



**ORGANIZING *for* HEALTH *and* JUSTICE**

The Clean Air Coalition of WNY  
371 Delaware Avenue  
Buffalo, NY 14202

August 31, 2023

Mr. Jim Hartz  
Director, Planning & Development  
Town of Tonawanda  
2919 Delaware Ave #14  
Buffalo, NY 14217  
cc: [jhartz@tonawanda.ny.us](mailto:jhartz@tonawanda.ny.us)

Dear Mr. Hartz,

The Clean Air Coalition of WNY was founded by Tonawanda residents concerned about environmental hazards and public health conditions in their neighborhoods and who demanded an active role in the decisions that impact their communities. These residents took direct action to identify pollution sources that were causing harm to their health and to hold these bad corporate actors accountable, most notably Tonawanda Coke.

In the decades that Clean Air has been active, our campaign work has evolved from sole focus on point source polluters to broader holistic campaigns that encompass not only those sources but also forward-looking development work to prevent any future harms from new development - of note, Clean Air assisted with the development of the Tonawanda Tomorrow plan, and today continues to include implementation of this plan in our Tonawanda-area campaigns.

Today we continue to build power in the Tonawandas and the City of Buffalo by developing grassroots leaders to organize their communities to run and win environmental justice and public health campaigns.

Given this history, Clean Air's membership has been tracking the development of the 2023 Comprehensive Zoning Law Amendment closely and today we submit the following comments.



We also reached out to subject matter experts at Smart Growth America for their evaluation of the proposed amendment with respect to previously-established goals from the Town’s 2015 Comprehensive Plan update, and also attached is their analysis, which we also support and submit today as public comments. Additionally, we have been collecting comments from the general public on this issue, and their comments are included as an attachment.

**Process Concerns**

**We are gravely concerned about the public engagement process to date, and we again reiterate the need for an extension on the public comment period.**

Clean Air has been keeping tabs on the development of the Comprehensive Zoning Amendment because it has strong implications for the implementation of the Tonawanda Tomorrow plan. Since fall 2022, Clean Air has been checking the Town’s Legal Notice webpage weekly for announcements related to the public comment period, as well as minutes from Town Board meetings, and monitoring the main Planning and Development webpage.

Thus, we were surprised to learn that in early June the draft documents were quietly posted on a difficult-to-find sub webpage of the Planning and Development department. We only learned of the posting on July 5 from a Facebook post dated July 23.<sup>1</sup>

To date, there has still not been an official public notice posted of the public comment period.

While this initial webpage posting included the deadline of August 31 for public comments, it did not include any information about how to submit comments. The Facebook social media post includes the original announcement wording -

*“The Office of Planning and Development is available to answer questions and receive comments on what is being proposed. A thorough public review period will be held between Monday, June 5 through Aug. 31, to gather any*

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[facebook.com/TownofTonawanda/posts/pfbid02iHOg2KdhnVs9qS3MM5mSEnuNcX6jaJnqwCAoqiL6nUbfC2RRKNhpcCZM1924BH2hl](https://www.facebook.com/TownofTonawanda/posts/pfbid02iHOg2KdhnVs9qS3MM5mSEnuNcX6jaJnqwCAoqiL6nUbfC2RRKNhpcCZM1924BH2hl)



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*comments from residents and business owners. It is anticipated that a public hearing will be scheduled by the Town Board in the Fall of 2023 to consider the draft law for adoption.”*

Clean Air staff responded to this Facebook post on July 5 inquiring about submission information, and it was only after this point that information on how to submit comments was shared, albeit initially only a phone number. **In short, for the first month that the public comment period was open, there were no clear channels for the public to submit comments.**

Bridge Rauch, Clean Air’s Environmental Justice Organizer for our Tonawanda campaigns, attended the Town’s Zoning Board meeting on July 19 to flag the insufficient public engagement and lack of public comment submission channels, and it was after this point that an email address was added to the Town’s webpage. They also at that time requested a simple submission form to make both submission as well as processing of public comments easier, but to date none has been posted.

Clean Air at this point also began publicly advocating for an extension of the public comment period by 30-45 days, i.e. late September or mid-October.

One public briefing on the proposed changes was held online on July 25. This briefing was not widely advertised, and when Clean Air reached out to reporters at the Buffalo News to inquire about whether a news article would be published about the briefing, we were surprised to learn that we were the first to reach out to them. This lack of publication was also reflected in the Ken-Ton Bee, which first published news of the briefing as a summary on August 2, a week after the briefing<sup>2</sup>.

