



July 11, 2016

Tim Elling, Chairman  
Town of West Seneca Zoning Board of Appeals  
1250 Union Road  
West Seneca, New York 14224

Re: Amended Variance Application & Supporting Documentation  
Proposed Residential Project – 4592 Seneca Street  
Town of West Seneca Zoning Board of Appeals  
Applicant: Ebenezer Community Landings LLC c/o Sean Hopkins, Esq.  
File No. 10035.4

Dear Chairman Elling and Members of the Zoning Board of Appeals:

Our firm represents Ebenezer Community Landings LLC (“Applicant”) in connection with its proposed development of the property at 4592 Seneca Street (“Project Site”) as a residential project as depicted on the updated Site Plan prepared by Carmina Wood Morris DPC that is attached to the enclosed Amended Variance Application.

Enclosed please find the following documentation being submitted on behalf of the Applicant in connection with the area variances being sought from the Zoning Board of Appeals (“ZBA”):

- **Amended Variance Application**: Consisting of the completed application form, the attached Short Environmental Assessment Form (“Short EAF”) along a full size copy of the Site Plan prepared by Christopher Wood, P.E. of Carmina Wood Morris DPC [Date: 06/23/16 – Drawing C-100] and the following Exhibits to the Amended Variance Application:
  - **Exhibit A**: Description of Proposed Residential Project and Description of Requested Area Variances;
  - **Exhibit B**: Narrative providing Justification for Requested Area Variances pursuant to the Balancing Test and Five Criteria contained in NYS Town Law Section 267-b(3)(b);
  - **Exhibit C**: Reduced size copy of the Site Plan prepared by Christopher Wood, P.E. of Carmina Wood Morris DPC [Date: 06/23/16 – Drawing C-100] (Note: A folded full size copy is also attached to the Amended Variance Application);
  - **Exhibit D**: Site Layout Plan for Previously Approved Project consisting of 26 Two-Family Homes [52 units] as prepared by Optima Engineering [Sheet C-1.0]; and,

**Correspondence to Chairman Elling and Members of the Zoning Board of Appeals**

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- **Exhibit E:** Project Comparison Overview – This provides a project comparison based on the layout of the previously approved 26 Two-Family Homes [52 units] as prepared by Optima Engineering [Sheet C-1.0] attached as Exhibit “D” and the layout depicted on the current Site Plan. The previously approved project had building footprints that were 24% larger overall and also had 67% more total building square footage.

**I. Additional Modifications to Project Layout Based on Input Received from the Zoning Board of Appeals during its Meeting on June 22nd:**

The Site Plan for the proposed residential project has been updated based on the input that was received during the public hearing held by the Zoning Board of Appeals on June 22<sup>nd</sup>. During the public hearing, we were asked to consider landscaping in the vicinity of the detention/bio-retention basin to be located behind the two-family homes labelled as Buildings No. 2 to 7. Landscaping has been added as requested and it is important to mention that the Applicant acknowledges that a Landscaping Plan will also be prepared and submitted for review by the Planning Board as part of the site plan review process.

The ZBA also asked us to consider providing landscaping within the Permanent Open Space on the northern portion of the Project Site. Landscaping has been added along the northern boundary of the Permanent Open Space to provide screening for benefit of homeowners along Muriel Drive. The landscaping depicted on the updated Site Plan in the northernmost 100 ft. of Permanent Open Space that will be permanent protected via the recording of a Declaration of Restrictions at the Erie County Clerk’s Office.

During the public hearing held by the ZBA on June 22<sup>nd</sup>, we also received helpful input relative to the placement of the attached garages for the two-family homes. The Site Plan presented to the ZBA on June 22<sup>nd</sup> showed the front of the attached garages as being parallel with the front wall of the two-family homes. Based on the input received from the ZBA, the location of the attached garages for the two-family homes has been moved back to substantially increase the length of the driveways for the two-family homes. This modification will also improve the appearance of the two-family homes.

**II. Conclusion:**

We are respectfully requesting that the ZBA grant the requested area variances during its upcoming meeting on Wednesday, July 27<sup>th</sup>.

