting interior finishes.⁶

Rehabilitation

"In Rehabilitation, historic building materials and character-defining features are protected and maintained as they are in the Preservation treatment; however, an assumption is made prior to work that existing historic fabric has become damaged or deteriorated over time and as a result, more repair and replacement will be required"⁷. Thus, latitude is given in the Rehabilitation treatment to replace extensively deteriorated, damaged, or missing features using either traditional or substitute materials.

The goal of Rehabilitation is to encourage the continued use and repair of a historic building while allowing appropriate alterations to ensure their contemporary use. This includes providing for accessibility. Rehabilitation is the most flexible of all the treatments and is the appropriate treatment when considering adaptive reuse projects for upper floors such as the conversion of the existing use – which could have been office space, storage or industrial space – into a new use such as residential, retail or other commercial space.

Restoration

Rather than maintaining and preserving a building as it has evolved over time, the goal of Restoration is to return a building to its appearance during a particular period in time. The use of the Restoration treatment may require removing features from other periods in a building's history and reconstructing missing features from the restoration period.⁸

Reconstruction

The goal of Reconstruction is to create a new building as it appeared at a particular, and most significant, time in its history. Or, to recreate something from the past that no longer exists. It should be noted that while Restoration focuses on restoring or recreating building features, Reconstruction provides the guidance necessary to recreate an entire non-surviving building or structure with new material. "In Reconstruction there is far less extant historic material prior to treatment, and in some cases nothing visible."⁹

Each of the treatments above has a set of Standards (see an example of Standards for Rehabilitation in the example below). They also have specific guidelines that clarify how to apply each specific Standard in the form of Recommended and Not Recommended actions. The Standards provide consistency to the work itself while the Guidelines focus directly on exterior materials and features, interior features, the site and setting, and special requirements such as accessibility requirements, health and safety code requirements, or retrofitting to improve energy efficiency.

CHOOSING THE APPROPRIATE TREATMENT¹⁰

Choosing the most appropriate treatment for a historic property requires careful decision-making about its historic significance, period of significance, and integrity.

- **Relative importance in history.** Is the building significant either nationally, statewide, or locally? Was it the home of business of an important citizen or entrepreneur? Is the house or commercial building representative of a significant style of architecture? Many buildings individually listed in the National Register of Historic Places are often more appropriate for Preservation or Restoration. Rehabilitation more frequently applies to buildings that contribute to a historic district but are not individually listed.
- **Physical condition.** What is the current condition of the building? Has the building deteriorated? Is the original massing, form, and orientation largely intact, or have they been altered? Are the alterations an important part of the building's history? Preservation may be appropriate if materials, details, and elements are essentially intact and convey the building's historical significance. If the building requires more extensive repair and replacement, or if alterations or additions are necessary for a new use, then Rehabilitation is probably the most appropriate treatment.
- **Proposed use.** Will the building be used as it was originally intended, or will it be given a new use? Many historic buildings can be adapted for new uses without seriously damaging their distinctive materials, features and spaces.
- **Mandated code requirements.** Regardless of the treatment chosen, health and safety and accessibility requirements will need to be considered. Identify the building's character defining spaces, features, and finishes so that code-required work will not jeopardize a building's materials as well as its historic character. Alterations and new construction will need to meet accessibility requirements under the Americans with Disabilities Act of 1990; however, the design should minimize material loss and visual change to a historic building.

Of the four treatments, only Rehabilitation includes an opportunity to make possible an efficient contemporary use through alterations and additions. The Standards for Rehabilitation, therefore, are commonly used by local historic preservation commissions and architectural review boards to evaluate proposed changes to a historic building and to determine if the work respects its historic features.

ENDNOTES

1. Chapter 276 Site Plan Review. City of Ithaca Site Plan Review (SPR) Requirements. 2014. <http://www.cityofithaca.org/DocumentCenter/View/1790>
2. Article XIX: City-Wide Design Guidelines and Standards, 120-159 Nonresidential Building Standards. City of Rochester Municipal Code, Chapter 120: Zoning. 2003. <http://ecode360.com/8682522>
3. Article XIX: City-Wide Design Guidelines and Standards, 120-159 Nonresidential Building Standards. City of Rochester Municipal Code, Chapter 120: Zoning. 2003. <http://ecode360.com/8682522>
4. Weeks, K., & Grimmer, A. "The Secretary of the Interior's standards for the treatment of historic properties: With guidelines for preserving, rehabilitating, restoring & reconstructing historic buildings". 1995. Washington, D.C.: U.S. Department of the Interior, National Park Service, Cultural Resource Stewardship and Partnerships, Heritage Preservation Services. <http://www.nps.gov/tps/standards/four-treatments/treatment-guidelines.pdf>
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7. "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings." National Park Service. http://www.nps.gov/tps/standards/four-treatments/standguide/rehab/rehab_approach.htm
8. "Standards for Restoration and Guidelines for Restoring Historic Buildings." National Park Service. http://www.nps.gov/TPS/standards/four-treatments/standguide/restore/restore_approach.htm
9. "Standards for Reconstruction and Guidelines for Reconstructing Historic Buildings." National Park Service. http://www.nps.gov/TPS/standards/four-treatments/standguide/reconstruct/reconstruct_approach.htm
10. "Four Approaches to the Treatment of Historic Properties." National Park Service. <http://www.nps.gov/tps/standards/four-treatments.htm>
11. "Secretary of the Interior's Standards." National Park Service. www.nps.gov/hps/tps/standguide/

CHAPTER NINE:

FINANCIAL CONSIDERATIONS AND FUNDING

Introduction

There are a multitude of financial considerations involved in Upper Floor redevelopment. Fortunately, there are a number of local, regional, state and national/federal groups and programs that offer assistance, including expertise and funding. This chapter is organized as a list of resources and is intended to introduce some of the groups, funding sources, and approaches to project financing.

Many grants and programs in this chapter are specific to property owners undertaking upper floor construction projects; others target businesses, or provide funding or assistance for a certain type of use. Some programs are intended for non-profits or governments, who, in some instances can forward the funding to building owners and/or use the programs to make improvements in downtowns that can have a positive effect on upper floor rehab.

Every upper floor project is different. Therefore, some topics will be more relevant than others depending on the reader. Web links are included for many of the topics and additional information can be found in Appendix 9.

Business Plans and Small Business Assistance

Business plans

Business plans are often the most important step in the process of determining whether a new business will work and be profitable. According to the US Small Business Administration, a business plan defines the business and identifies major goals. It includes information on current and future budgets including projected revenues, expenditures and cash flow. It is used to determine what resources are needed and how to allocate them, and also attempts to anticipate potential issues and forecast associated costs. A business plan also helps with loan applications because it includes specific financial information that will help lenders determine if the loan can be paid back.

Business plans can be relevant to all types of businesses, not just traditional retail or commercial. A

business plan may help determine if an investment in an upper floor rehab and the subsequent use of that space is financially viable. During this planning phase, building owners should also assess the market demand of what their final use(s) will be. If they are creating apartments, they should look into the rental market in the areas to determine what is available, and what type of rent they may be able to expect. This is also a good time to research grants and other funding sources to see if the project is eligible and if such assistance could help close any funding gap to make the project profitable.

The US Small Business Administration has a number of resources and recommendations to help with business plan creation which can be found at <http://www.sba.gov/writing-business-plan>.

Small Business Assistance

An increasing number of communities offer special services to help small businesses, which can include “development centers offering counseling and technical support for growing small businesses; ‘incubators’ offering an office facility (often with shared secretarial, computer, phone, and copying services) for start-up businesses, usually packaged with counselling and technical support; and seed capital funds, pools of local money available for high-risk venture capital investments in start-up businesses.”¹

A number of New York State Small Business Development Centers are located within the region including the City of Rochester, Greece, Brockport, and Geneseo. These Centers provide technical assistance to new and existing small business including counseling, training and workshops. <http://www.nyssbdc.org/>

Additional business plan assistance, information and support are available through local SCORE (Service Corps of Retired Executives) Chapters which can include guidance from mentors, advisors and counselors. Visit <http://www.score.org/>.

There are also two Entrepreneurial Assistance Program Centers in the region that provide support,

training and assistance to new and potential business owners.