As stated, this briefing was also online-only. The public could only participate through the chat function. Formatting meetings in this way is not only inaccessible to the general public, but also adds additional accessibility barriers for people with disabilities, seniors, and for those with less access to the internet, such as residents who use smartphones for internet access.

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<https://www.kentonbee.com/articles/town-releases-amendments-to-zoning-law-for-public-review/>



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Clean Air conducted public outreach throughout July and August in the Town of Tonawanda- **not one of the hundreds of people we spoke with was aware of the posted documents and the public comment period.**

In response to statements from Town representatives requesting a show of public support for the extension, Bridge Rauch, representing Clean Air, attended the Town Board meeting on August 14 and delivered 10 pages with 69 signatures from members, supporters, and Tonawanda residents in support of an extension on the public comment period. A Clean Air member also collected an additional 9 signatures which we submitted via email on August 29, and 6 letters were sent directly to your office through our online submission form.

We ask that the process as described be contrasted with the City of Buffalo's Green Code process between October 2015 and January 2017 - this process, which also concerned comprehensive revisions to the zoning code, included 242 public meetings in neighborhoods, which were attended by well over 1000 residents and yielded hundreds of comments.<sup>3</sup>

We understand that COVID upended traditional outreach and engagement processes, and that this process has been significantly delayed due in part to COVID. Tonawanda is also a smaller municipality than the City of Buffalo, so 200+ meetings might not be called for - but we feel that two poorly-advertised online-only meetings are certainly insufficient for the need.

**Again, we ask that the Town extend the deadline for public comments by 30-45 days, to September 30 - October 15, 2023.**

### **Comprehensive Zoning Amendment Needs Stronger Inclusionary Zoning Measures to Support Affordable, Walkable and Diverse Development**

We feel the draft amendment as currently structured falls short of the Comprehensive Plan Goal to

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<sup>3</sup> <https://www.buffalogreencode.com/>



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*“Maintain and enhance the vitality of neighborhoods and neighborhood centers, and retain a diverse stock of residential properties that meets the needs of all residents”*

as well as the Tonawanda Tomorrow goal to

*“Revamp the Town’s zoning code to emphasize walkability, diverse transportation options, mixed-use development, and other design principles attractive to young people and families”*

We support the attached analysis by Smart Growth America on these points.

**We further encourage adding a 10-30% affordable housing requirement to the Planned Unit Development Districts and the Transit-Oriented Development Districts for residential developments of 5 or more units, with the median income for determining affordability pegged to current census tracts, not the Area Median Income of the region.<sup>4</sup>**

**We object to the continued use of restrictive Euclidean-style Single Family zoning (R-1) for the vast majority of the residential areas of the Town.**

While we understand this may be too much work to take on at this time, we strongly encourage working to phase out this outdated form of zoning within the next decade in favor of form-based residential zoning that allows for by-right residential development of homes that fit within the building character of the neighborhood. This R-1 zoning also unnecessarily designates duplexes and multifamily homes that are within these neighborhoods, many of which have been present for generations, as non-conforming, and prevents the development of mixed use corners, which undermines walkability.<sup>5</sup>

As the American Planning Association notes in their recent “Equity in Zoning” Guide

<sup>6</sup>,

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<sup>4</sup>

[https://smartgrowthamerica.org/wp-content/uploads/2023/05/AntiDisplacement\\_FactSheet\\_I\\_Z-Programs.pdf](https://smartgrowthamerica.org/wp-content/uploads/2023/05/AntiDisplacement_FactSheet_I_Z-Programs.pdf)

<sup>5</sup> <https://ilsr.org/neighborhood-stores-overlooked-strategy-fighting-global-warming/>

<sup>6</sup> <https://planning.org/publications/document/9264386/>



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*“Over-regulation of building forms, site performance, and permitted uses can all create barriers to opportunities for historically disadvantaged and vulnerable communities.”*

This guide from APA features a number of specific policies municipalities can adopt to codify equity, including the recommendation to

*“Establish new residential zoning districts or amend existing residential districts to allow more types of housing by right.”*

We encourage taking the recommendations of this guide under consideration when revising the R-1 and R-2 sections of the draft amendment.

We are further troubled to see that the R-1 zoning has a minimum lot width of 45', minimum front setback of 25', and minimum lot area of 4,500 square feet.<sup>7</sup>

We are also troubled to see that R-1 requires two spaces for cars<sup>8</sup>, and does not permit Accessory Dwelling Units/In-Law Suites even with a special use permit.<sup>9</sup> We also noted that Building-Mounted Wind Energy Conversion Systems are not permitted anywhere except Industrial and Mixed Use Waterfront areas. All of these provisions are contradictory to the stated goals of the town's plans.

