

# APPLICATION TO BOARD OF APPEALS

Tel. No. \_\_\_\_\_

Appeal No. 2024-018  
Date April 5, 2024

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

I (we) Benderson Development Company, LLC of ~~101 105 French Road~~

570 Delaware Ave BFl 14202, HEREBY APPEAL TO THE ZONING BOARD OF APPEALS FROM THE DECISION OF THE BUILDING INSPECTOR ON AN APPLICATION FOR A BUILDING PERMIT, WHEREBY THE BUILDING INSPECTOR DID DENY PERMIT TO: install a new 98.86 monument sign when 32sf is permitted

- |  |   |
|--|---|
| <input type="checkbox"/> A PERMIT FOR USE                        | <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 checked="" 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 ~~101 105 French Road~~ 2303 Union Road.

3. State in general the exact nature of the permission required, Area variance of 66.86sf to install a new 98.86 monument sign when 32sf is permitted.

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: \_\_\_\_\_

Please see attached letter of intent

B. Interpretation of the Zoning Ordinance is requested because: Please see attached letter of intent

C. A Special or Temporary Permit or an Extension thereof Under the Zoning Ordinance is requested pursuant to Article \_\_\_\_\_, Section 120, Subsection 40, Paragraph 12A of the Zoning Ordinance, because: 32sf of signage is permitted and 98.86 is requested

James A. Boglioli  
Applicant's 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

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

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. \_\_\_\_\_

Building Inspector DyBme

April 17, 2024

**VIA HAND DELIVERY**Chairman and Members of the Zoning Board of Appeals  
1250 Union Rd,  
West Seneca, NY 14224**Re: Garden Village Plaza  
French and Union Road, Cheektowaga, NY (BDP# 4048)  
Area Variance Application**

Dear Members of the Zoning Board of Appeals:

Enclosed please find the application materials in connection with our request for variance relief necessary to install a free-standing sign at the above-referenced property. A single variance is required to allow for the installation of a new monument sign measuring 98.86 square feet where 32 s.f. is permitted.

**The Subject Property and the Proposed Project**

The Garden Village Plaza property is a former retail shopping center which has been vacant for a number of years. It is located on the southeast corner of French Road and Union Road and maintains driveway connections to both French Road and Union Road. The property has recently been redeveloped for commercial/warehouse uses and is improved with three buildings maintaining over 300,000 s.f. of building area. The project is a significant improvement to the area.

**The Town Law §267-b(3) Balancing Test**

As the Zoning Board is aware, Town Law §267-b(3) provides that a Zoning Board must balance the benefits of the applicant with the detriment to the health, safety and welfare of the community. It is clear that granting the variances will not cause any detriment to the health, safety, and welfare of the community. Granting the variance relief will allow a large redevelopment to provide sufficient signage for the tenants in the facility. Pursuant to Town Law §267-b (3), in undertaking this balancing test the Zoning Board should consider five factors. We believe that the application conforms to the standards set forth in the Town Law and should be granted. With respect to the five factors provided for in Town Law §267-b(3), we note the following:

**1. An Undesirable Change in Area Character Would Not Occur.**

As noted above, Benderson redeveloped the above-referenced property. The property was vacant and improved with a number of buildings. A majority of the properties in the immediate vicinity of the subject property are zoned M1 - Light Manufacturing, including the properties which are directly across from the Subject property on Union Road and French Road. The proposed signage will not result in a change in area character. This is a very large development, with over 300,000 s.f. of warehouse development. The proposed sign is attractive and scaled to fit the development and the surrounding area. Based on the above, an undesirable change will not occur by granting the requested variance relief.

**2. The Petitioner May Not Achieve the Sought-after Benefit Without the Sought-after Variance Relief.**

Without the sought-after variance relief, Benderson will be unable to provide adequate signage for the large project. The permitted 28 s.f of signage is simply too small to allow tenant signage on the monument sign. Further, the buildings are setback from the road, so adequate tenant signs are necessary as people look for the businesses within the development.