<http://www.esd.ny.gov/businessprograms/eap.html>

EAP Centers in the Region:

Urban League of Rochester – Genesee, Monroe, Wayne & Ontario Counties

<http://www.ulr.org/business-development-services>

IBERO American Action League – Ontario, Wayne, Seneca & Yates Counties

<http://iaal.org/programs-services/entrepreneurial-assistance-program/>

Public and Private Financing

Many projects would not be financially viable if they were financed through private loans alone. In New York State the cost of upper floor revitalization can be very high due to renovation, remediation, and construction upgrade costs, as well as additional costs after construction, such as property taxes and interest repayment. The demand for downtown space and the subsequent rents that can be charged may not be sufficient to completely cover these costs. In other cases, future profits could cover these initial costs, but banks may not be willing to take on the risk to finance the entire project. For this reason, many projects require at least one form of additional financial assistance; this may include grants, tax credits, or gap financing loans which have different terms and requirements than traditional bank loans.

Revolving Loan Funds (RLF)

A revolving loan fund serves as a gap financing tool usually intended for small- and medium-sized businesses. As loans are repaid, the funds are loaned out to new projects. Many businesses have issues with the level of capital available to them through traditional lending channels, and are able to utilize low-interest RLF loans to complete their financing needs during startup or expansion. There are multiple revolving loan funds available regionally from the state, counties, some municipalities, and non-profit organizations. The G/FLRPC Regional Revolving Loan Fund is a good example: it provides up to \$200,000 to eli-

gible industrial or service businesses throughout the nine-county region. A list of additional RLF funds is included in Appendix 9.

Private Investors

Some civic or socially-minded groups have funds to lend for certain types of projects that fit their mission. One example of this is the Clarion Fund operated by the Christ Clarion Presbyterian Church in Pittsford, which has loaned money for small business development and building rehab (including commercial, residential, and public uses) to low-income entrepreneurs and neighborhood groups in the City of Rochester.

Private Investment Group

A Private Investment Group may consist of a small group of residents that pool their money to purchase a business, building, or multiple buildings.² Residents in the Village of Perry have embraced this concept with the creation of Perry New York LLC. The LLC currently has 32 investors who give either money or in-kind services to help complete rehabilitation projects on Main Street in Perry. See *Rufus Smith Building* below and Case Study – Main Street LLC.

Cooperative

A Cooperative (or Co-op) is an organization that is owned by members who have purchased shares. The model is often used to create a business or organization that members see a need for but is not yet available.

Venture Capitalists

Venture capitalists finance companies that are expected to have significant growth and take on some ownership of the company based on their investment and may also take on some management and decision-making roles.³

Charitably-Minded Venture Capital Funds

Some venture capital funds have charitable goals and objectives such as assisting businesses in underserved neighborhoods that provided needed goods and services, such as grocery stores.⁴

Commercial Finance⁵

Commercial finance companies take on higher-risk commercial loans than banks may approve. Finance companies may be needed if a business continues to need its loan ceiling raised, if its credit history or rating is poor, or if the company has a high debt-to-worth ratio with a strong cash flow. Finance companies typically have higher rates and fees due to the greater risk inherent in the loans they provide.

Government Development Assistance

It is common for local governments to help pay for infrastructure such as roads, sewer, and water extensions to support new developments when possible. In other circumstances, local governments expect land developers and other private parties to pay for these improvements. Some municipalities are able

to fund some high-priority developments, when applicable through their municipal budgets as well as state and federal funds they administer. The City of Rochester has financial assistance programs, matching grants, and low-interest loans available for certain projects involving businesses development and building construction/renovations especially those that will attract or retain jobs and increase the city's tax base. <http://www.cityofrochester.gov/article.aspx?id=8589935982>

Capital Improvement Plans (or Programs)

Capital Improvement Plans identify essential municipal investments in coming years, which often include infrastructure, structures, or machinery. They should also include a schedule and strategy for identifying and saving funds to pay for these improvements through tax dollars, municipal budgets, grants, etc.

Non-profit Developers

Some non-profits are in the development business and are able to rehab buildings, often for affordable housing. These groups can include neighborhood/



Rufus Smith Building. In 2008 the Rufus Smith block in downtown Perry underwent \$700,000 dollars in renovations thanks to the Perry New York LLC (PNY).

Perry New York LLC was created in 2005 and has been a catalyst for reinvestment downtown. Revitalization efforts in the Village (by PNY and others) have resulted in:

- \$2.5 million dollars in renovations and investment (with \$1.4 million on the way for the Main Street Improvement Project
- 25 net new businesses
- 76 new jobs from those businesses
- 7 new residential apartments
- 25 renovated/new commercial spaces

See Case Study – Main Street LLC. Photo credit: Rick Hauser; “Main Street LLC: Community Entrepreneurism and the Case for Private Sector Rehab”

downtown associations, special interest non-profits, service providers, affordable housing providers or other special interest non-profits. These groups are able to utilize grant funding as well charitable donations to help fund their projects.

Public/Private Partnerships

Local governments and businesses can come together to collectively fund a non-profit agency that can focus on economic and business development, and marketing of a district. This type of partnership can often open up access to certain funding sources and programs that the government or private businesses would otherwise not be eligible for.⁶

Federal and State Tax Credits & Incentives

“Many states allow communities to use enterprise zones, tax increment financing, and other strategies to give direct tax breaks to a new industry or to ensure that a designated portion of the taxes paid by a new business directly benefits the area around it.”⁷

Federal Investment Tax Credit Program for Income-Producing Properties

The Federal Rehabilitation Tax Credit program is a federal incentive to attract private investment to the rehabilitation and reuse of historic, income-producing structures. It provides a 20 percent federal tax credit toward the qualified rehabilitation expenses of a certified historic structure, as determined by the National Park Service. Individual structures listed on the National Register, or contributing structures in a National Register Historic district are qualified for the program.

The property must be substantially rehabilitated. Rehabilitation expenditures must exceed the greater of the adjusted basis of the building and its structural components or \$5,000. The rehabilitation must be in accordance with the Secretary of Interior’s Standards for Rehabilitation, and requires the review and certification of the State Historic Preservation Office (SHPO), which administers the program in New York. All work must be approved before beginning construction. The incentive has been used to capital-

ize rehabilitation projects large and small throughout central and western New York.

NPS website: <http://www.nps.gov/tps/tax-incentives/before-you-apply.htm>

NYS SHPO website: <http://nysparks.com/shpo/tax-credit-programs/>

Key resource on all federal preservation incentives: <http://www.nps.gov/tps/tax-incentives/taxdocs/about-tax-incentives-2012.pdf>

10% Credit for Non-historic Properties

A federal 10 percent tax credit is available for the rehabilitation of non-historic buildings placed in service before 1936. The building must be rehabilitated for non-residential use. In order to qualify for the tax credit, the rehabilitation must meet three criteria: at least fifty percent of the existing external walls must remain in place as external walls, at least seventy-five percent of the existing external walls must remain in place as either external or internal walls, and at least seventy-five percent of the internal structural framework must remain in place. A building listed on, or eligible for, the National Register of Historic Places cannot utilize this program.

There is no formal review process for rehabilitations of non-historic buildings. The tax credit is claimed on IRS form 3468 for the tax year in which the rehabilitated building is placed in service. There is no corresponding state program to the Federal 10 percent Rehabilitation Credit.

New York State Rehabilitation Tax Credit for Commercial Properties

Complementing the Federal Rehabilitation Tax Credit is a 20 percent New York State income tax incentive for rehabilitation of income-producing structures. You must utilize the Federal Credit to claim the state credit, but use of the state credit is limited to National Register-listed structures in distressed census tracts. For the purpose of this program, eligible census tracts are those at or below 100 percent of State Median Family Income. Over 90 percent of

census tracts in upstate New York qualify for this additional incentive.

Working in conjunction, the state and federal rehabilitation credits cover forty percent of a building's qualified rehabilitation expenses. Contact the State Historic Preservation Office to determine the census tract eligibility of your commercial property, as well as its National Register status.

