

Analysis and Recommendations: Irondequoit Senior Housing Regulations

Prepared for:

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Analysis and Recommendations: Irondequoit Senior Housing Regulations

The purpose of this report is to provide an independent analysis and evaluation of the Town of Irondequoit's provisions for senior housing. It includes the following sections:

1. Comparison and analysis of regulatory approaches to senior housing in other Monroe County towns
2. Recommendations for changes to Irondequoit's bulk, lot size and parking requirements for senior housing
3. Professional opinion regarding whether the Town's existing provisions constitute "spot zoning" and their consistency with to the Town's Comprehensive Plan

1. Comparison and analysis of regulatory approaches in Irondequoit and other Monroe County towns

In order to assess how Irondequoit's provisions for senior housing compare to those in other areas, LaBella Associates reviewed the Town's R-7 Residential zoning district regulations and compared them to similar zoning district regulations in six other Monroe County towns:

- Chili
- Greece
- Henrietta
- Perinton
- Pittsford
- Webster

This evaluation only addresses those regulations that specifically provide for senior housing. It does not address regulations for multi-family housing in general. Some Monroe County towns, including Brighton and Penfield, do not specifically provide for senior housing. In these communities, senior housing would be regulated based on the housing type, such as multi-family dwellings. Both of these towns have provisions for Planned Development Districts that could accommodate a range of housing types, including senior housing.

The evaluation and comparison addresses both the mechanisms for establishing the districts and the specific requirements of the district, including site area, permitted uses, dimensional requirements and parking.

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The attached table summarizes the comparison of zoning regulations for senior housing among Monroe County Towns that specifically provide for such housing. The following narrative provides an assessment of the regulations in the Town of Irondequoit in comparison with other Towns.

Mechanism for establishing district

The mechanisms used in Monroe County towns to provide for senior housing include a “floating zone,” a planned development district, a special use permit process and permitting the use “by right.” The following table summarizes the distinctions between these approaches.

Floating zone	A zoning district for which regulations, but not boundaries, are established in the Town Code. The establishment of boundaries for the floating zone in a specific location requires an amendment to the zoning map by the Town Board. (See Section 3 for a more detailed description.)
Planned Development District/ Planned Unit Development	A type of floating zone that requires approval of a conceptual or preliminary site development plan for a specific project prior to rezoning of a particular site by the Town Board.
Special Use Permit	Use is allowed in certain zoning districts with a special use permit, subject to general and/or use-specific requirements. (Also referred to as “conditional use.”)
Permitted “by right”	Listed as a permitted use in specified zoning districts.
Incentive zoning	Use permitted by municipality on a case-by-case basis as an “amenity” in exchange for increased density or other modifications of zoning requirements

In municipalities that do not have specific provisions for senior housing, such development is regulated based on the type of housing constructed (single family, duplex, multi-family, etc.)

Floating Zone

Towns that utilize a “floating zone” to provide for senior housing include Irondequoit and Greece.

The Town of Irondequoit established the R-7 Residential District as a floating zone. The district regulations specify the legislative intent, permitted uses, dimensional and other requirements, and the process for delineating the district boundaries on a specific site. The Town Board may rezone land to R-7 at the request of an applicant or upon its own initiative, following a public hearing. Although the R-7 district regulations include general criteria for rezoning as “Legislative intent and purpose,” they do not include a formal process that ties the rezoning to a specific site plan. Applicants are not required to obtain conceptual or preliminary site plan approval prior to rezoning. There are no provisions for the zoning designation to revert to the previous designation if the development is not constructed in accordance with the approved site plan.

The Town of Greece has two floating zones that can accommodate senior housing. The RMS Multiple-Family Residential – Senior Citizen District permits apartments as well as assisted living facilities and the R1-S Single Family Residential – Senior Citizen District permits single family dwellings. The Town Board may create such a district upon its own initiative or in response to a request from an applicant, following a public hearing. The creation of these zones is not subject to a formal process that ties the rezoning to a specific site plan for the future development of the site.

Planned Development District

The “planned development district (PDD)” mechanism is a type of “floating zone” that requires the approval of a preliminary site plan for the development of a specific site before the land may be rezoned. Towns that utilize the Planned Development District process to accommodate senior housing include Chili and Webster.

In the Town of Chili, “senior citizen dwelling units and complexes” are permitted within the Planned Neighborhood Overlay District (PNOD) in certain areas of the Town, designated in the Comprehensive Plan, subject to preliminary site plan approval.

