

**Council Members Hoey and O'Brien introduced the following:**

**Ordinance Number 17.91.20**

**AN ORDINANCE AMENDING SECTION 375-5 (ADMINISTRATION AND ENFORCEMENT) OF CHAPTER 375 (UNIFIED SUSTAINABLE DEVELOPMENT ORDINANCE) OF THE CODE OF THE CITY OF ALBANY**

*The City of Albany, in Common Council convened, does hereby ordain and enact:*

**Section 1.** Paragraph (iii) (Waivers) of subdivision (b) (Procedure) of subsection 375-5(E)(14) (Major Development Plan Review) of Chapter 375 (Unified Sustainable Development Ordinance) of the Code of the City of Albany is hereby amended to read as follows:

- A. An applicant may request, in writing, a waiver or modification of any of the development plan review standards. Such request shall set forth the specific relief sought and the reasons why the same are necessary.
- B. The Planning Board ~~reserves the right to waive or otherwise modify such standards upon a finding that such action is necessary to eliminate practical difficulties associated with strict interpretation of these provisions and that the result will not violate the spirit and intent of these provisions.~~ Such request shall set forth the specific relief sought and the reasons the same are necessary ~~may grant~~ waivers from the development standards established in section 375-4 except that the Planning Board shall not grant a waiver of the dimensional standards established in section 375-4(A) or the standards relating to signs established in section 375-4(I).
- C. In making its determination as to the granting of a waiver, the Planning Board shall take into consideration the benefit to the applicant if the waiver is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community that may result from such grant. In making such determination, the Planning Board shall also consider:
  - (i) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting of the waiver;
  - (ii) whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than a waiver;
  - (iii) whether the requested waiver is substantial;
  - (iv) whether the proposed waiver will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
  - (v) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Planning Board, but shall not necessarily preclude the granting of the waiver.

D. The Planning Board, in the granting of waivers under this subdivision, shall only grant such waivers to the minimum extent that it shall deem necessary and adequate while at the same time preserving and protecting the character of the neighborhood and the health, safety, and welfare of the community.

**Section 2.** Subdivision (c) (Review Criteria) of subsection 375-5(E)(1) (Building Permit) of Chapter 375 (Unified Sustainable Development Ordinance) of the Code of the City of Albany is amended to read as follows:

(c) Review Criteria

An application for a Building Permit shall be approved only if the Chief Building Official determines that it is consistent with the adopted Building Code, Uniform Fire Code, any provisions of this USDO, and the Albany City Code.

**Section 3.** Subsection (11) (Conditions Of Approval) of section 375-5(D)(General Procedures) of Chapter 375 (Unified Sustainable Development Ordinance) of the Code of the City of Albany is hereby amended by adding new subdivisions (f) and (g) to read as follows:

(f) If conditions are placed on any development approval, the Planning Board shall stipulate to the point in the development process by which such conditions must be satisfied. For example, the Planning Board may stipulate that a condition must be satisfied “prior to clearing and grubbing,” or “prior to clear cutting,” or prior to demolition,” or “prior to a foundation permit being issued,” or “prior to any building permits being issued,” or “prior to the issuance of a Certificate of Occupancy,” or at any other point as may be appropriate.

(g) For any project that is approved with conditions, all such conditions imposed shall be posted on the Planning Department’s website for public comment for a period of no fewer than ten (10) business days prior to issuance of any building or demolition permits. The Planning Department shall inform all departments of the imposition of conditions and provide the departments ten (10) business days in which to submit to the Planning Board any comments or corrections to the conditions. The Chief Planning Official shall have the authority to refer such conditions back to the Planning Board for modification. Should the Chief Planning Official determine that the conditions do not need to be modified and referred back to the Planning Board, such decision may be appealed to the Board of Zoning Appeals in accordance with section 375-5(D)(12)(b)(i) by any party aggrieved by the Chief Planning Official’s decision. In the event that the posted conditions require modification because of any local, state, or federal law or regulation, the Planning Board shall modify such conditions.