**3. The Requested Variance Is Not Substantial.**

The Court stated in Matter of Easy Home Program v. Trotta, 276 A.D.2d 553 (2d Dept. 2000), that the fact that a variance may seem substantial on paper does not justify the denial of an application if there is no demonstrated harm to the community. In the present case, the variance presents no harm to the community as the sign is compatible with the surrounding neighborhood.

New York Courts have upheld variances far in excess of what is being requested in this matter. For example, in Matter of Sasso v. Osgood, 86 N.Y.2d 374 (1995), the variance concerned a 60% reduction in lot area and a 50% reduction in lot width. Based on all facts presented, the Court of Appeals overturned the Fourth Department and directed that those variances be approved. See also, Lodge Hotel, Inc. v. Town of Erwin Zoning Bd. of Appeals, 43 A.D.3d 1447 (4th Dept.2007)(Fact that variance was substantial was insufficient to deny petitioners' application).

Simply 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 § 267b(3) test. When one looks at the current matter, the variance relief is not substantial.

**4. The Variance Will Not Have an Adverse Effect or Impact on the Physical or Environmental Conditions in the Neighborhood.**

There will not be any adverse physical or environmental effect or impact on neighborhood conditions. The property is not environmentally sensitive, and the proposed development will provide better community aesthetics, while offering more greenspace than what presently exist on the site.

**5. A Self-Created Hardship Does Not Require Denial.**

Town Law § 267b(3) explicitly states that a self-created hardship is not by itself a sufficient basis to deny an area variance application.

Even if the Board were to determine that the hardship was self-created, the Court was directly confronted with this issue in Matter of Easy Home Program v. Trotta, 276 A.D.2d 553 (2d Dept, 2000) when it held that even though the hardship was self-created and even though the variance was substantial, where there was no evidence demonstrating the variance would have an undesirable effect on the character of the community, a variance application must be approved. See, also, Jackson v. Kirkpatrick, 125 A.D.2d 471 (2d Dept, 1986); De Sena v. Zoning Board of Appeals, 45 N.Y.2d 105 (1978); Goshen Shopping Center v. Zoning Board of Appeals, 112 A.D.2d 140 (2d Dept, 1985).

In the present case, there is no evidence that the variances would have any negative effect on the neighborhood.