We instead suggest a minimum lot width of 25' for new build structures, a setback defined by the front yard line of the block, and a minimum structure size set by percentage of lot covered rather than a specific required size. In the City of Buffalo, minimum lot widths for residential zones can be as narrow as 15', but the N-2R residential areas that are most closely similar to Tonawandas R-1 district have minimums of 25'.

The N-2R setback minimum in the city of Buffalo is not defined strictly, but rather is +/- 5' from the established front yard line on the block. Finally, while the minimum lot size is 1500 sqft, rather than any specific minimum defined building requirement, instead structures must cover LESS than 70% of the lot.

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<sup>7</sup> Table 20-b

<sup>8</sup> §215-30.4

<sup>9</sup> Table 20-a



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We suggest eliminating the requirement for minimum parking for new developments in residential areas entirely, and replacing instead with a Transportation Demand Management plan for larger residential developments.

We suggest allowing Accessory Dwelling Units and In-law Suites by right in residential areas, including in R-1 areas, and allowing installation of Building-Mounted Wind Energy Conversion Systems with a Special Use Permit.

### **Key Opportunity to Codify Environmental Justice into Town Law**

**We strongly support the development and addition of an Environmental Justice Overlay Zone for residential parcels within the General Industrial Zone and adjacent areas, particularly those areas defined by the State of New York under the Disadvantaged Communities Criteria.**

We recognize that it is not ideal that residents live in General Industrial areas, for either the residents or for the businesses. However, the reality is that people live there, and the homes in these areas have been consistently occupied for close to a century or longer - these residents deserve protection and no one deserves to live next to another Tonawanda Coke. Further, as the PUD districts are implemented in waterfront areas, these protections would assuage concerns that new residents may have about moving into areas adjacent to current industry.

What's more, **the newly passed NYS Cumulative Impacts Law, which became law in June 2023<sup>10</sup>, requires additional environmental justice considerations with SEQRA reviews in residential areas that bear disproportionate cumulative impacts from industrial operations** - taking this opportunity now to develop an overlay zone that includes possible provisions such as a Community Benefits Ordinance, required public meetings and public feedback process on permitting processes including renewals, or larger buffer zones to mitigate offsite noise, dust, and smells would not only improve and save lives of the residents of these areas, but also save the Town and area industry potential litigation or other issues in the future.

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<sup>10</sup>

<https://www.natlawreview.com/article/new-york-enacts-environmental-justice-permitting-law>  
<https://www.weact.org/2022/12/governor-hochul-signs-landmark-environmental-justice-legislation-reducing-the-cumulative-impacts-of-pollution-on-disadvantaged-communities/>





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Developing this Environmental Justice Overlay will require additional research, public outreach, and labor to develop. **A placeholder in the draft codifying a commitment to develop this Overlay within the next five years would suffice for our concerns at this time, and we would happily work with the Town to facilitate neighborhood meetings and help develop this overlay.**

Thankfully, we would not need to start from scratch - the 2019 New School Tishman Environment and Design Center Report “Local Policies for Environmental Justice: a National Scan<sup>11</sup>” provides an excellent start, as do the anti-displacement policy guides recently published by Smart Growth America and the Environmental Protection Agency for brownfield redevelopments.<sup>12</sup>

Notably, as referenced in the Tishman report, Newark NJ passed an ordinance in 2016 amending zoning and land use regulations to directly address cumulative impacts and environmental justice, and the language from this ordinance could be closely borrowed.<sup>13</sup>

### Other Assorted Concerns

The Draft Comprehensive Amendment retains an outdated and discriminatory definition of “Adult Entertainment Cabaret” under “Adult Uses”<sup>14</sup> -

*“ADULT ENTERTAINMENT CABARET — A public or private establishment which is licensed to serve food and/or alcoholic beverages, which features topless dancers, strippers, male or female impersonators or similar entertainers.”*

We would like to emphasize that Drag performances are not explicitly adult by nature, and typically inclusion of drag in Adult Use definitions is due to carryover from older discriminatory codes, which no longer is legal under our modern

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<sup>11</sup>

[https://static1.squarespace.com/static/5d14dab43967cc000179f3d2/t/5d5c4bd0e1d5150001a5a919/1566329811163/NRDC\\_FinalReport\\_04.15.2019.pdf](https://static1.squarespace.com/static/5d14dab43967cc000179f3d2/t/5d5c4bd0e1d5150001a5a919/1566329811163/NRDC_FinalReport_04.15.2019.pdf)