The current project layout for the residential project reflects the input that has been received during the past several months from the Planning Board, the ZBA and nearby property owners, including the informational meeting held with property owners the West Seneca library branch on May 7<sup>th</sup>.

We believe the currently proposed project is a dramatic improvement compared to the previously approved project that consisted exclusively of large two-family homes as depicted on the previously approved Site Plan attached as Exhibit “D” of the Amended Variance Application.

**Correspondence to Chairman Elling and Members of the Zoning Board of Appeals**

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If there are any questions regarding the enclosed Amended Variance Application and supporting documentation or the proposed residential project, please feel free to contact me at 510-4338 or via e-mail at shopkins@hsr-legal.com.

Thank you for your continued cooperation.

Sincerely,

HOPKINS SORGI & ROMANOWSKI PLLC



Sean W. Hopkins, Esq.

Enc.

cc: Mike Harmon, Zoning Board of Appeals [w/enclosure]  
Evelyn Hicks [w/enclosure]  
Michael P. Hughes [w/enclosure]  
Rick Marzullo [w/enclosure]  
Jeff Baksa, Assistant Code Enforcement Officer [w/enclosure]  
Jeffrey Schieber, Code Enforcement Officer [w/enclosure]  
Jacqueline Felser, Recording Secretary [w/enclosure]  
Kevin Curry [w/enclosure]  
Christopher Wood, P.E., Carmina Wood Morris DPC [Via e-mail w/enclosure]

AMENDED APPLICATION

APPLICATION TO BOARD OF APPEALS

Prepared By: Sean W. Hopkins, Esq., Hopkins Sorgi & Romanowski, PLLC Tel: 510-4338 E-mail: shopkins@hsr-legal.com

Tel. No. Sean Hopkins, Esq. - 510-4338

Appeal No. 2016-40

Date July 10, 2016

TO THE ZONING BOARD OF APPEALS, WEST SENECA, NEW YORK:

I (we) Ebenezer Community Landings LLC c/o Sean Hopkins, Esq. of Hopkins Sorgi & Romanowski, PLLC 5500 Main Street, Suite 343 Williamsville, New York 14221

HEREBY APPEAL TO THE ZONING BOARD OF APPEALS FROM THE DECISION OF THE BUILDING INSPECTOR ON AN APPLICATION FOR A BUILDING PERMIT NO. DATED May 10, 2016, WHEREBY THE BUILDING INSPECTOR DID DENY TO

- A PERMIT FOR USE for a proposed residential project
A PERMIT FOR OCCUPANCY
A TEMPORARY PERMIT OR EXTENSION THEREOF
A CERTIFICATE OF EXISTING USE
A CERTIFICATE OF ZONING COMPLIANCE
AREA PERMIT

1. Applicant is the PROPERTY OWNER CONTRACTOR FOR THE WORK CONCERNED HEREIN PROSPECTIVE TENANT OTHER (Describe) Contract Vendee pursuant to Purchase Contract with Property Owner

2. LOCATION OF THE PROPERTY 4592 Seneca Street

3. State in general the exact nature of the permission required. A description of the proposed residential project and the requested area variances is provided at Exhibit "A". A reduced size Site Plan is provided at Exhibit "C" and a full size copy is also attached.

N/A 4. PREVIOUS APPEAL. No previous appeal has been made with respect to this decision of the Building Inspector or with respect to this property, except the appeal made in Appeal No. , dated , 20.

5. REASON FOR APPEAL.

A. A Variance to the Zoning Ordinance is requested because strict application of the ordinance would produce undue hardship, or the hardship created is unique and is not shared by all properties alike in the immediate vicinity of this property and in this use district, or the variance would observe the spirit of the ordinance and would not change the character of the district because:

A description of the requested area variances for the proposed residential project is provided at Exhibit "A" and justification for the requested area variances pursuant to the balancing test and five criteria set set forth in NYS Town Law Section 267-b(3)(b) is provided at Exhibit "B" of this Variance Application.