Conclusion

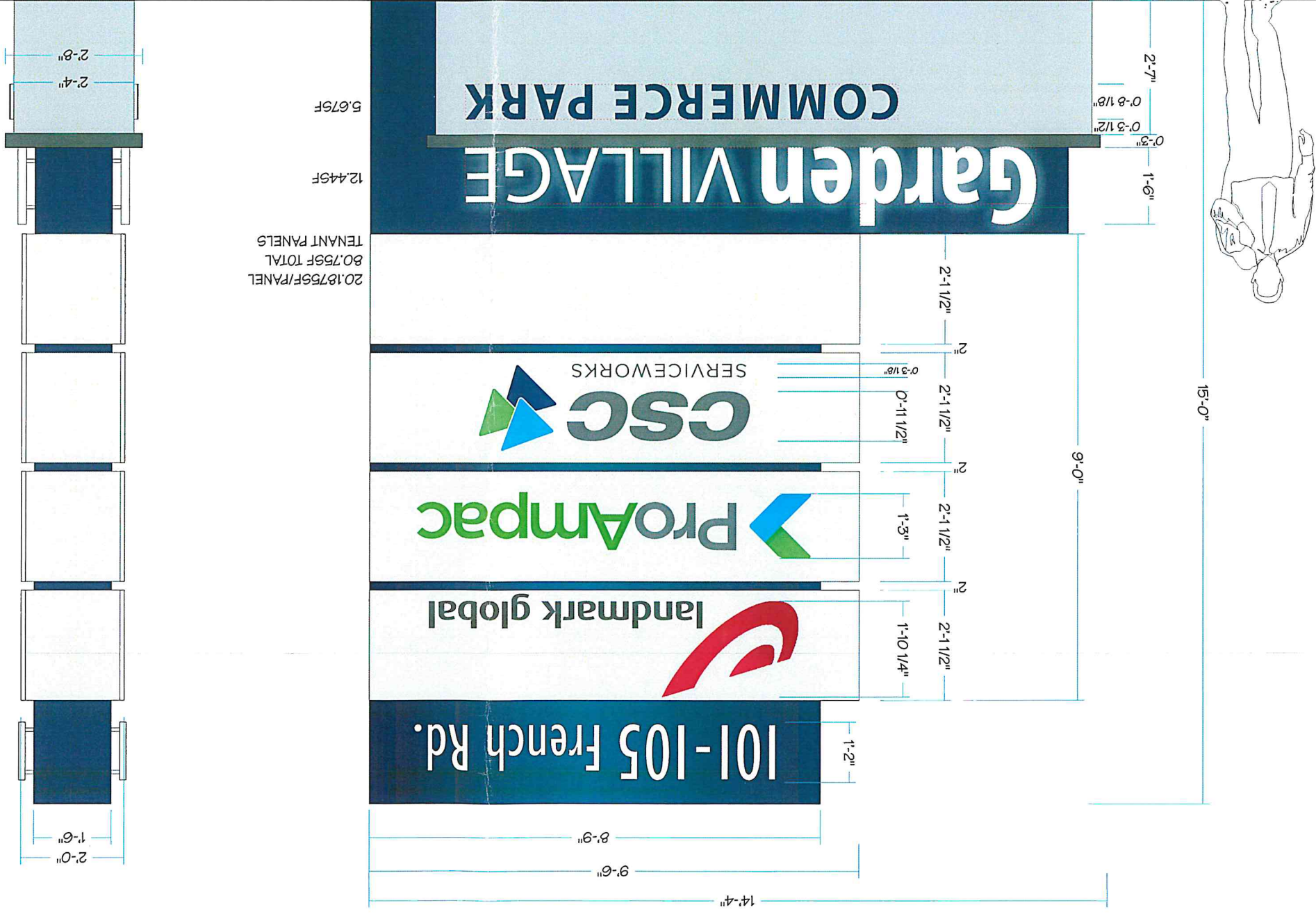
We look forward to working with the Town on this project. Should you have any questions, please do not hesitate to contact me by phone at (716) 878-9626 or by e-mail at [JamesBoglioli@Benderson.com](mailto:JamesBoglioli@Benderson.com).

Sincerely,  
**BENDERSON DEVELOPMENT COMPANY, LLC**

*James A. Boglioli*

James A. Boglioli, Esq.  
Director, Right to Build – Northeast US

TOWN OF WEST SENECA  
UNION RD. ENTRANCE



PERMITTED PROPOSED VARIANCE			
# OF Pylon Signs	1	na	na
Size of Freestanding Signs	32sf	90.0sf	Variance req'd for relief of 60.0sf
Height of Freestanding Signs	15'	15'	na
Setback	10'	15'	na

ZONED C-2 - COMMERCIAL

**BENDERSON**  
DEVELOPMENT

570 DELAWARE AVENUE, BUFFALO, NEW YORK 14202

PROPERTY GARDEN VILLAGE  
CHECKTOWAGAWEST SENECA, NY  
PRP.# 4048 DRWG.# 4048 GR BID

BY: C. ROZEK DATE: 02.10.22 REVISION 03.25.24

PROPOSED DF MONUMENT SIGNAGE

3/4" = 1'-0"

**SITE PLAN**  
 SCALE: NONE  
 DRAWN BY: TCA  
 PROPERTY ID#: 4048-5215-5217-5277 MEDIUM PLAN  
 JUNE 29, 2022  
**GARDEN VILLAGE COMMERCE CENTER**  
 FRENCH & UNION RD.  
 CHEEKTOWAGA, NY 14224