<http://nysparks.com/shpo/tax-credit-programs/>

<http://nysparks.com/shpo/tax-credit-programs/documents/NYSTaxCreditPrograms.pdf>

New York State Historic Homeownership Rehabilitation Tax Credit

Rehabilitation work on historic residential structures may qualify for a tax incentive. The credit will cover 20 percent of qualified rehabilitation costs of structures, up to a value of \$50,000. Houses must be an owner-occupied residential structure and be individually listed on the State or National Register of Historic Places, or a contributing building in a historic district that is listed in the state or National Register of Historic Places. In addition, the house needs to be located in an eligible census tract. At least \$5,000 must be expended on qualifying work and at least 5% of the total project must be spent on the exterior of the building. All work must be approved by NY SHPO prior to start of construction.

The Historic Homeownership credit is a tool to promote in residential neighborhoods adjacent to downtowns and commercial cores in order to further develop a nearby customer base for local, main street businesses.

*Federal Low Income Housing Tax Credits (LIHTC)*⁸

The LIHTC Program was established in 1986 to encourage the private market to invest in affordable housing through the use of incentives. Federal housing tax credits are given to developers of qualified projects, who then market these credits to investors to raise capital. This additional funding allows developers to offer lower, more affordable rents. De-

velopers receive a dollar-for-dollar credit against their federal tax liability each year over a period of 10 years. The amount of the annual credit is based on the amount invested in affordable housing.⁹

*New Markets Tax Credits Program (NMTC)*¹⁰

The NMTC Program was created in 2000 to spur new investment into existing businesses and real estate projects in low-income communities. The Program awards a federal income tax credit in exchange for making equity investments in specialized financial institutions called Community Development Entities (CDEs). The credit is for 39 percent of the investment amount over a seven year period. CDEs must be certified.

New York State Historic Property Tax Exemption – The Ithaca Law

A higher property tax assessment is one issue that could discourage building owners from investing money to rehab their upper floors. For historic buildings in municipalities that have adopted a local landmark law such as one based on the Model Law (see Chapter 6), the opportunity to mitigate this impact may be available. Section 444-a of the New York State Real Property Tax Law enables local taxing authorities – village, town, city and county governments, as well as school districts – to grant a tax exemption on the amount of the increased assessment resulting from capital improvements to a locally-landmarked building. The alteration or rehabilitation must be in compliance with the local preservation law.

The enabling legislation must be adopted by each of the taxing authorities for their component of the increased property tax to be abated. Municipalities must adopt the exemption by local law; school districts must adopt it by resolution.

“Generally, the amount of the exemption in the first year is 100% of the increase in the value attributable to the alteration or rehabilitation. The amount of the exemption remains the same for years two through five; thereafter the exemption is phased out over the next four years (that is, in year six, the exemption is



Frederick Douglass Apartments. Historic tax credits were used for the building renovations. See Case Study – A Rochester Urban Row Success Story for more information. (Photo - Suzanne Neace Photography)

80 percent of the increase in value; then 60 percent in year seven, and so on).¹¹ However, municipalities authorizing the exemption may reduce the percentages of exemption, or may limit eligibility to forms of alteration or rehabilitation prescribed in their local law or resolution.

Language of 444-a:

<http://codes.lp.findlaw.com/nycode/RPT/4/2/444-a>

Tax form: http://www.tax.ny.gov/pdf/current_forms/orpts/rp444a_fill_in.pdf

Historic Preservation - Funding and Assistance

Landmark Society of Western New York

“The Landmark Society of Western New York, Inc. is one of the oldest and most active preservation organizations in America. It is a not-for-profit membership organization dedicated to protecting the unique architectural heritage of our region and promoting preservation and planning practices that foster healthy, livable, and sustainable communities.”¹²

The Landmark Society has a number of services and programs available in its nine-county service area that aid building owners in their upper floor reuse projects.

See Appendix 9 for more information on the Landmark Society of Western New York’s programs including:

- Preservation Planning Services
- Preservation Rehab Loans
- Preservation Grant Fund
- Five to Revive
- Public Outreach & Education

Preservation League of New York State

The Preservation League serves as New York’s state-wide historic preservation advocacy organization. The League is dedicated to the protection of New York’s diverse and rich heritage of historic buildings, districts, and landscapes. It actively encourages historic preservation by public and private organiza-

tions, agencies, and individuals in local communities throughout the state and provides a united voice for historic preservation at the state and federal level.

See Appendix 9 for information on the Preservation League of New York State's programs including:

- Technical Services Program
- Public Policy Program
- Seven to Save Endangered Properties Program
- Preserve New York Grant Program (PNY)
- Technical Assistance Grants (TAG)
- Endangered Properties Intervention Program (EPIP)

National Trust for Historic Preservation

The National Trust (NTHP) is our county's membership nonprofit organization dedicated to advancing historic preservation and community revitalization in all 50 states and US Territories. It is a privately funded group "working to save America's historic places." The organization is headquartered in Washington, DC with field offices across the country. The headquarters is the entry point for NTHP's services and programs.

See Appendix 9 for information on the National Trust for Historic Preservation including:

- Technical Assistance
- National Trust Preservation Funds
- Johanna Favrot Fund
- Hart Family Fund for Small Towns
- Cynthia Woods Mitchell Fund
- 11 Most Endangered Historic Places
- National Treasures Program
- National Main Street Center, Inc.
- National Trust Community Investment Corporation
- Emergency/Intervention Funding

Certified Local Government Program

Among New York State municipalities with preservation laws, over 80 communities have qualified for Certified Local Government (CLG) status. Becoming a CLG offers communities tangible financial and programmatic benefits. Jointly administered by the National Park Service (NPS) and the State Historic

Preservation Office (SHPO) in each state, the program is a "preservation partnership between local, state and national governments focused on promoting historic preservation at the grass roots level." Establishment of a local preservation law that meets CLG requirements is a fundamental component of establishing CLG status. The Model Law complies with CLG standards, saving a community much time in drafting a law from scratch.

Local, State and Federal Financial Incentives for Landmarked Structures

The ability to access federal grant funds for the above purposes is one of the benefits of participation in the CLG program. Another benefit of local landmark capability is the ability for taxing jurisdictions to abate taxes on improvements to locally designated historic properties for a ten-year period under Section 444-a of New York's Real Property Tax Law (<http://codes.lp.findlaw.com/nycode/RPT/4/2/444-a>). The law does not reduce taxes on a property, but defers a possible increase in assessed value and resulting taxes in stages over 10 years, in order not to penalize reinvestment in historic properties.

The financial incentives for rehabilitation provided by the state and federal rehabilitation tax credit program apply to commercial properties listed on the National Register of Historic Places and to owner-occupied residential properties listed on the State Register of Historic Places. Local landmark status alone does not qualify a property to use either of these state and federal rehabilitation credits. A property owner undertaking rehabilitation work incentivized by the state or federal credit must also secure approval for such work from a local historic preservation commission if the property is locally designated.

The New York State Historic Preservation Office website provides information on both the federal and state rehabilitation tax credit incentives (<http://nysparks.com/shpo/tax-credit-programs/>).

Additional Programs and Funding

The list below identifies additional programs and funding that may be of interest. Information pertaining to these programs is in Appendix 9.

Energy Efficiency Incentives

- Energize NY Finance
- Energy Conservations Improvements Property Tax Exemption
- Multifamily Performance Program
- Existing facilities Program

New York State Additional Funding and Programs (See Appendix 9 for descriptions)

New York State Consolidated Funding Application

New York State Heritage Area System

1. Western Erie Canal Main Street Program

New York State Office of Community Renewal

1. New York Main Street Program
2. Community Development Block Grant Program (CDBG)
3. Urban Initiatives Program
4. Rural Areas Revitalization Projects Program (RARP)

New York State Canal Corporation

1. Canalway Grant Program

New York State Council on the Arts (NYSCA)

1. Project Support
2. Technical Support
3. Facilities Support
4. Capital Projects
5. Design & Planning Studies

Empire State Development

1. Empire State Development Grant Funds
2. Excelsior Jobs Program
3. Regional Tourism Marketing Grant Initiative (I LOVE NEW YORK Fund)

New York State Energy Research and Development Authority (NYSERDA)

1. Economic Development Growth Extension Program

2. NYSERDA Cleaner, Greener Communities Program
3. NYSERDA Flexible Technical Assistance
4. Existing Facilities Program
5. Industrial and Process Efficiency Program
6. New Construction Program

Federal – Additional Funding and Programs

National Heritage Areas (NHA)

1. Erie Canalway National Heritage Corridor Grants

National Endowment for the Arts

1. Our Town

U.S. Department of Housing and Urban Development (HUD) – Affordable Housing Programs

1. HOPE VI Main Street
2. Section 203(k) Program

U.S. Department of Agriculture (USDA)

1. USDA Rural Development
2. Community and Economic Development
3. Community Facilities Loans and Grants
4. Rural Community Development Initiative

Other Local Resources

There are many more sources of financial assistance and guidance available for property and business owners at the local level (too many to include in this guidebook). Check with the following local organizations to determine what other assistance is available in your municipality.