B. Interpretation of the Zoning Ordinance is requested because:

C. A Special or Temporary Permit or an Extension thereof Under the Zoning Ordinance is requested pursuant to Article Section , Subsection , Paragraph of the Zoning Ordinance, because:

Handwritten signature of Sean W. Hopkins

Signature

TO BE COMPLETED BY THE BUILDING INSPECTOR

1. Provision(s) of the Zoning Ordinance Appealed, including article, section, subsection or paragraph of the Zoning Ordinance See Exhibit A for description of an updated list of requested area variances for the proposed residential project including references to the applicable sections of the Zoning Code.

2. Zoning Classification of the property concerned in this appeal R-50

3. Type of Appeal:

- Variance to the Zoning Ordinance.
Interpretation of the Zoning Ordinance or Zoning Map
Special or Temporary Permit or an extension thereof under the Zoning Ordinance.

4. A statement of any other facts or data which should be considered in this appeal.

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**Amended Short Environmental  
Assessment Form Prepared Pursuant to  
the State Environmental Quality Review  
Act (“SEQRA”)**

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# Short Environmental Assessment Form

## Part 1 - Project Information

## Amended Short Environmental Assessment Form

### Instructions for Completing

**Part 1 - Project Information.** The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

<b>Part 1 - Project and Sponsor Information</b>				
Name of Action or Project: Ebenezer Woods Project				
Project Location (describe, and attach a location map): 4592 Seneca Street - Town of West Seneca - Erie County				
Brief Description of Proposed Action: The proposed project ("action") consists of a residential project consisting of 31 single-family detached patio homes and 14 two-family homes [total of 59 units] units on the 11.56 acre parcel at 4592 Seneca Street ("Project Site"). The Project Site is zoned R-50(s) and requires a special use permit from the Town Board and site plan approval by the Planning Board. The proposed action has been defined broadly to include all required discretionary approvals/permits and all proposed site improvements including the proposed homes, an internal private roadway, a driveway connection to Seneca Street, a storm water management system, all required utility connections and improvements, etc. The project is a Unlisted action pursuant to SEQRA because it does not cross any of the thresholds for a Type I action listed in 6 NYCRR Part 617.4. It also important to mention that the Town previously issued a negative declaration based on its environmental review of the previously approved project consisting of 26 attached two-family residential units.				
Name of Applicant or Sponsor: Ebenezer Community Landings LLC c/o Sean Hopkins, Esq.		Telephone: 716.510-4338 E-Mail: shopkins@hsr-legal.com		
Address: 5500 Main Street, Suite 343				
City/PO: Williamsville		State: NY	Zip Code: 14221	
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval: See Attachment "1" of the attached Short Environmental Assessment Form for list of required permits and approvals for the proposed project.			NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>
3.a. Total acreage of the site of the proposed action?		11.56 acres		
b. Total acreage to be physically disturbed?		9.4 acres		
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		11.56 acres		
4. Check all land uses that occur on, adjoining and near the proposed action. <input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban) <input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____ <input type="checkbox"/> Parkland				



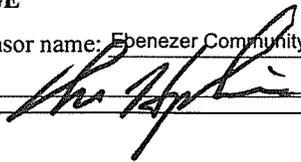
18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____ <u>There will not a dam but there will be detention ponds provided as part of required stormwater management system for the purpose of satisfying the NYSDEC's stringent storm water quantity standards. The precise size of the detention facilities will be determined in connection with the fully engineered plans to be included with the Site Plan Application.</u>	NO	YES
	<input type="checkbox"/>	<input checked="" type="checkbox"/>
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____ _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____ <u>The NYSDEC Mapper used to prepare this Amended Short EAF checked this box as "Yes". There is no history of contamination on the Project Site.</u>	NO	YES
	<input type="checkbox"/>	<input checked="" type="checkbox"/>