**BENDERSON**  
 DEVELOPMENT COMPANY, LLC  
 519 DELAWARE AVENUE, BUFFALO, NY 14202  
 Phone: (716) 834-0111 Fax: (716) 834-1711  
 www.benderson.com

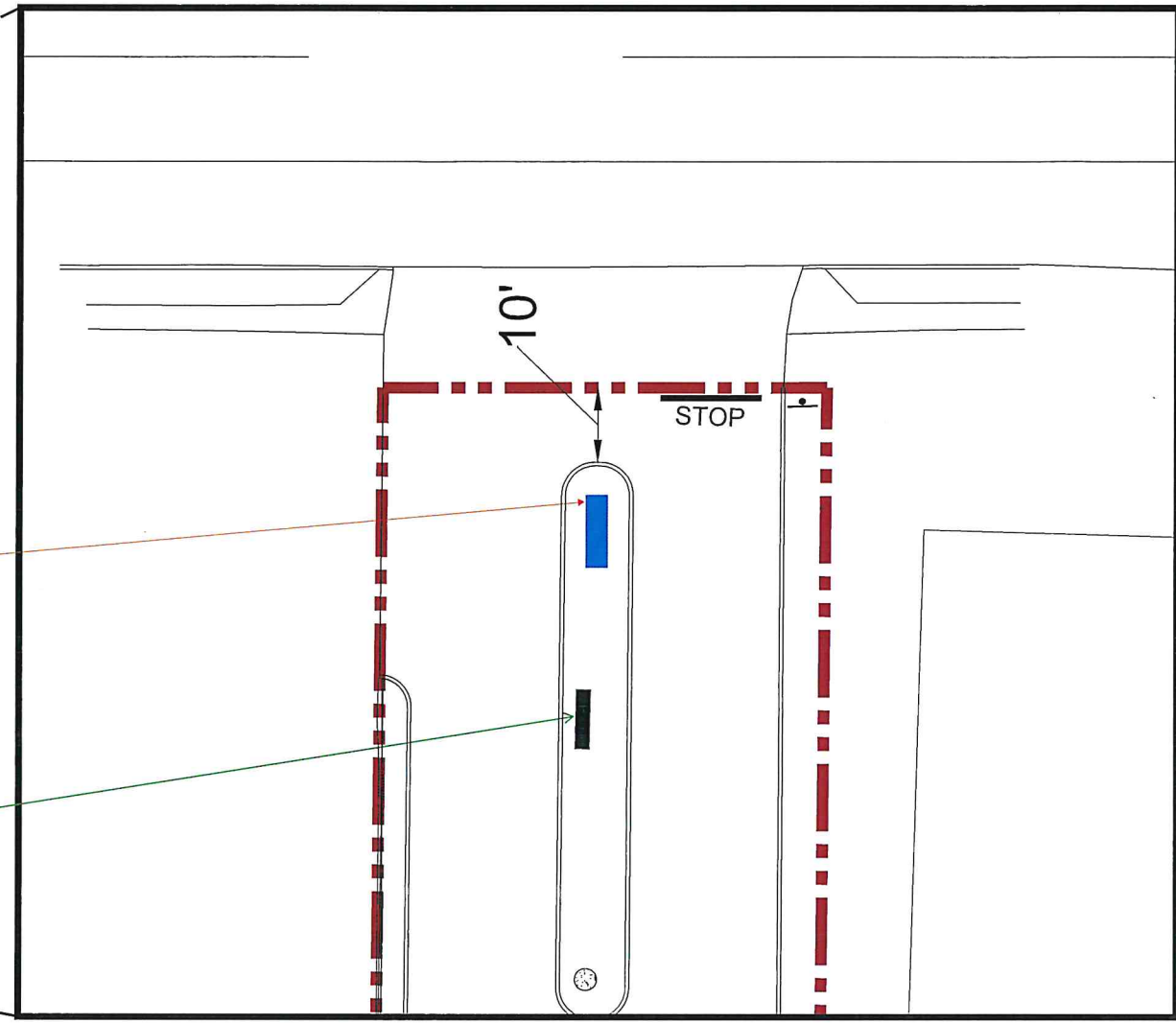
THE SOLE PURPOSE OF THIS DRAWING IS TO ILLUSTRATE THE APPROXIMATE DIMENSIONS AND LAYOUT OF THE WARRANTED OR REPRESENTATION EXPRESSED OR IMPLIED, IS MADE WITH RESPECT TO THE ILLUSTRATION.