The Progressive Development Overlay District (PPD) in the Town of Webster provides for the development of senior housing, including assisted living facilities, in the HC High-Intensity Commercial District and in the OP Core Area North Office Park District. The establishment of a PPD is subject to the approval of a preliminary development plan by the Town Board. Final site plan review by the Planning Board takes place following the creation of the district.

Special Use Permit

The Town of Henrietta allows the construction of “senior housing, including assisted living, nursing home and ancillary health-related facilities” in the RR-1 Rural Residential Sub-district with a Special Use Permit, subject to specified criteria. The Town of Pittsford allows “multiresident senior or retirement housing” in the Monroe Avenue Transitional Zone (MATZ) with a special permit.

Allowed “By Right”

The Town of Perinton allows senior housing developments “by right” in all residential zoning districts.

Incentive Zoning

“Incentive zoning” allows municipalities to modify zoning requirements, such as density, height or other limitations, in exchange for the provision of an “incentive” that is valued by the community. In the Town of Brighton, “child care or elder-care facilities” are listed as an amenity for which incentives may be offered through the Town’s incentive zoning provisions. Site plan review by the Planning Board is required before the amenity will be accepted.

Requirements

Types of Dwellings Permitted

Irondequoit's R-7 zoning District permits only multi-family dwellings which incorporate assisted living and/or other services for seniors. Irondequoit's R-7 is the most restrictive of the Towns reviewed with regard to types of dwellings permitted.

All of the other Towns reviewed permit a variety of housing types in addition to multi-family dwellings and assisted living facilities, including Chili and Henrietta (single family dwellings), Greece (single and 2-family dwellings), Pittsford (single-family and attached dwellings) and Webster (multi-family, single family, patio home and townhouse).

Other Uses Permitted

In Irondequoit's R-7 zoning district, only senior housing is permitted. The other Towns reviewed that utilize the "floating zone" or PDD process permit a variety of uses as part of a planned development, either "by right" or with a special use permit, including public and community facilities, recreation, and certain business and office uses.

Site Size

Irondequoit requires a minimum of five acres of "net buildable area" as determined by the Planning Board based on a "site capacity worksheet analysis." Basing the minimum site size on "net buildable area" is very unusual. In the other Town codes, minimum site sizes were based on gross area.

Among Towns that require five acres or smaller sites are Greece (5 acres), Henrietta (2 acres) and Pittsford (45,000 sq. ft.)

Towns that require larger sites include Chili (30 acres/ 15 developable) and Webster (10 acres.)

In the Town of Perinton, senior housing is permitted by right and the site size varies based on the requirements for each residential zoning district.

Density

The Town of Irondequoit's R-7 Zoning District permits up to 14.5 units/ acre (3,000 sq. feet per unit.) The permitted density is higher than that in Webster (8 units/acre) and lower than in Greece (15-20 units/ acre) and Chili (18 units/acre.) Some municipalities limit density based on projected traffic generation (Town of Pittsford) or base it on an analysis of the site. Densities may also be limited by restrictions in lot coverage, open space requirements and height limitations.

Building Coverage and Building Area

Irondequoit limits building coverage to 25% of the net buildable area. This is considerably more restrictive than the requirements in other Towns, which calculate minimum building coverage based on the size of the entire lot, site or development area. Building coverage maximums range from 25% in Henrietta to 60% in Chili.

In addition, the maximum total building area, including all accessory uses and structure, is limited to 1000 square feet per dwelling unit. The other Town regulations do not include limitations on total building area in addition to their density and bulk restrictions.

Setbacks

The minimum front building setback in Irondequoit's R-7 Zoning District is 75 feet. This is the same as the required front setback in Webster and smaller than the 100 feet required in Greece. Irondequoit's required rear setback is also 75 feet, which is larger than that required in other Towns. The side setback is 50 feet or the building height (maximum 30 feet) whichever is greater.

Height

Irondequoit's R-7 District limits buildings to a height of 30 feet. This is the same as the limitation in Pittsford. The other Towns (Greece, Henrietta, and Webster) limit height to three stories. Assuming a story is 10-12 feet, the maximum height would be 30-36 feet.

Size of Dwelling Units

Irondequoit's R-7 Zoning District regulations appear to disallow studio apartments. The minimum size of apartments are 400 square feet for a one-bedroom, 480 square feet for a 2-bedroom, and 560 square feet for a 3-bedroom. These are significantly lower than the minimum sizes required by other Towns.

Parking Requirements

Irondequoit's R-7 District regulations require one parking space for each congregate living unit and one per 10 assisted living units. In addition, one parking space is required for each employee, one for each vehicle used at the facility and one per 10 living units for visitors and deliveries.