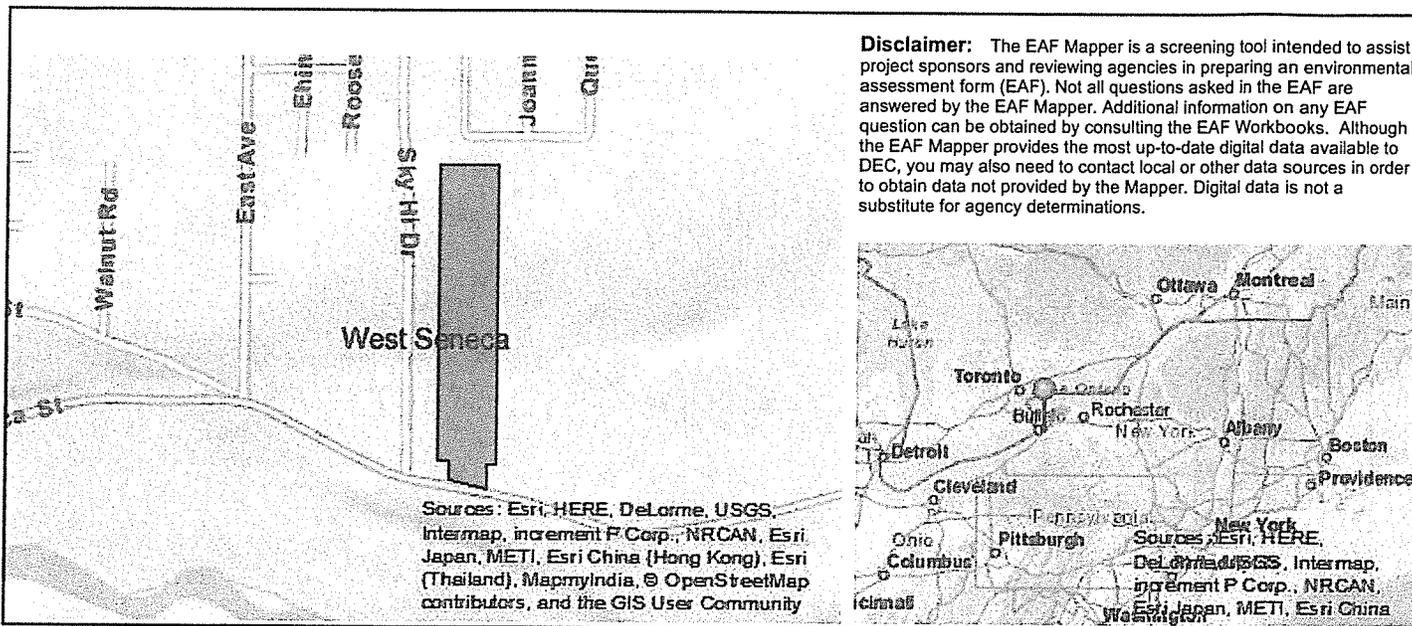
**I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE**

Applicant/sponsor name: Ebenezer Community Landings LLC c/o Sean Hopkins, Esq.

Date: July 11, 2016

Signature: \_\_\_\_\_





Part 1 / Question 7 [Critical Environmental Area]	No
Part 1 / Question 12a [National Register of Historic Places]	No
Part 1 / Question 12b [Archeological Sites]	Yes
Part 1 / Question 13a [Wetlands or Other Regulated Waterbodies]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
Part 1 / Question 15 [Threatened or Endangered Animal]	No
Part 1 / Question 16 [100 Year Flood Plain]	No
Part 1 / Question 20 [Remediation Site]	Yes

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**Exhibit A: Description of Proposed  
Residential Project and Description of  
Requested Area Variances**

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**EXHIBIT A OF AMENDED VARIANCE APPLICATION**

**PROPOSED RESIDENTIAL PROJECT - 4592 SENECA STREET  
PROJECT DESCRIPTION AND DESCRIPTION  
OF REQUESTED AREA VARIANCES**

**I. Project Description:**

The proposed project ("action") consists of a residential project consisting 31 detached patio homes on the 7.94 acres north of the ditch that bisects 4592 Seneca Street ("Project Site" and fourteen two-family homes on the 3.62 acres south of the ditch [total of 59 residential units].<sup>1</sup>

The layout of the proposed residential project is depicted on the reduced size copy of the Site Plan prepared by Carmina Wood Morris DPC provided at Exhibit "C" and a full size copy of the Site Plan is also attached to this Amended Variance Application. The Site Plan for the residential project received a favorable recommendation from the Planning Board on June 9<sup>th</sup> in connection with the pending request for a Special Use Permit.