**Section 4.** Paragraph (ii) (Staff Review and Action) of subdivision (b) (Procedure) of subsection (17) (Demolition Review) of section 375-5(E) (Specific Procedures) of Chapter 375 (Unified Sustainable Development Ordinance) of the Code of the City of Albany is hereby amended by adding new subparagraphs (C) and (D) as follows:

C. When conditions are placed on any demolition approval, the Planning Board shall stipulate to the point in the development process by which such conditions must be satisfied, in a manner similar to that which is established for conditions on Building Permits in § 375-5(D)(11)(f).

D. For any demolition that is approved with conditions, all such conditions imposed shall be posted on the Planning Department's website for public comment for a period of no fewer than ten (10) business days prior to issuance of any building or demolition permits. The Planning Department shall inform all departments of the imposition of conditions and provide the departments ten (10) business days in which to submit to the Planning Board any comments or corrections to the conditions. The Chief Planning Official shall have the authority to refer such conditions back to the Planning Board for modification. Should the Chief Planning Official determine that the conditions do not need to be modified and referred back to the Planning Board, such decision may be appealed to the Board of Zoning Appeals in accordance with section 375-5(D)(12)(b)(i) by any party aggrieved by the Chief Planning Official's decision. In the event that the posted conditions require modification because of any local, state, or federal law or regulation, the Planning Board shall modify such conditions.

**Section 5.** This ordinance shall take effect immediately.

**APPROVED AS TO FORM  
THIS 26<sup>th</sup> DAY OF AUGUST, 2020**

---

**Corporation Counsel**

**To: Danielle Gillespie, City Clerk**

**From: Brett Williams, Esq., Sr. Assistant Corporation Counsel**

**Re: Request for Common Council Legislation  
Supporting Memorandum**

**Date: August 26, 2020**

**SPONSORS: Council Members Hoey and O'Brien**

**ORDINANCE NUMBER 17.91.20**

**TITLE**

AN ORDINANCE AMENDING SECTION 375-5 (ADMINISTRATION AND ENFORCEMENT) OF CHAPTER 375 (UNIFIED SUSTAINABLE DEVELOPMENT ORDINANCE) OF THE CODE OF THE CITY OF ALBANY

**GENERAL PURPOSE OF LEGISLATION**

Section 1 of the ordinance preserves Planning's ability to grant waivers or modifications of any development plan review standards, but after this amendment will now require more specificity and justification for the waiver, in writing, from the applicant. This section also 1) limits the development standards from which the Planning Board may grant waivers, 2) lays out criteria the Planning Board must consider in making its determination to grant waivers, and 3) stipulates that such waivers are to be granted to the minimum extent possible.

Under the USDO as currently enacted, building permits may only be issued if the Chief Building Officer has determined that a given project is in compliance with the Building Code, City Code, and USDO. Section 2 of this ordinance adds the Uniform Fire Code to that list of mandatory considerations.

Sections 3 and 4, which concern conditions placed on, respectively, development and demolition approval, add two sections to each provision:

The first new paragraph requires that the Planning Board shall now establish the point in the development or demolition process by which each condition must be satisfied, e.g. "prior to clear cutting," or "prior to demolition."

The second new paragraph establishes a circuit breaker to ensure that the Chief Planning Official takes into consideration and properly imposes conditions recommended by other departments. Under the new legislation, all conditions imposed on all projects shall be posted for review on the Planning Department's website for a period of ten days, and will also be referred back to the departments for review, comment, or correction. The Chief Planning Official may then refer conditions back to the Planning Board for modification or addition, where necessary. If the Chief Planning Official does not refer such corrections

back to the Planning Board, any party aggrieved by the Chief Planning Official's decision not to do so may appeal such decision to the BZA.

**NECESSITY FOR LEGISLATION AND ANY CHANGE TO EXISTING LAW**

The USDO was enacted, in part, to make development in Albany an easier, more attractive prospect for potential developers. The USDO's flexibility – reflected, for example, in the Planning Board's ability to grant waivers and the Chief Planning Official's authority to impose conditions – is a significant factor in accomplishing this goal.

However, this flexibility must not come at the expense of the safety of the people who build these new developments, nor of those who live and work in the City. This ordinance retains the USDO's flexibility while ensuring that due consideration is given to safety whenever a developer asks Planning to deviate from the standards of the USDO.

**FISCAL IMPACT(S)**

None