<sup>12</sup> <https://www.epa.gov/brownfields/strategies-minimize-displacement>

<sup>13</sup>

<https://newark.legistar.com/LegislationDetail.aspx?ID=2770971&GUID=D0C566D0-463A-482D-A4AC-78884351DA79&FullText=1>

<sup>14</sup> §215-15.7





understanding of the First Amendment. Indeed, Tonawanda is not alone in this, and very recently East Aurora updated their zoning code definitions to remove drag performances when a local bar ran into zoning code enforcement issues over this.<sup>15</sup>

**We strongly support striking the terms “male and female impersonators” from this definition.**

However, we also would just add that in the future revisiting the restrictions of Adult Uses to Mixed Use Industrial and General Industrial zones is worth consideration - exotic dancers do not typically wear industrial safety gear when at their workplaces, but are no less at risk from industrial contaminants as their peers working as laborers in these areas. All workers deserve workplace safety, and zoning in this manner inherently means these workers are exposed to unsafe conditions.

**We suggest in the future considering adding protective zoning measures against “box store” type suburban development** - The Institute for Local Self-Reliance has a number of policy guides for steps municipalities can take through zoning codes to add these protections, such as capping the floor size of retail developments.<sup>16</sup>

Finally, **we encourage publishing a simple 1-2 page guide breaking down the Draft Zoning Amendments prior to scheduling the Public Hearing.**

There are, of course, also quite a number of proposed changes to the Town’s zoning that we like and applaud.

For example, we applaud the more expansive definition of Family, although it may be prudent to strike “family” entirely in favor of “household.”

We are strongly in support of the new Planned Use Development District, especially goals #3 and #6 of open space protection, historic redevelopment, and public waterfront access.

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<sup>15</sup>

[https://buffalonews.com/news/local/the-drag-brunches-were-successful-and-unlawful-until-a-urora-changed-the-law/article\\_39cd0e20-7fc5-11ed-9b5c-d378de71c11d.html](https://buffalonews.com/news/local/the-drag-brunches-were-successful-and-unlawful-until-a-urora-changed-the-law/article_39cd0e20-7fc5-11ed-9b5c-d378de71c11d.html)

<sup>16</sup> <https://ilsr.org/rule/store-size-caps/>



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We also strongly support the new Transit-Oriented Development District, which aligns with the goals of the Tonawanda Tomorrow Plan - as the town moves forward, we look forward to seeing this implemented equitably and working towards increased public transit services in Tonawanda.

We were also pleasantly surprised by the Dark Sky Lighting Standards and the pedestrian connectivity requirements<sup>17</sup>. We are also relieved to see that there are no more unzoned areas in the Town, which have been prone to exploitation in development.

In sum, while we feel there are changes that absolutely must be made to the draft, and that a much stronger public engagement process must be undertaken, we applaud the monumental effort by Town staff and consultants to date, and we look forward to continuing to work with the Town to advance and codify equity and justice into future development.

Respectfully Submitted,

Bridge Rauch,  
Environmental Justice Organizer  
Clean Air Coalition of WNY

Chris Murawski,  
Executive Director  
Clean Air Coalition of WNY

Jim Jones  
Board Chair, Clean Air Coalition of WNY  
Tonawanda Resident

Katherine Heubusch  
Member, Clean Air Coalition of WNY  
Tonawanda Resident

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<sup>17</sup> §215-30.9



**Additional Public Comments**

Name	Anonymous Submission
Contact	N/A
Comment	There needs to be more time for residence to review and give feedback for zoning. We need more protection for Residents in industrial zoning. We need more inclusive zoning for families in residential zones that are not exclusionary.

Name	Anonymous Submission
Contact	N/A
Comment	Please keep walkability, community gathering spaces, and carbon-capturing NATIVE trees and plants at the heart of your planning. Plan for PEOPLE not CARs and corporations.

Name	Post it notes from assorted attendees, zoning charette 8/29
Comment	<p>Protections against noise, dust, smells for residents in industrial area</p> <p>Need a flood hazard overlay for waterfront</p> <p>Niagara Falls Boulevard - trail crossing at Ellicott Creek Park to Amherst</p> <p>Niagara Falls Boulevard - sidewalks are non-existent</p> <p>Need a waterfront trail similar to the one on the Canadian side of Niagara River</p> <p>Need SAFE creekside bike rail trail</p> <p>Keep seeing strollers on Creekside Drive - unsafe, needs sidewalks!</p> <p>What is happening with the Huntley Building? Will this be demolished?</p>