The proposed residential project requires area variances from the Zoning Board of Appeals ("ZBA") and a description of the required area variances based on the project layout depicted on the current Site Plan is provided below in **Section II**. The Project Site is zoned R-50(S) pursuant to the Town of West Seneca Zoning Map.<sup>2</sup>

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<sup>1</sup> At the time the original Variance Application was filed, the proposed project consisted of 67 residential units. The current project layout is the outcome of review by the Planning Board during its meetings on April 14<sup>th</sup>, May 12<sup>th</sup> and June 9<sup>th</sup> and input from nearby property owners including the input received during an informational meeting with nearby property owners on May 7<sup>th</sup> at the West Seneca library branch.

<sup>2</sup> The (S) reference in the zoning classification denotes that a special use permit was previously granted for a project on the Project Site. Pursuant to Section 120-16A(2) of the Zoning Code, the 14 attached two-family homes require a special use permit for group dwellings and multiple-family dwellings and the 31 detached single-story patio homes require a special use permit for a subdivision for the construction of multiple single-family patio homes on a private road with an

## **II. Description of Requested Area Variances:**

The Applicant is seeking the following area variances from the ZBA in connection with the proposed residential project:

### **Proposed Detached Single-Story Patio Homes (North of Ditch):**

- 1. The front yard setback of the detached patio homes is less than required per Section 120-30 of the Zoning Code [30 ft. setback required vs. 9 ft. proposed].**

**[Note:** The front yard setback has been measured from the edge of the 60 ft. private right-of-way as depicted on the Site Plan. The front yard setback from paved portion of the private driveway that will provide access to the detached patio homes will be a minimum of 30 ft. to provide room for vehicles to be parked in the driveways on the front side of the detached patio homes.

- 2. The minimum lot size for the detached patio homes labelled as Buildings No. 15-25 and 31-45 is less than required per Section 120-29A of the Zoning Code [8,000 sq. ft. required vs. minimum proposed lot size of 5,021 sq. ft.].**

**[Note:** The updated Site Plan includes a chart showing the size of each of the patio homes lots. The proposed detached patio homes labelled as Buildings No. 27 and 30 on the Site Plan exceed 8,000 sq. ft. in size. The average lot size based on the Plan that received a favorable recommendation from the Planning Board on June 9<sup>th</sup> is 8,328 sq. ft.]

- 3. The rear yard setback of the detached patio homes labelled as Buildings No. 25, 26 and 27 on the Site Plan is less than required per Section 120-30 of the Zoning Code [30 ft. setback required vs. minimum rear yard setback of 5.55 ft. proposed].**

**[Note:** The rear yard setback of the detached patio homes for Buildings No. 25, 26 and 27 reflects the effort of the Applicant for the location of the proposed private driveway to be located as far west on the Project Site as possible in order to provide a larger than the required minimum 30 ft. required rear yard setback for Buildings No. 33 to 47 from the west property line of the lots utilized for residential purposes on the west side of Ski Hi Drive.]

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appurtenant association to be approved by NYS Attorney General Office. The proposed project will also require Site Plan Approval from the Planning Board.

4. **The minimum lot width for the detached patio homes labelled as Buildings No. 28 and 29 is less than required per Section 120-29A of the Zoning Code [50 ft. required vs. lot width of 47 ft. proposed].**

[**Note:** This area variance only applies to Buildings No. 28 and 29 on the northern side of the proposed cul-de-sac of the proposed private driveway.]

**Proposed Two-Family Homes (South of Ditch):**

1. **The front yard setback of the group dwellings and multifamily buildings is less than required per Section 120-30 of the Zoning Code [30 ft. setback required vs. 1.74 ft. proposed].**

[**Note:** The front yard setback has been measured from the edge of the attached porches on the front side of Buildings No. 1 to 7 to the proposed 60 ft. wide private right-of-way as depicted on the attached current Site Plan. The minimum distance as measured from the front side of the attached garages to the closest edge of pavement of the interior private driveway that will service the residential project is 35.88 ft. since the garage setback for Building No. 7 is 19.88 ft. and the length of the paved portion of the driveway that will service Building No. 7 within the private right-of-way is 18 ft.]