- County Economic Development and Industrial Development Agencies
- City, Town and Village Governments and Planning Departments
- Neighborhood or Rural Preservation Corporation
- Downtown or Neighborhood Associations
- Business Associations or BIDs
- Housing agencies
- Landmark or Historic Preservation Organizations

ENDNOTES

1. Kelly, E., & Becker, B. "Community Planning: An Introduction to the Comprehensive Plan". 2nd ed. Washington, D.C.: Island Press, 2000.
2. "Economic Development Tools for Commercial Districts." Downtown Economics: Ideas for Increasing Vitality in Community Business Districts (newsletter). May 2010, Issue 165
3. "Funding Sources for Small Businesses." Greater Rochester SCORE. <http://www.scorerochester.org/help/funding/sources.php>
4. "Economic Development Tools for Commercial Districts." Downtown Economics: Ideas for Increasing Vitality in Community Business Districts (newsletter). May 2010, Issue 165
5. "Funding Sources for Small Businesses." Greater Rochester SCORE. <http://www.scorerochester.org/help/funding/sources.php>
6. National Council for Public Private Partnerships. <http://www.ncppp.org>
7. Kelly, E., & Becker, B. "Community Planning: An Introduction to the Comprehensive Plan". 2nd ed. Washington, D.C.: Island Press, 2000.
8. "How Do Housing Tax Credits Work." U.S. Department of Housing and Urban Development. http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/training/web/lihtc/basics/work
9. Ibid.
10. "New Markets Tax Credit Program." Community Development Financial Institutions Fund. http://www.cdfifund.gov/what_we_do/programs_id.asp?programID=5
11. "Application for Partial Exemption for Alteration of Rehabilitation of Historic Real Property." New York Department of Taxation and Finance. http://www.tax.ny.gov/pdf/current_forms/orpts/rp444a_fill_in.pdf
12. Landmark Society of Western New York. <http://landmarksociety.org/>

CASE STUDIES

National Register Listing Opens Doors to Funding Geneva, NY



Historic view of Exchange Street. (Photo - Johnson-Schmidt & Associates)

Downtown Geneva in Ontario County certainly had the qualities of an historic district but lacked official recognition and thus enjoyed only some of the advantages. Like many communities, downtown Geneva's experience with the State and National Register of Historic Places (S/NR) had been limited to the listing of individual landmarks, most notably the 1894 Smith Opera House, a popular performance venue. After several decades of local consideration and consternation, the pursuit of an historic district that included the individual landmark buildings and rows of business blocks had stalled. That all changed when a local long-time building owner expressed interest in rehabilitating his c. 1901 building and learned he could not take advantage of the combined 40% in state and federal tax credits available for appropriate rehabilitation because his building would not meet the requirements for an individual landmark. However, he would be eligible for the credits if his building was in a S/NR historic district and considered to be a contributing structure. Such a venture called for cooperation with building owners and other community stakeholders. Rather than give up, this building owner and others got the ball rolling.

Following several meetings between the soon-to-be developer and a preservation firm, the economic

advantages of creating a downtown State and National Register of Historic Places historic district were presented to the Geneva Business Improvement District (BID). The interested parties also consulted with the NYS Office of Parks, Recreation and Historic Preservation for project guidance. As a result, in 2013



Exchange Street. (Photo - Johnson-Schmidt & Associates)

the BID applied to the Preservation League of New York State for a Preserve New York Grant to hire the preservation firm to complete the necessary research and documentation for the nomination. The BID was awarded \$9,000 toward this work and the nomination was completed and approved in nine months. The Geneva Downtown Commercial Historic District was officially listed in May 2014.

Comprised of 87 primarily commercial properties, this district was approved by the National Park Service because it met at least one of the four official criteria used to determine the significance of a place, from a single building to an entire community. Geneva's historic district is significant for the criteria related to history, design, and architecture. Taken together, the group of buildings and their setting tell the tale of Geneva's importance in the areas of commerce, transportation and architecture. The commercial rows span the decades of 1840 to 1940 and include



Historic and present day photos of the Dove Block, 459-465 Exchange Street. (Photo - Johnson-Schmidt & Associates)

several architect-designed buildings.

The owner-developer is working with the preservation firm to turn the 24,000 square foot corner building – best known as the Montgomery Ward department store between 1942 and 1979 – into 12 market-rate apartments on the third and fourth floors. This phased development should lead to a renewed anchor building, known as One Franklin Square since the 1990’s. The ground and second stories will continue to house businesses and offices, including the Geneva BID. This \$1.6 million project would be impossible without the historic district designation that opened doors to state and federal preservation tax credits for income-producing properties. Best of all, other downtown owners are looking anew at upper floor reuse possibilities.



One Franklin Square, 437 South Exchange Street. (Photo - Johnson-Schmidt & Associates)

R.H. Newell Building by Andrew Meier Medina, NY



Early 1900's photo of the R.H. Newell Building (Photo - Andrew Meier)

The R.H. Newell Building in Downtown Medina, a three-story brick building in high Italianate style, was built in 1876. The Hart House Hotel, as it was known, was Medina's finest inn. The proprietor, Elizur Kirke Hart of Albion, was a prominent entrepreneur and banker, founder of the Rochester Post Express, and a United States Congressman. He is perhaps most well known as the original owner of Hart Island (now "Heart Island") in the Thousand Islands, on which Boldt Castle now sits.

By 1918, the Hart House had gone dark. Over the next 86 years, the building was home to the Robert H. Newell & Company, a manufacturer of high-end custom shirts. Newell completed extensive renovations to turn the hotel into a factory, and at its peak, utilized all three floors of the 14,000 square foot structure for its 100 employees. The company catered to a discerning and well-heeled clientele through its national network of salesman and retail stores stretching from Fifth Avenue in New York to



Robert H. Newell & Company, manufacturer of high-end custom shirts (Photo - Andrew Meier)

Los Angeles. Customers included Bob Hope, John Jacob Astor, Winston Churchill, and Warren G. Harding.

In 2005, the recently-vacated building was acquired by Renewell, LLC, which completed a 5-year restoration in 2010.



Shirt Factory Café. (Photo - Andrew Meier)

Resources for Restoration

The \$1.3 million rehabilitation project utilized as many sources and incentives available, including:

- Historic tax credit equity (federal only)
- New York Main Street grant
- National Grid Main Street Revitalization Program grant
- Upstate Blueprint Fund loan (ESDC)
- National Trust for Historic Preservation Loan Funds
- Local historic property tax exemptions (Real Property Tax Law 444-a).