Irondequoit's parking requirements are more restrictive than those in the Town of Greece (1 per five dwelling units) and Perinton (one per 1.5 dwelling unit), but less restrictive than those in Chili (2 per dwelling unit) and Henrietta (2 ½ per dwelling unit.) Pittsford limits the number of parking spaces to eight (8) per parcel. Several municipalities note that parking requirements are flexible and may be reduced if fewer spaces are needed.

2. Recommendations for changes to Irondequoit's requirements for senior housing

Based on a review of the Town of Irondequoit R-7 Residential District, certain modifications are recommended to help the Town to achieve the stated intent of the R-7 Residential District:

- Encourage and, where appropriate, provide for independent as well as assisted-living communities and community-care facilities as a housing option.
- Allow flexibility in the provision of housing with a continuum of levels of care to satisfy the economic, social, psychological, social and health-care needs of the elderly.
- Protect to the maximum practicable extent the aesthetic character of the Town of Irondequoit, the property values of the community and the general health, safety and welfare of the public

The suggested recommendations address both the specific dimensional requirements of the district as well as the process for establishing the district on a specific site. They are intended to provide more clarity in the review process as well as flexibility in the dimensional requirements.

Lot Size, Parking and other Dimensional Requirements

We recommend that the minimum size of the site be based upon the total area rather than the "net buildable area." Setbacks and buffers should be applied to minimize impacts on neighboring properties. The Town should retain some flexibility to reduce the required minimum lot size in particular circumstances.

The number of parking spaces should be based on the projected needs of the residents. A requirement for excessive parking tends to result in overly large parking areas and related stormwater management requirements. As many senior housing developments have been constructed in the region during the past several years, their parking requirements have become clearer.

Approval Process

Currently, the delineation of an R-7 Residential District on a specific site is not tied to the approval of a specific site plan. In addition, there are no provisions for the land to revert to the previous zoning classification if the site is not development as envisioned in the initial rezoning application. These provisions are included in the planned development district regulations that are currently in effect in several Monroe County towns.

LaBella recommends that the Town consider modifying the R-7 district regulations to require:

- Inclusion of a preliminary development plan to be incorporated in the rezoning action;
- Subsequent planning board review of a final development plan prior to construction; and,
- Reversion of the site to the previous zoning classification if the approved development plan is not constructed within a certain period of time.

If it is impractical to make these changes in advance of the project currently being proposed, LaBella recommends that the Town Board attach conditions to any rezoning to R-7 Residential that incorporate a preliminary development plan and limit the approved uses to those consistent with the plan and require a Planning Board approval of a detailed final development plan that is consistent with the plan reviewed by the Town Board.

3. Professional opinion regarding whether the Town’s existing provisions constitute “spot zoning” and reference in the Town’s Comprehensive Plan

A New York Department of State publication includes the following description of floating zones ¹:

“Floating zones allow a municipality flexibility in the location of a particular type of use and allow for a use of land that may not currently be needed, but which is desired in the future. The floating zone is also a way of scrutinizing significant projects for municipal impacts, as floating zones must be approved by the local legislative body.

The standards and allowable uses for a floating zone are set forth in the text of the municipality’s zoning regulations, but the actual district is not mapped; rather, the district “floats” in the abstract until a development proposal is made for a specific parcel of land and the project is determined to be in accordance with all of the applicable floating zone standards. At that time the municipality maps the floating zone by attaching it to a particular parcel or parcels on the zoning map. The floating zone technique may be used by communities that wish to provide for a future industrial park, for example.

Because the floating zone is not part of the zoning map until a particular proposal is approved, the establishment of its boundaries on the zoning map constitutes an

¹ Creating the Community You Want: Municipal Options for Land Use Control, New York State Department of State, 2006.

amendment to the municipal zoning regulations which requires the approval of the local legislative body.”²

New York Zoning Law and Practice also references floating zones.³ The publication describes a floating zone as one created in a two-step process. The first step is adoption of an initial ordinance that describes the district and outlines the enactment procedure without locating the district on the zoning map. The second step consists of the actual creation of such a district through an amendment to the zoning map enacted by the legislative body⁴. As the discussion in New York Zoning Law and Practice indicates, such a district is “commonly described as a floating zone because of its initially undetermined location.”