2. **The minimum building combined side yard setback for the two family homes is less than required per Section 120-30 of the Zoning Code [42.4 ft. combined side yard setback required vs. 11 ft. proposed].**

[**Note:** Pursuant to the 2<sup>nd</sup> footnote in Section 120-30 of the Zoning Code, the minimum side yard setback is 25 ft. or a distance that is equal to one-half the height of such building, whichever is greater. The mean average height of the group dwellings and multifamily buildings is 21.2 ft. and as such the minimum combined side yard setback is 42.4 ft. The closest portions of the two-family homes are measured from the attached garages and the minimum combined side yard setback from the principal portion of these buildings is a minimum of 31 ft. and is labelled on the attached current Site Plan.]

3. **The required number of parking spaces for each of the 14 proposed two-family homes is less than required per Section 120-41D of the Zoning Code [2 parking spaces required for each attached residential unit versus 1 parking space proposed for each residential unit].**

[**Note:** This area variance has been added based on the input provided by Jeff Baksa of the Building Department during the meeting of the ZBA held on June 22<sup>nd</sup>. This area variance is needed because while there will be 2 parking spaces for each of the two-family homes as required, one of the required parking spaces will be partially located with the portion of the proposed 60 ft. wide private right-of-way. The private right-of-way has a width of 60 feet but the paved portion of the private right-of-way has a width of 24 feet.]

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**Exhibit B: Justification for Requested  
Area Variances Pursuant to Balancing  
Test and Five Criteria set forth in NSY  
Town Law Section 267-b(3)(b)**

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**EXHIBIT B OF AMENDED VARIANCE APPLICATION**

**JUSTIFICATION FOR REQUESTED AREA VARIANCES  
PURSUANT TO THE STATUTORY MANDATED BALANCING TEST AND FIVE  
CRITERIA CONTAINED IN NYS TOWN LAW § 267-b(3)(b)**

NYS Town Law §267-b(3)(b) sets forth a statutorily mandated balancing test to be considered by a zoning board of appeals in connection with its review of a request for area variances. The statutorily mandated balancing test requires a zoning board of appeals to balance the benefits that will be realized against the resulting detriments to the health, safety and welfare of the community.

The granting of the requested area variances for the proposed residential project as listed in Exhibit "A" will result in substantial benefits to the Applicant without any resulting detriments to the health, safety and welfare of the community. The benefits that will be received by Applicant if the Zoning Board of Appeals ("ZBA") grants the requested area variances include the following:

1. The Applicant will be able to develop the Project Site as a residential project featuring both detached patio homes and two-family homes based on the project layout depicted on the updated Site Plan prepared by Carmina Wood Morris DPC.
2. The Applicant will be able to develop the Project Site as a residential project in a manner consistent with the project layout that received a favorable recommendation from the Planning Board in connection with the pending request for a Special Use Permit.
3. The Applicant will be able to develop the Project Site in a manner that utilizes an internal private driveway and other privately owned and maintained infrastructure as opposed to a residential project relying on public owned infrastructure.
4. The Applicant will be able to develop the patio home component of the proposed residential project in accordance with the review process that has previously been utilized for detached patio homes by the Town of West Seneca.
5. The Applicant will be able to develop the Project Site based on a project layout the Applicant believes will be a dramatic improvement compared to the previously approved project layout consisting of 26 large two-family homes [52 units] as

depicted on the Site Layout Plan for the previously approved project attached as Exhibit "D".

In applying the statutorily mandated balancing test set forth above, NYS Town Law §267-b(3)(b) requires a zoning board of appeals to consider the following five criteria:

**1. 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 requested area variance.**

The granting of the requested area variances by the ZBA will not create an undesirable change in the character of the neighborhood or a detriment to nearby properties. An effort has been made during the past several months to advance a residential project based on the input received during the past several months from the Planning Board, ZBA and nearby property owners.

The Project Site will be developed in accordance with current stormwater management standards and will include a stormwater management system that complies with the NYSDEC's stringent stormwater quantity and quality standards. The requested area variances will not result in any detriments to nearby properties since the Applicant is not proposing for any of the residential buildings to be located closer to existing residential uses than the required setback of thirty feet.