The project was built in two phases: First floor restaurant and retail, and upper floor office and residential. The tenants currently occupying the building include:

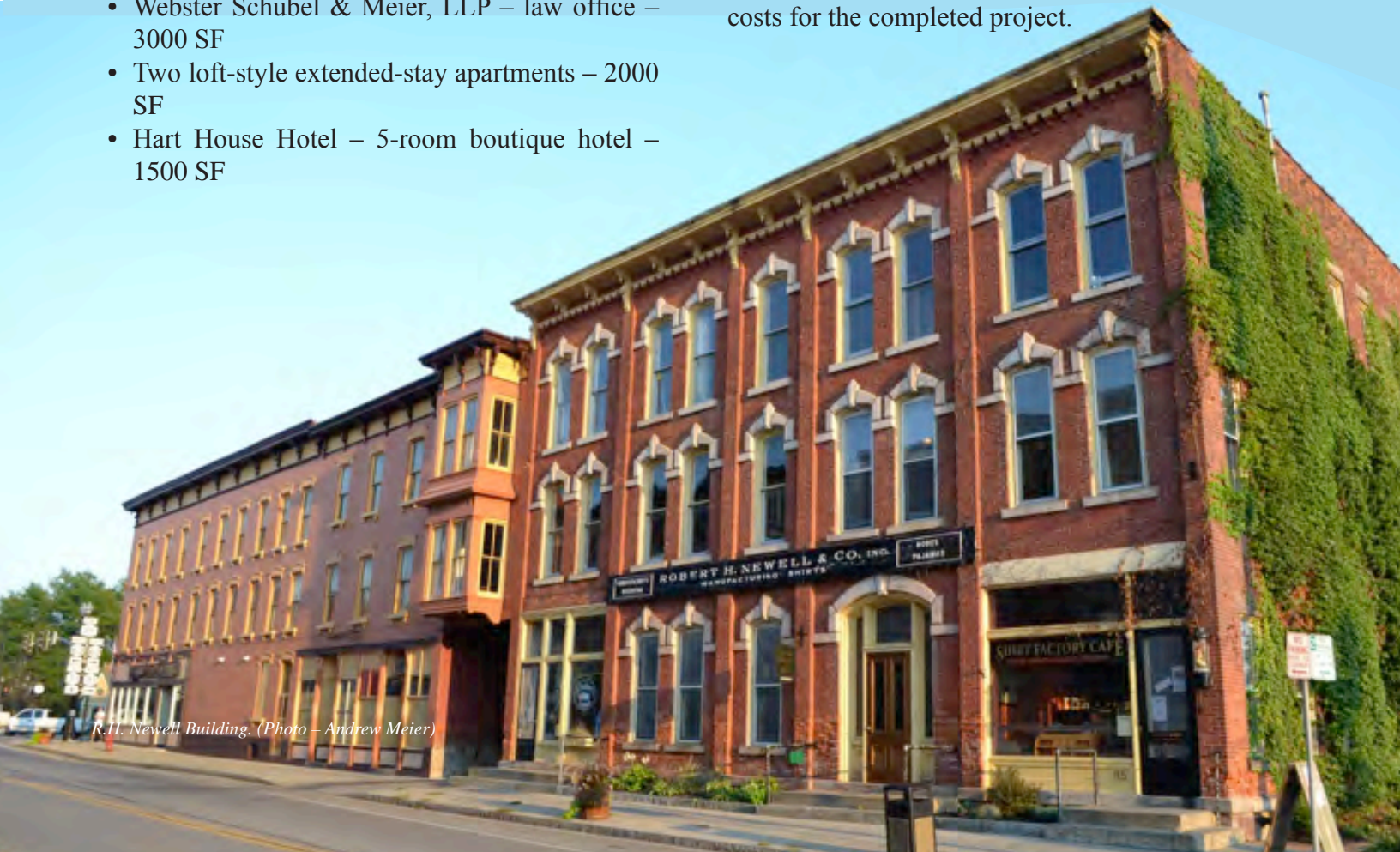
- Shirt Factory Café/Boiler 54 – Café and outdoor bar and music lounge – 3000 SF
- 810 Meadworks – on-site producer of mead, a beverage fermented from honey – 1100SF
- A Knitter’s Corner – yarn shop – 350 SF
- Webster Schubel & Meier, LLP – law office – 3000 SF
- Two loft-style extended-stay apartments – 2000 SF
- Hart House Hotel – 5-room boutique hotel – 1500 SF

Hart House Hotel also plans to convert vacant second-floor space into five (5) more guest rooms in 2015.

Why so many mixed uses?

Nearly equidistant from major population centers in both Buffalo and Rochester, the R.H. Newell Building was designed to accommodate a host of businesses that, working together, can build destination status. As part of that process, the developer took an active role in conceiving and selecting new businesses to match the available space. The result is an intertwined network of tourist-oriented businesses under one roof that can cross-market and build economies of scale. For instance, because the hotel cannot staff a front desk 24/7, the Shirt Factory Café serves as the front desk at certain times of the day, which helps both businesses without compromising service. Countless other synergies – seen and unseen – are at play every day that help each businesses build customer base while keeping operational costs down. The result is a stable cluster of tenants that provide the cash flows necessary to cover debt service and other carrying costs for the completed project.

R.H. Newell Building. (Photo – Andrew Meier)



A Rochester Urban Row Success Story – Frederick Douglass Apartments Rochester, NY



Frederick Douglass Apartments, 442-466 ½ West Main Street, Rochester, NY. (Photo - Suzanne Neace Photography)

Downtown rehabilitation efforts that involve many buildings can present challenges related to funding, design, and project coordination. Sometimes they do not work as well as intended and a new approach should be considered.

That is the story of the six-building row of 442-466 ½ West Main Street in Rochester, which occupies most of the 400 block of West Main Street. Constructed between 1855 and 1869 with a mix of commercial and residential spaces, the row was renovated in the 1990's. Although many historic architectural features were retained, the quality of work and later maintenance was poor to fair. A subsequent proposed

project failed to secure the necessary funding so an intended ownership change did not move forward. The third effort, carried out from July 2011 to April 2013, led to high-quality, lasting results, producing 28 residential units and 8 commercial spaces in what has been known as the Frederick Douglass apartments since the 1990's.

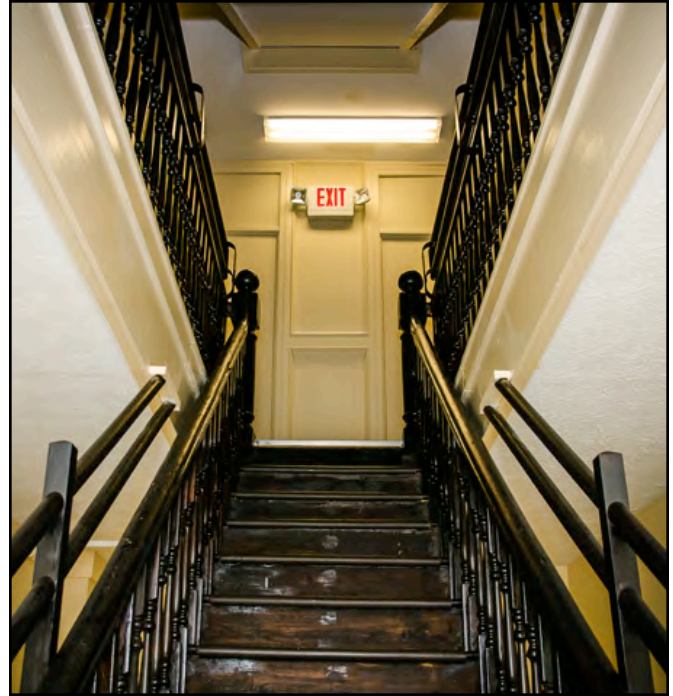
Several key factors were instrumental to this success:

- Design: Unlike earlier efforts, the buildings were treated as individual entities rather than a monolithic block. This allowed for more careful attention to suitable layouts, use of remaining historic fabric, and necessary code compliance

tailored to meet the challenges and opportunities presented by each of the six buildings.

- **Preservation:** In previous rehabilitation projects, state and federal historic preservation tax credits were not used. One reason for this was that two of the six buildings were considered non-contributing to the area's Susan B. Anthony/Madison Square-West Main Street Historic District, listed in both the State and National Registers. Subsequent research and analysis changed the status of the two buildings to "contributing." This designation opened the door to preservation tax credits for the entire project.
- **Financing:** In addition to preservation tax credits, the project's developers worked closely with the City of Rochester, New York State, and several banks for major support. Among these were: The NYS Housing Trust Fund, Federal Low Income Housing Tax Credits, Chase Bank, Federal Home Loan Bank of New York, the Rochester Housing Authority, Community Development Block Grant support, a PILOT agreement with the City, and short-term tax exempt bonds for construction.
- **Experience:** The development team included owners, development consultants, attorneys, architects, preservation consultants, and others with proven track records in completing mixed-use projects.
- **Neighborhood Context:** The development team understood the assets of the mid-to-late 19th century Susan B. Anthony neighborhood that was experiencing a comeback. Also, members of the same team and other entities were responsible for a new development – The Voters Block –directly across the street. The Voters Block provides a total of 92 units in new construction and a reuse project and 45 single, double and triplex homes. This critical mass established a refurbished, lively neighborhood.