New York Zoning Law and Practice also references two potential failings of floating zones that have been raised in the past: First, that the implementation of a floating zone may not be in accordance with the comprehensive plan and, second, a related concern that implementation of a floating zone may be an instance of “spot zoning”. In reviewing important rulings in this area, New York Zoning Law and Practice cited the 1951 decision in the *Rodgers v. Village of Tarrytown*⁵ case. With regard to comprehensive planning and floating zones, New York Zoning Law and Practice indicates:

“It is necessary to consider the features of the approved ordinances which the courts regarded as essential to validity. In *Rodgers v. Tarrytown*, the principal claim of the opponents of the ordinance was that it was not adopted in accordance with a comprehensive plan. The court responded by noting that the two-step approval was careful, preplanned method of introducing garden apartments into residential areas. Examining the ordinance, the court found that the required size of floating zones was large enough for site planning to protect surrounding owners (ten acres), that the planning review of proposals and the stringent standards guaranteed protection of the neighborhood, and that the overall purpose of the plan was to serve the public welfare of the community rather than to confer a special benefit upon the developer-applicant.”

² Creating the Community You Want: Municipal Options for Land Use Control, New York State Department of State, 2006, p. 8.

³ New York Zoning Law and Practice, Section 24:04 – The floating zone feature, pps. 24-7 – 24-9.

⁴ In LaBella’s experience this second step commonly consists of three subsidiary steps, one in which the legislative body or planning board reviews and approves a preliminary development plan, a second in which the legislative body establishes the district by amending the zoning map and a third in which the municipal Planning Board approves a more detailed final development plan that is consistent with a) the preliminary development plan reviewed by the planning board or legislative body in connection with the rezoning action, and b) any conditions imposed in the zoning.

⁵ *Rodgers v. Village of Tarrytown*, 302 N.Y. 115, 96 N.E.2d 731 (1951)

With respect to the related claim that implementation of a floating zone must always be characterized as spot zoning given the narrow focus upon a single site, New York Zoning Law and Practice offers the following:

“In *Rodgers*, the Court of Appeals placed great emphasis upon the public purpose of the floating zone technique, as distinct from the alleged private interests which would be served by creation of the district. The public welfare objective of planned unit development are clear. They emerge clearly from the statements of purpose⁶ and from the detailed standards. In summary, it seems unlikely that an attack upon planned unit development legislation can succeed on the basis of its floating zone feature.”

Irondequoit’s R-7 Floating Zone

Whether Irondequoit’s R-7 Floating Zone provisions and implementation of the R-7 Floating Zone would withstand a challenge like that brought in the *Rodgers* case referenced in the foregoing discussion is a legal matter best taken up with counsel. However, with respect to that issue, LaBella has found the following:

- The Irondequoit code provision includes an explicit statement of legislative intent and purpose that describes the public purpose underlying creation of R-7 zones in Irondequoit; and,
- The Irondequoit code provision also includes detailed standards such as those referenced in the Zoning Law and Practice review of the *Rodgers* decision, including a minimum lot size that should be sufficient for site planning to protect surrounding neighbors.

Given the foregoing, LaBella would not expect rezoning pursuant to these provisions to be characterized as spot zoning provided it was undertaken for the specified public purpose.

In addition, with respect to reference in the comprehensive plan, given the statement of intent and purpose found directly in the code, we would not expect the absence of an explicit and more detailed reference to the R-7 floating zone in the comprehensive plan to be a fatal flaw. Including such references in the comprehensive plan would be preferable nonetheless, and we recommend that Irondequoit consider ensuring that such references are included in any comprehensive plan update considered for future adoption.

As indicated in the passage from the New York Department of State publication quoted above, floating zones are valued for the flexibility they offer a municipality in locating particular uses and in scrutinizing significant projects for municipal impacts. That being so, in our experience most municipalities are careful to avoid the inclusion of too many burdensome dimensional requirements that unnecessarily constrain or undermine the desired flexibility. The Irondequoit code is not clear regarding the need for all of the dimensional requirements included in Section 235-147 and we question whether each would

⁶ Citations included in the original have been deleted.

be necessary if Irondequoit included an opportunity for a detailed site specific review during the floating zone process.

As we have indicated, in our experience the second step in a floating zone process (in which a floating zone is actually mapped) frequently consists of two subsidiary steps, one in which the legislative body simultaneously approves a preliminary development plan and establishes the district by amending the zoning map and a second in which the municipal planning board subsequently approves a more detailed final development plan. When reviewing such a floating zone project in this final step, planning board's will usually have to confirm that the final development plan is consistent with the preliminary development plan reviewed by the legislative body in connection with the rezoning action and confirm that the plan is consistent with any conditions imposed in the zoning in addition to taking up other issues traditionally considered during site plan review. In these instances, an application to the planning board proposing a development significantly different from that proposed to the legislative body when the zone was established would be rejected, as would one that failed to comply with any conditions imposed by the legislative body during the rezoning. In some instances, municipal floating zone provisions also include a reversion clause specifying that the rezoning would be reversed automatically and the previous zoning designation restored should the site remain vacant and the project not be completed within a minimum period of time.