**2. Whether the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than an area variance.**

It would not be possible for the Applicant to develop the residential project with private infrastructure and the proposed mixture of patio homes and two-family homes in order to obtain the benefits it is seeking without the granting of the requested area variances. The area variances for the detached single-story patio homes are required based on the review process the Town utilizes for patio homes and the front yard setback, side yard setback and minimum lot width area variances for the patio homes are all based on the need to show each patio home on an individual

lot per the Town's previously use patio home review process. The side yard setback variances need for the two-family homes south of the ditch are necessary in order for these buildings to include attached garages.

**3. Whether the requested area variance is substantial.**

The requested area variances are not substantial given the fact that the granting of the requested area variances will not result in any significant adverse impacts. None of the requested area variances will result in a residential project that is not appropriate in terms of both density and scale for the Project Site.

The reason the magnitude of the variance is relevant is that, generally, the larger the difference the more likely it is that a negative effect would be generated. See Matter of Human Development Services of Port Chester v. Zoning Board of Appeals of the Village of Port Chester, 110 A.D.2d 135, aff'd, 67 N.Y.2d 702. However, in any particular case, the facts may demonstrate that while a variance may seem noteworthy on paper, no negative effect would be produced and, accordingly, the sought-after variance should be granted.

For example, in Matter of Frank v. Scheyer, 227 A.D.2d 558, 642 N.Y.S.2d 956 (2d Dept. 1996), the parcel was 19,983 square feet. However, the zoning code required a minimum lot size of one acre or 43,560 square feet. The variance at issue was more than 54%. Nevertheless, based the facts presented, no harm would befall the community and the Court directed the zoning board of appeals to grant the application. The Court took similar action in Matter of Shaughnessy v. Roth, 204 A.D.2d 333, 611 N.Y.S.2d 281 (2d Dept. 1994), in which the premises contained 50 feet of frontage and 5,000 square feet of area. The zoning code required 80 feet of frontage and a minimum lot size of 10,000 square feet. Accordingly, the application concerned a 50% reduction in lot area coupled with a second area variance seeking a 62.5% reduction from the required

frontage. Nevertheless, based on the facts in the record, the Court directed the respondents to issue the variances. Additionally, in Matter of Sasso v. Osgood, 86 N.Y.2d 374 (1995), the applicant sought area variances for a 60% reduction in lot area and a 50% reduction in lot width. Based on all of the facts presented, the Court of Appeals, our State's highest court, overturned the holding of the appellate court and directed that the requested area variances be granted.

Merely because a variance may seem noteworthy on paper does not mean that any "harm" would be generated on the surrounding community, and it is "harm" that is balanced against the interest of the applicant according to the Town Law §267-b(3) test. As mentioned previously, the requested area variances will not result in any "harm" on the surrounding community. It is the position of the Applicant that if the requested area variances are properly viewed as required by the cases discussed above, it is clear that the requested area variances are not substantial since they will not result in harm to the community.

**4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood.**

The granting of the requested area variances will not have any adverse effects or impacts on physical or environmental conditions in the neighborhood. As mentioned previously, Project Site will be developed in accordance with current stormwater management standards and will include a stormwater management system that complies with the NYSDEC's stringent stormwater quantity and quality standards. There is only one small federal wetland with a size of 0.042 acres located on the Project Site based on the recently completed comprehensive wetland delineation there will only be small impact to this wetland. The proposed residential buildings will have an upscale appearance that will not result in any adverse impacts and landscaping will be provided pursuant to a Landscaping Plan that will be included with the Site Plan Application to be reviewed by the Planning Board as part of the comprehensive review process.

**5. Whether the alleged difficulty was self-created.**

Town Law §267-b(3)(b) expressly states that the issue of whether an alleged difficulty is self-created cannot be utilized as the sole criteria in determining whether to grant requested area variances. It is the position of the Applicant that the alleged difficulty that has resulted in the need for area variances for the patio home component of the residential project is not self-created given that the proposed lots have been depicted on the Site Plan for illustrative purposes only. The setback variances for the two-family homes are largely attributable to these building including attached garages and no large apartment complex type buildings are being proposed. Nonetheless, if the ZBA determines that the alleged difficulty resulting in the need for the requested area variances is due to a self-created difficulty, such a finding would not lessen the strong justification for the requested area variances per the balancing test and the other four criteria as discussed above.