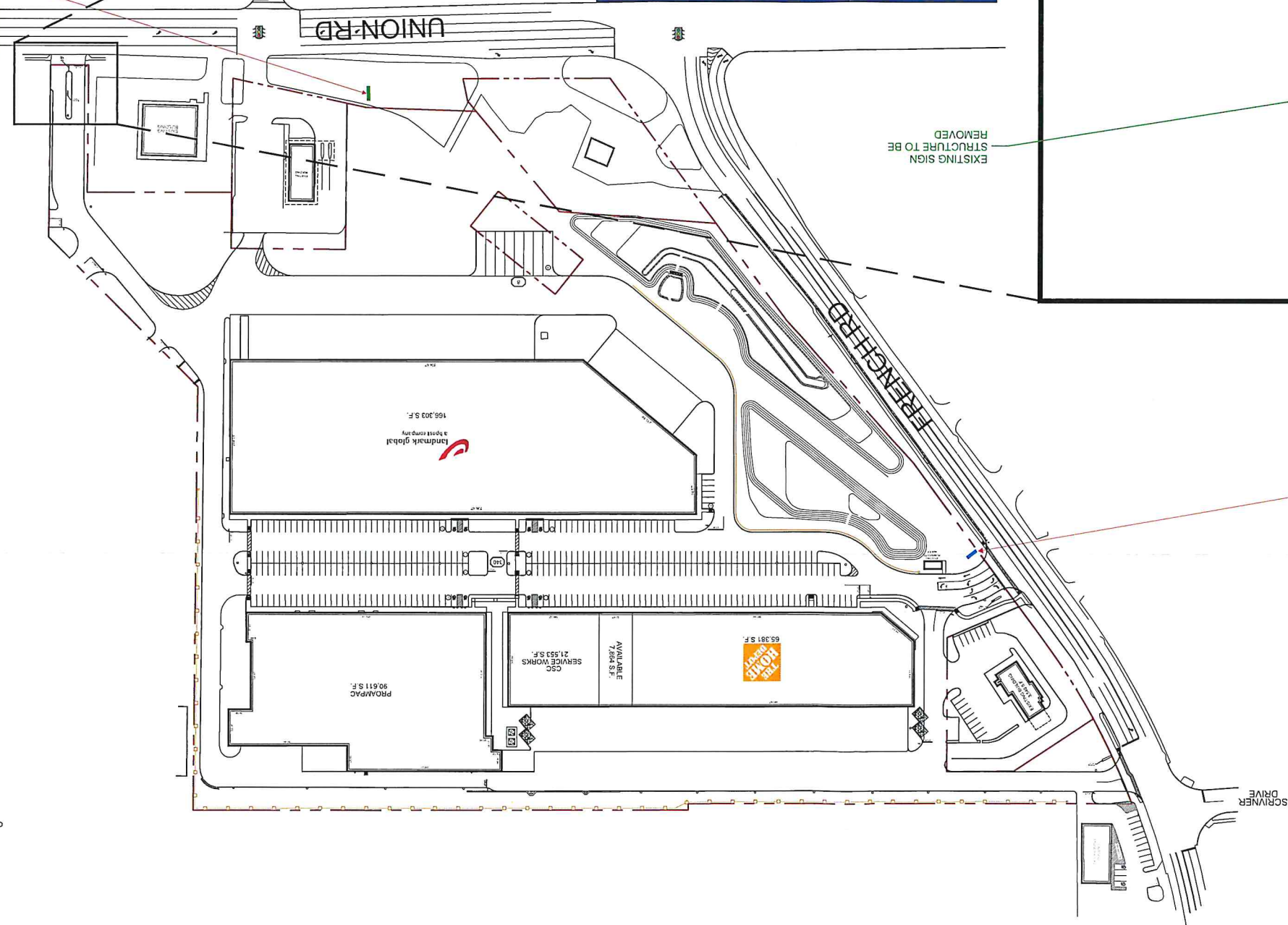
**EXISTING PYLON SIGN TO BE REMOVED**

**PROPOSED NEW PEDESTAL SIGN WITH EXTENDED ISLAND**  
 TOWN OF WEST SENeca

101-105 French Rd.  