LaBella has recommended that Irondequoit consider amending their current code to include provisions such as these and, should it be impractical to do so before progressing with the currently proposed project, to include conditions in the rezoning which would effectively implement them in this instance.

Comparison of Senior Housing Regulations in Irondequoit and Neighboring Towns

Municipality	Process	District Name	Areas permitted	Types of Dwellings Permitted	Other permitted principal uses	Special Permit Uses allowed	Minimum area of site	Maximum density	Max. Height	Minimum Setbacks (feet)			Maximum Building/Impervious Area Coverage	Minimum size of dwellings (sf)			Parking Requirements	
										Front	Rear	Side		1- bdrm	2- bdrm	3- bdrm		
Irondequoit	Floating zone – Not contingent on specific site plan	R-7 Residential	Townwide	Multi-family dwellings	None	None	5 acres buildable land	14.52 units/ net buildable acre (3000 sq. ft. net buildable area per dwelling unit)	30 ft	75	75	50 ft or the bldg. height whichever is greater	Max. bldg. area: 1000 sq ft/unit Max. bldg. coverage: 25% of net buildable area. Max. Impervious area: 60% of net buildable area	NA	400	480	560	1/ employee 1/ vehicle used by the facility 1/10 assisted-living units 1/ congregate -living unit. 1/ 10 living units for visitors and delivery vehicles
Chili	Planned Development District – Preliminary site plan approval required before rezoning	Planned Neighborhood Overlay District	Within 9 Study Sub-Areas in Comprehensive Plan	Senior citizen dwellings, single family dwellings,	restricted business uses and special permitted uses, park and recreation, public facilities	Residences on upper stories of permitted non-residential uses; neighborhood retail; limited-alcohol and no-alcohol restaurants	30 contiguous acres with 15 developable acres	18 units/ acre for attached senior housing, which may not comprise more than 35% of total units	Not specified	75' from State/ County Highways 60' from Town Roads 35' from Internal roads	40	45'	60% of site total, excluding wetlands	NA	850	1,000	1,150	2 spaces/ dwelling (multi-family)
Greece	Floating zone – No formal criteria for rezoning	RMS Multiple Residential – Senior Citizen District	Townwide	Multi-family dwellings; 1-2 family dwellings	Adult day-care centers Assisted-living facilities, nursing homes.	Churches, schools, golf courses,	5 acres	Multi-family: 15 units/ acre Assisted living/ nursing home: 20 units/ acre	3 stories	100'	25' from multi-family districts; 50' from single-family districts		Not specified	400	600	750	NA	1/ 5 residential units, plus 1/ employee
Henrietta	Special Use Permit by Town Board	RR-1 Rural Residential District	RR-1 District only	1-family dwellings	Churches, schools, golf courses, child-care	None	2 acres	Determined through site analysis and dimensional requirements	3 stories	60 ft./ 90 ft. if abutting a commercial property		25% of lot area	500	600	800	950	2 2/3 dwelling unit	
Perinton	By Right	All residential districts	All residential districts	Varies by district			Varies by district											1/ 2 residents
Pittsford	Special Use Permit	Monroe Avenue Transitional Zone (MATZ)	MATZ zone	1-family dwellings; attached dwellings	Home-based professional offices	Adaptive reuse of residential structures for offices, studios; Places of worship; schools	45,000 sq. ft.	Traffic generation limited to 20 vehicle trips per day	30 ft	70	35	15	Max. Impervious surfaces: 20%	Not specified for multi-family dwellings	Not specified	Not specified	Not specified	Maximum: 8/ parcel
Webster	Planned Development District – Preliminary site plan approval required before rezoning	Progressive Development Overlay District (PPD)	HC-High Intensity Comm., OP Core-Office Park	Multi-family, single-family, townhouse, patio home	HC: Commercial, office, recreation OP: Recreation, office, hotel	OP: Light manufacturing, warehouse	10 acres	8 units/ acre	3 stories	75 ft. if abutting non-residential district / 100 ft. if abutting residential district		33% of total development area	Not specified	Not specified	Not specified	Not specified	Flexible	