The circumstances were right for bringing back the 400 block of West Main Street. The Frederick Douglass Apartments has transformed six historic buildings that were in disrepair, partially vacant



Historic stairs repaired and restored. (Photo - Edgemere Development, Inc.)

and behind in taxes into 28 occupied, affordable residential units and eight neighborhood commercial storefronts plus a laundry. West Main Street is one of Rochester's oldest and most important corridors.

By working together the major players were able to solve issues of blighted historic buildings and integrate their reuse with a new-build project and strengthen the surrounding historic area.



Frederick Douglass Apartments Stairways before repair. (Photo - Edgemere Development, Inc.)

How Zoning Can Impact Upper Floors Medina, NY

Want more life downtown? Make sure that your community's zoning ordinance allows an appropriate mix of uses that enhances reinvestment opportunities.

Like many communities, the Village of Medina (in Orleans County, New York) had a zoning ordinance that placed limits on permitted upper floor uses, specifically prohibiting residential occupancy. This use had not always been forbidden; concerns about noise, safety, and building conditions in apartments on Main Street led to residential use in commercial buildings downtown becoming prohibited.

Yet by 2004, some officials and owners were considering revisiting this exclusion. National and state housing trends show a growing interest in downtown living including villages and cities along the Erie Canalway. In July 2005, the Preservation League of New York State, the Orleans County Planning and Development Department and other groups offered "Enhancing Main Street: Making Upper Floors Work Again" in nearby Albion. This program attracted over 70 people including a strong contingent from Medina. The workshop's speakers explained the "nuts and bolts" of upper floor residential rehabilitation stressing the positive impacts on local economies and community character.

As a result, Medina's leaders examined the pros and cons of reintroducing upper floor apartments as a permitted use. The issue was not without controversy. To address concerns, the ordinance – which went into effect March 2007 – contains specific criteria for livability including maintenance and apartment square footage requirements. The latter calls for designated bedrooms as a means of preventing cutting up spaces into a "warren of tiny rooms and inviting overcrowding," according to one Medina businessperson. The biggest concern expressed about a return to downtown apartments was the specter of a downward spiral if landlords and tenants did not abide by village regulations.



Main St. Medina, late 1800's. (Photo - Christopher Busch)

What has happened since the zoning change?

Medina is experiencing new investment, building by building, in its Main Street Historic District. This district of 54 buildings includes most of the downtown and has been listed in the State and National Registers of Historic Places since the mid-1990s, thus proving rehabilitation tax credit incentives. There is also a local historic district and its commission plays a valuable design review role. Owners are working with one or two buildings at a time and seeking to make the most of their two-to-three story structures.

For example, The English Rose Tea Shoppe is looking to have an office and meeting space on its second floor. Plans for 414-416 Main Street include first floor commercial (a restaurant and a men's store are being considered), offices on floor two, and a spacious owner-occupied apartment on the third story. Support for this project is likely to come from National Grid Main Street funding, a façade grant administered by the county Chamber of Commerce and combined state and federal tax credits. A former renter of retail space has purchased 436-438 Main Street and is rehabilitating the first floor retail space in such a way that upstairs apartments could be a future option. Finally, according to the owner of the

former c. 1870 Journal Register Building at 409-413 Main Street, the first floor will provide retail and office/showroom space while the second story will be developed into two 1,000 square foot apartments with the possibility of a third unit in the future.

All of this smaller scale Main Street activity is in addition to two large projects nearby. These are the phased rehabilitation of the 1864-1865 Bent's Opera House (a Preservation League "Seven to Save" property) which calls for retail, restaurant and performance spaces, and The Newell Shirt Company Factory, a major mixed-use development which offers a café, meeting rooms and offices and will include apartments on its top floor in the future.

With the zoning change, Medina added an important redevelopment opportunity – residential use – to its economic development toolbox. As a result, some owners are choosing to “live above the store” by creating attractive apartments with views of an historic downtown and the Erie Canal and extending that opportunity to others.



Exterior Rehab work on 409-413 Main St. Medina, 2014. (Photo - Christopher Busch)



409-413 Main St. Medina, pre-renovation. (Photo - Christopher Busch)



409-413 Main St. Medina, 2014. (Photo - Christopher Busch)

New Life for a “White Elephant” – Montour House Montour Falls, NY



Montour House, Montour Falls, NY. (Photo - Nelson Development Group)

Many communities have a large vacant or underutilized building that defies redevelopment for years if not decades. It may be former high school, an opera house block or bank building. In Montour Falls, Schuyler County, it was the 1854 Montour House, once the center of community activity. Constructed as the village’s hotel, over the years it housed the post office, a bank, a social club and offices. Vacant and deteriorating since the 1980s, it took an area businessman turned developer to see and capitalize on this landmark’s potential. The three-story, 22,500 square foot Montour House was rehabilitated to 10 apartments on the second and third floors and spaces for professional offices, a bank and a café on the first floor. Among the elements that lead to this success are:

- Working with the Schuyler County Partnership for Economic Development, local government leaders, business people and other stakeholders developed a Downtown Improvement Strategy that called for maintaining and expanding the commercial area’s essential character, a mix of land and building uses including retail, office and residential activities.
- The same Strategy document supported the long-term preservation of downtown’s historic buildings as a goal.
- The Montour House was eligible for the combined 40% state and federal rehabilitation tax credits because of its inclusion in a State and National Registers of Historic Places historic district and in a distressed Census tract.

- As is typical of projects that use historic preservation tax credits, the developer worked with the hotel's rich architectural features such as a grand staircase, high ceilings, ornate brickwork and other key elements. He also had the building's dozens of wood windows restored on-site.
- By involving many stakeholders and agencies, the project attracted at least five sources of financial support including the Schuyler County Industrial Development Agency and the NY Main Street Program administered by the NYS Office of Community Renewal.

At the project's start it had its doubters, not surprising after three decades of building vacancy. To acquaint area residents with the project, the developer held regular "work-in-progress" Open House events complete with seasonal fruit and regional wines. He also worked with regionally-sourced materials as much as possible and helped support ten jobs during and after construction. Talk about a good neighbor!

Palmyra Community Library

Palmyra, NY

By Caitlin Meives, Preservation Planner, Landmark Society of Western New York

Article originally published 2/14/13 at <http://landmarksociety.org/2013/02/palmyra-community-library/>



Palmyra Community Library, 402 East Main Street (Photo - Bero Architecture, PLLC)

I recently had the pleasure of attending a meeting with other preservationists and planners from around the region at the Palmyra Community Library, a historic office building on Main Street in the village that recently completed a major rehabilitation. After the meeting, Library Director, Patricia Bayne, and President, Jennifer Voss, treated us to a grand tour.

The building was built in 1907 and originally served as the offices of the Garlock Packing Company. The Palmyra Community Library purchased the office building from another company in 2007.

Beginning in 2008, Library officials worked with the design team at Bero Architecture, PLLC to carry out this important project. The first floor space had been

partitioned into multiple rooms. As part of the rehab, the first floor was returned to a single, large open space. Drop ceilings were removed to reveal the full height of the room.

Historic details—wood floors, staircase, and moldings—were retained and touched up and new electric and heating/cooling systems were sensitively incorporated, making the current library space warm, inviting, and full of character. With a number of large window openings, the room also features loads of natural light (even on a rainy and dreary day).

