

# APPLICATION TO BOARD OF APPEALS

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Appeal No. 2022-20

Date April 15, 2022

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

Ebenezer Community Landings LLC c/o Sean Hopkins, Esq. of Hopkins Sorgi & McCarthy 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 April 14 2016, WHEREBY THE BUILDING INSPECTOR DID DENY TO

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> A PERMIT FOR USE for a proposed residential project | <input type="checkbox"/> A CERTIFICATE OF EXISTING USE      |
| <input type="checkbox"/> A PERMIT FOR OCCUPANCY   | <input type="checkbox"/> A CERTIFICATE OF ZONING COMPLIANCE |
| <input type="checkbox"/> A TEMPORARY PERMIT OR EXTENSION THEREOF                        | <input type="checkbox"/> AREA PERMIT                        |

1. Applicant is the  PROPERTY OWNER  
 CONTRACTOR FOR THE WORK CONCERNED HEREIN  
 PROSPECTIVE TENANT  
 OTHER (Describe) \_\_\_\_\_

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.

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. 2016 08, dated August 24th, 2022.  
[Area variances granted by the Zoning Board of Appeals on August 24, 2022 lapsed.]

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: \_\_\_\_\_

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

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## **EXHIBIT A OF 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 six attached townhome buildings [23 total units] on the 3.62 acres south of the ditch.

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 Variance Application. The Site Plan for the residential project received was approved by the Planning Board on April 14, 2022 subject to the issuance of the required area variances by the Zoning Board of Appeals.

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.

#### **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. 6.82 ft. minimum 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. 6-17 and 22-36 is less than required per Section 120-29A of the Zoning Code [8,000 sq. ft. required vs. minimum proposed lot size of 4,680 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. 18 through 21 on the Site Plan exceed 8,000 sq. ft. in size. The average lot size based on the Plan that received approval from the Planning Board on April 14, 2022 is 8,314± sq. ft.]

- 3. The rear yard setback of the detached patio homes labelled as Buildings No. 6-18, 22, 23 and 34-36 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 the buildings 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. 24 to 33 from the west property line of the lots utilized for residential purposes on the west side of Ski Hi Drive.]

- 4. The minimum lot width for the detached patio homes labelled as Buildings No. 17 through 22 is less than required per Section 120-29A of the Zoning Code [50 ft. required vs. lot width of 37.11 ft. proposed].**

**[Note:** This area variance only applies to **No. 17 through 22** on the northern side of the proposed cul-de-sac of the proposed private driveway.]

#### **Proposed Group Dwellings (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. 0.0 ft. proposed].**

**[Note:** The front yard setback has been measured from the edge of the front side of Buildings No. 1 through 5 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 buildings to the closest edge of pavement of the interior private driveway is 18 ft., which occurs at the southwest corner of Villas Building 2, along the interior side of the curve of the private driveway. The shortest driveway for any villa building unit, are also those for Building 2, and in this building, all are 22.25 feet long, measured from face of building to the back of curb.]

- 2. The minimum building combined side yard setback for the Group Dwellings is less than required per Section 120-30 of the Zoning Code [32 ft. combined side yard setback required vs. 24 ft. minimum 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 16 ft. and as such the minimum combined side yard setback is 32 ft. The minimum combined side yard setback from the principal portion of these buildings is a minimum of 24 ft. and is labelled on the attached current Site Plan.]

- 3. The required number of parking spaces for each of the proposed Group Dwellings 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 is needed because while there will be 2 parking spaces for each of residential unit 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]

- 4. The rear 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. 18 ft. minimum proposed].**

**[Note:** The rear yard setback has been measured from the edge of the proposed 12'x15' decks of Buildings No. 1, 3 and 4 to the right-of-way as depicted on the attached current Site Plan. The minimum distance as measured from the edge of the proposed 12'x15' decks of Buildings No. 1, 3 and 4 to the right-of-way is 18 ft.]

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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 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 Site Plan Approval from the Planning Board subject to receipt of the required area variances on April 14, 2022.
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 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.

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.

**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 group dwellings in order to obtain the benefits it is seeking without the granting of the requested area variances.

**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.

**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**

**[Drawing C-100]**

**(Note: A Full Size Folded Copy of the Site  
Plan is also attached)**

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