**Conclusion:**

The benefits that will be received by Applicant if the requested area variances are granted clearly outweigh any resulting detriments per the statutorily mandated balancing test. The Applicant requests that the ZBA grant the requested area variances to allow it to move forward with the proposed residential project based on the layout depicted on the updated Site Plan attached to this Amended Variance Application.

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**Exhibit C: Reduced Size Copy of Site Plan  
Prepared by Carmina Wood Morris DPC  
dated June 23, 2016 [Drawing C-100]  
(Note: A Full Size Folded Copy of the Site  
Plan is also attached)**

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**Exhibit D: Site Layout Plan for Previously  
Approved Project Prepared by Optima  
Engineering**

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**Exhibit E: Project Comparison  
Overview [11" x 17"]**

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**Ebenezer Woods – Project Comparison**  
**Town of West Zoning Board of Appeals**

- **Size of Project Site:** 11.56 Acres
- **Zoning Classification:** R-50<sup>1</sup>
- **Currently Proposed Project:** 31 detached patio homes on the 7.94 acres north of the ditch that bisects the Project Site
- 28 attached residential units comprised of fourteen buildings with two units each on the 3.62 acres south of the ditch.<sup>2</sup>

**Summary of Modifications to Site Plan Presented to the Planning Board on May 12<sup>th</sup>:**

- Number of Residential Units decreased from 67 to 59 units [11.9% reduction]
- Average size of detached patio home lots increased to 8,328 sq. ft.
- Previously proposed 6 units buildings eliminated
- Driveway length for patio homes increased from 25 ft. to 30 ft. [Min. 9 ft. setback from illustrative private right-of-way]
- Setback of the detached patio homes from the northern property line contiguous to homes on Muriel Drive increased to a minimum setback of 190 ft. [More than 600% increase – Pursuant to the Special Use Permit Condition recommended by the Planning Board on June 9<sup>th</sup>, the rear 100 ft. will consist of Permanent Open Space to be protected via the recording of a Declaration of Restrictions at the Erie County Clerk’s Office.]
- Increased Greenspace and Reduced Impervious Surfaces and Infrastructure

**Previously Approved Two-Family Plan<sup>3</sup>:**

**Current Site Plan:** **Comparison:**

<b>No. of Residential Units:</b>	54 [27 Two-Family Building]	59	Current project has 5 more units
<b>Footprint of Buildings:</b>	109,436 sq. ft.	88,068 sq. ft.	Previous Plan had 24% larger overall Building Footprint
<b>Total Building Sq. Footage:</b>	179,943 sq. ft. <sup>4</sup>	107,668 sq. ft. <sup>5</sup>	Previous Plan had 67% more total Building Square Footage

<sup>1</sup> Per Section 120-29A of the Zoning Code, the allowable density for R-50 zoned property is 8,000 sq. ft. for the 1<sup>st</sup> dwelling unit plus 5,000 sq. ft. per each additional dwelling units. Based on this standard, the allowable density is 100 residential units [11.65 acres x 43,560 sq. ft. = 505,553.6 sq. ft. – 8,000 sq. ft. (1<sup>st</sup> unit) = 497,553.6 sq. ft. / 5,000 sq. ft. = 99.51 units plus the 1<sup>st</sup> unit for total of 100 units allowed]. The current project has 41% less residential units than permitted.

<sup>2</sup> The Planning Board recommended issuance of a Special Use Permit based on the current project layout during its meeting on June 9, 2016.

<sup>3</sup> A copy of the previously approved Site Plan for the 26 two-family homes is provided at Exhibit “D”.

<sup>4</sup> The two-family homes depicted on the previously approved plan prepared by Optima Engineering were 3,460 sq. ft. each.

<sup>5</sup> The detached patio homes depicted on the current Site Plan consist of 1,600 sq. ft. and the two-family homes consist of 2,028 sq. ft.