The second floor, which can be accessed via the main



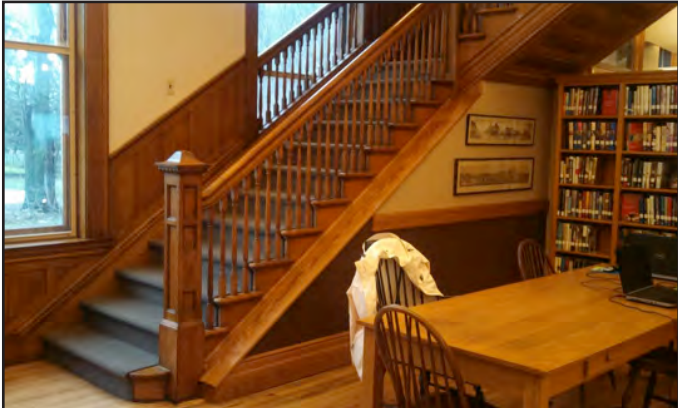
The Garlock Office Building during construction, c.1907. (Photo - Palmyra Community Library)



At left, the first floor subdivided into multiple rooms. At right the first floor space after demolition of non-historic partitions. (Photos - Bero Architecture, PLLC)

staircase (shown to the right) or a newly installed elevator, was also rehabbed and converted to library offices and a children’s room. The third floor will be brought back to life in the next and final stage of rehab; the Library is currently gathering ideas and feedback from the community for possible uses.

Now the village of Palmyra boasts a beautiful and functional library that is within easy walking distance for village residents and provides a great space for the community to gather. Along with the other amazing commercial buildings in Palmyra, the rehabbed building enlivens the Main Street streetscape and draws visitors and residents alike to downtown. Another great example of preservation fostering community.



Library’s renovated interior. (Photos - Landmark Society of Western New York)

Main Street, LLC

By Rick Hauser, AIA, LEED AP, founding partner of In. Site: Architecture.
Originally published 11/11/13 in the *Finger Lakes Times*

Pick a big building in your downtown which is largely vacant, deteriorating. It's two, maybe three stories tall, built 80 or more years ago. Perhaps the cost of a true rehabilitation is beyond the financial ability and/or short-term timeframe of its individual owner or any buyer. And the prospects of any future 90% matching grants appearing on New York State's horizon are dim. The building may be able to endure only five more years of neglect before it reaches the point of no return. Is there a way out?

Your community is not alone in facing this problem. While each city and village has unique circumstances, I have been astounded by the similarities, and by the interest in a solution I call "Main Street LLC." As the title implies, this is a for-profit development group that nonetheless recognizes the qualitative – as well as quantitative – benefits of reversing the momentum caused by blighting structures. Instead, it creates a broadly shared success story that itself leads to wider reinvestment in a community.

Let's start with the basics. Main Street LLC is an inclusive development group whose strength is in its numbers. You become a member by investing whatever amount you can afford to not see again for a while. That may be \$2,500 or \$25,000. Or perhaps you're a plumber, an electrician, a surveyor, a lawyer, an architect or you sell building supplies, and you can allocate all or a portion of your goods or services as an in-kind investment. Maybe you have an IRA and you direct your manager to invest a portion of that money in your own community. Finally, you might be the owner of the building – you can take a membership interest as a portion of the purchase price.

So with the above participation, your Main Street LLC has raised substantial funds – a group in Perry actually has raised \$580,000 for two buildings doing just this. Your lenders are going to be thrilled to contribute a smaller share of the total acquisition

and renovation cost. The remaining amount you borrow may even be at interest rates subsidized through NYSEDA or your IDA. Some IDA's will further partner with you by offering a sale-leaseback agreement that locks in your property taxes for 5-10 years and eliminates sales tax on construction material.

Meanwhile, your thirty member-investors all become your downtown's newest cheerleaders. They've put their "money where their house is" and they now own a piece of downtown. They will make a more conscious effort to patronize businesses; they may become a tenant themselves when the time is right. And they will certainly direct potential tenants to "their" building. Meanwhile, the scale of the project assures that its cost per square-foot of leasable space is lower than possible on a smaller project. Your Main Street LLC has minimized its debt load, and can thus afford to take the long view, providing affordable, available, attractive space.

While you're waiting for the project to cash flow in years one and two, there are tax credits for you. The low-hanging fruit is a 10% tax credit with no strings attached as long as your building is old, not residential, and not in a designated historic district. That alone means that if you are just a 5% member of an LLC that spends \$500,000 on rehabilitation costs (some of that can be borrowed money, you know), you will save \$2,500 on your personal federal income tax during those first years. And if your community is forward-looking enough to recognize the benefits of creating a national register historic district in your downtown, it means that in the same example you will save \$10,000 split between federal and state income taxes, as long as the building follows rehabilitation standards. (On the other hand, owners in a National Register Historic District who want to knock their building down, blow it up, paint it pink, or wrap it in vinyl will not be prevented from doing so by this designation – the local zoning ordinance



Bussey Block, Perry, NY, completed 2005. (Historic / Pre-renovation / Post-Renovation Photos - Rick Hauser, Main Street LLC: Community Entrepreneurism and the Case for Private Sector Rehab)

may be another issue!).

There is a lot more to this strategy. In the end, “Main Street LLC” may offer a way forward for your downtown, one that is private sector-fueled, and community-led.

MAIN STREET, LLC might work as a way forward for problem buildings in your downtown. Here’s how:

- it fills a need
- it asks people to put their money where their house is
- it inspires people to invest in their community
- it creates community cheerleaders
- it establishes a pro-active network of committed residents for the next opportunity
- it makes for a compelling narrative
- it creates success on the ground that neutralizes lingering cynicism
- it builds momentum for others
- it spreads the risk
- it is better positioned to take advantage of public incentives

Fire Safety and Historic Character Work Together

A fire damaged 19th century building was not only rescued and rehabilitated but retained some of its surviving historic features and met New York State Existing Building Code requirements. How? This Corning, NY building is listed as “contributing” to a downtown National Register historic district, and thus is considered “historic” by the Existing Building Code. The Code offers special provisions for designated historic buildings which can make compliance easier while still addressing fire safety concerns. As a small building, less than four stories tall and with less than 3,500 square feet per floor, it was a good candidate for this provision.

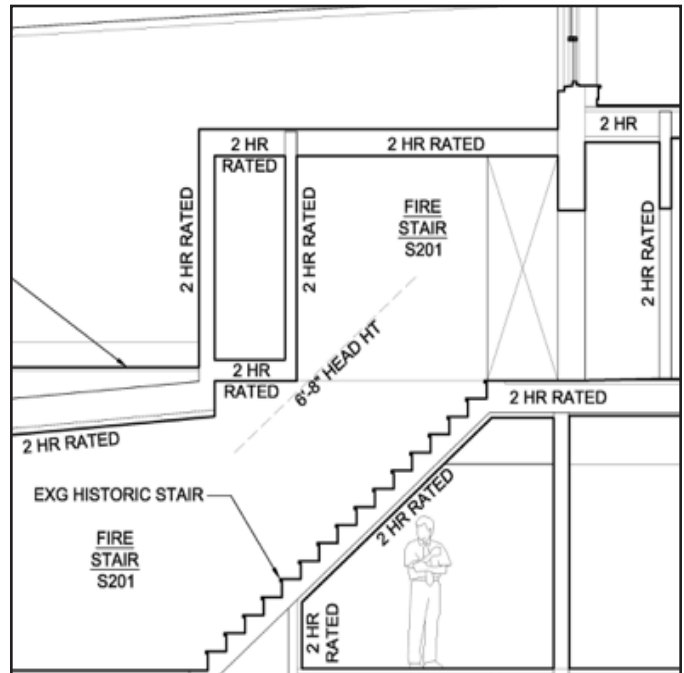
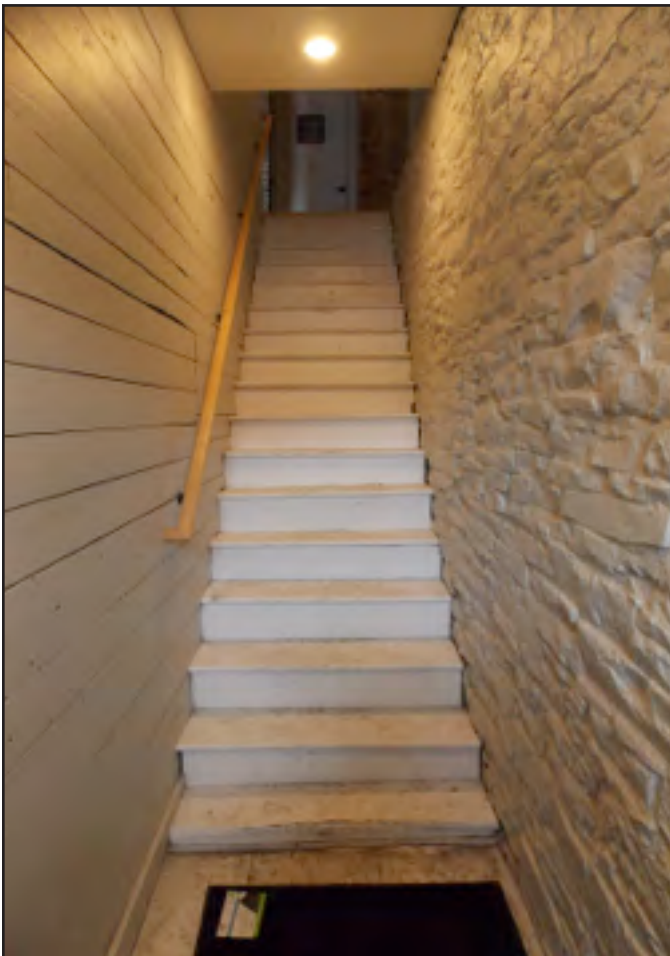
The building is mixed use, with commercial on the first floor and apartments above. The front and rear stairs were features the owner wished to retain even

though they did not meet new construction Code standards. Issues included:

1. the differential between the risers and treads should not be more than 0.375 of an inch and these stairs were far from uniform;
2. the bottom riser was too short; and
3. there were no railings (two were required).

Thus these stairs, built over 150 years ago, did not meet the requirements for new stairs.

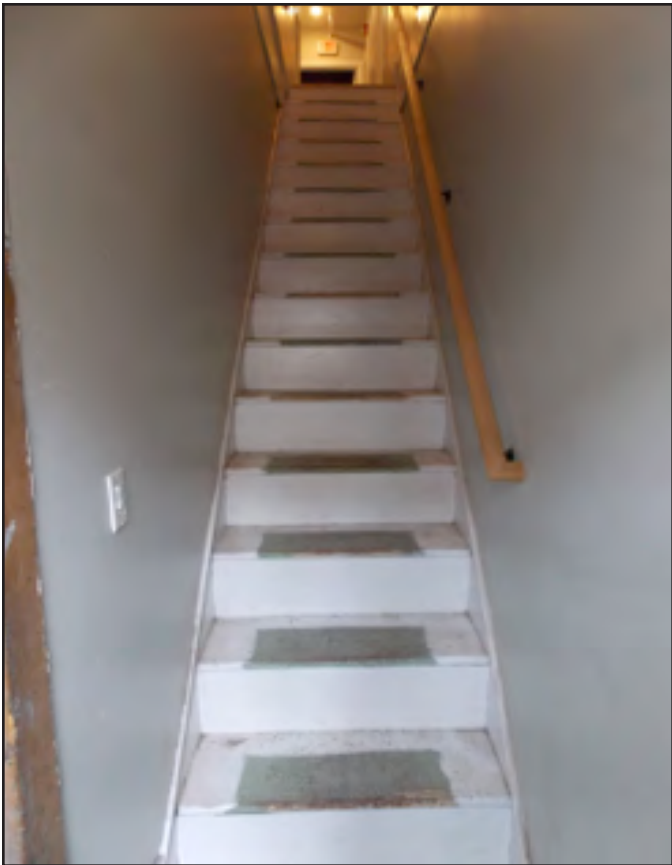
Since they were not damaged by the fire, technically, the stairs could remain unimproved if they were legal when first installed. If they needed repair, then they would have had to be repaired. However, they could be repaired without needing to be upgraded. Because the building was historic, the owner could go much further to duplicate the nature of the original stair than would otherwise be permitted (see Existing



Existing stairs with railing (left) and architectural drawing of stairs. (Photo and Drawing - Johnson Schmidt & Associates Architects)



New apartment space and existing stairs with railing (below). (Photos - Johnson Schmidt & Associates Architects)



Building Code 1102.5).

Due to consultation throughout the project, the owner, architect and local code official came to understand each other’s goals and what was possible as part of a mixed-use redevelopment (restaurant and four apartments) in which retaining historic character was important. There is a single railing to help users navigate the stairs’ uneven risers and somewhat worn treads. This was a very reasonable compromise between historic character and common sense safety made possible by the language and tone of the Existing Building Code and Chapter 11 (Accessibility).

Today the stairways provide two means of egress between the first and second stories. Residents and visitors can appreciate over a century of history and character embodied in the rubble stone, horizontal plank and plaster walls in addition to the well-used but still highly functional wooden stairs.

Local Preservation Laws at Work in the Genesee-Finger Lakes Region

New York State has a long and successful track record with communities enacting and benefitting from local preservation law (also called ordinances). Over 175 villages, towns and cities of all sizes have a stand-alone law that establishes a local landmark commission or architectural or design review authority. Also, over 80 municipalities have become Certified Local Governments.

A snapshot of the communities in the nine-county service area of the Genesee/Finger Lakes Regional Planning Council (G/FLRPC) shows a strong concentration of historic preservation commissions (also known as landmark boards) in Monroe County. Influenced at least in part by the City of Rochester's Preservation Board, which was established in 1969, the county has 15 other commissions. Ontario and

Orleans counties are next with two each, while Genesee, Livingston, Seneca, Yates and Wayne counties each have one commission. Wyoming County has no commission but the Village of Perry is especially active with its Main Street revitalization efforts.

As of late Fall 2014, 25 communities have some form of a preservation law and most of these call for stand-alone bodies with their own appointed commissioners as opposed to having a municipal planning board also function as a preservation commission. Of the region's 25 commissions, eight have worked with the New York State Office of Parks, Recreation and Historic Preservation to achieve Certified Local Government (CLG) status. Thus they have access to enhanced training, grant



Businesses on Main Street in Brockport. (Photo - Landmark Society of Western New York)



Main Street, Brockport. (Photo - Landmark Society of Western New York)

funds, and other services associated with this federal program administered by the state agency. Monroe County has five communities that are CLGs while Orleans, Yates and Wayne counties each have one, in the villages of Albion, Penn Yan and Palmyra respectively.

Most of the commissions in the G/FLRPC area rely on their local laws for guidance on design review principles and procedures and base their decisions on the sections of the laws that have to do with appearance and the issuance of Certificates of Appropriateness. Some communities also have separate design guidelines, created to aid commissioners and the property owners they advise and whose projects they review. Commissions also look to the Secretary

of the Interior's Standards for Rehabilitation as a document on which to base their own guidelines as well as to other commissions. For example, when the Village of Fairport sought an example of design guidelines, it turned to the Village of Pittsford's and adapted them to fit Pittsford's needs.

One aspect of commission work in the G/FLRPC's service area is that the commissions sometimes work together for mutual benefit. For example, when the Villages of Palmyra and Fairport were considering passing their own local preservation ordinances (based on the Model Law), the mayors in both communities discussed mutual goals. By 2007 each village had a preservation law on its books and in 2009 both had achieved CLG status. For Fairport, the idea of a local

preservation law had been around for about 30 years but it became a reality only after a local building was threatened with demolition for a chain drugstore. For Palmyra, there was no specific threat but a desire on the part of the then mayor to more effectively capitalize on the small village's historic character and link that asset to economic development. While Fairport has been active in local designations with over 30 properties now local landmarks, Palmyra has stressed awareness and education by inviting preservation architects, development consultants and others to community meetings. These Erie Canal villages in two neighboring counties are experiencing the pluses of local landmark laws by making their communities not only delightful places to visit but ones where residents and businesses "can put down roots."

Commissions share information and collaborate. In 2010, Brockport, Fairport, Pittsford, and Palmyra worked with the City of Rochester and the Town of Irondequoit on a CLG-supported training program for its commissioners and the community. Also, thanks to the Landmark Society of Western New York (LSWNY), commissioners and others involved in local preservation can participate in discussions of "best practices" and the latest on funding and other opportunities through meetings of the "Partners Roundup Program."