 landmark global  
 ProAmpac  
 CSC SERVICE WORKS  
 Garden VILLAGE  
 COMMERCE PARK



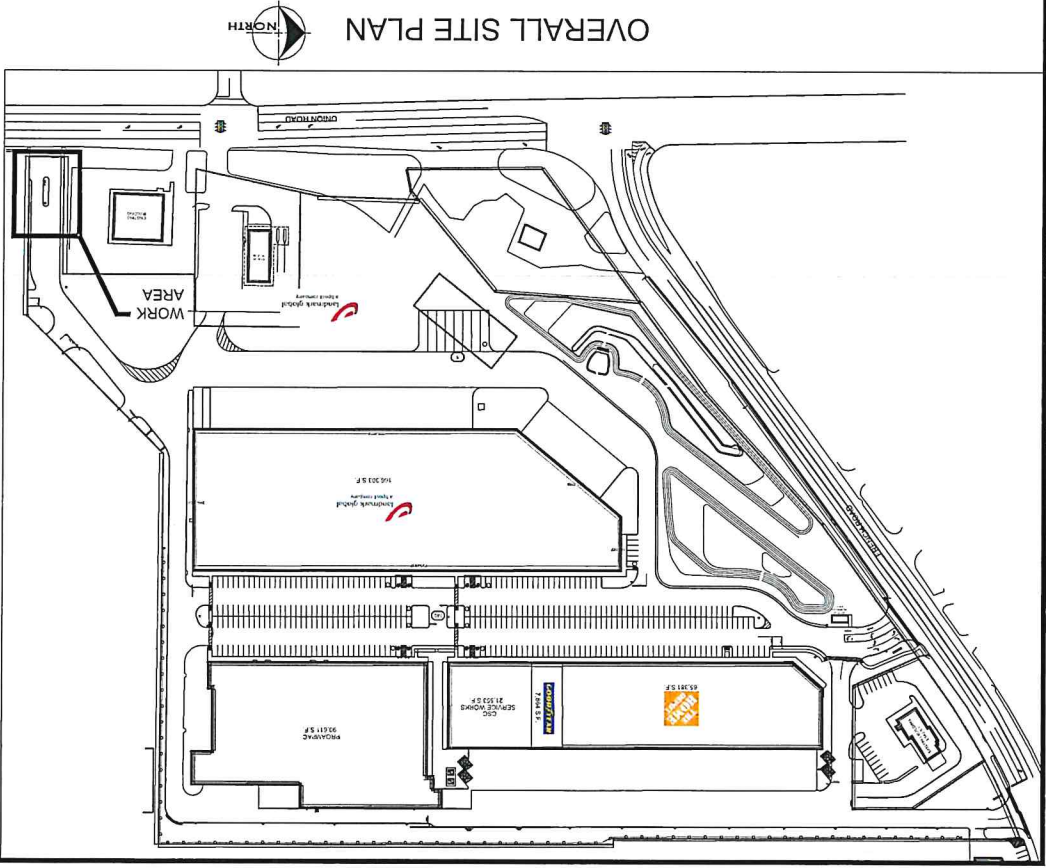
EXISTING SIGN STRUCTURE TO BE REMOVED



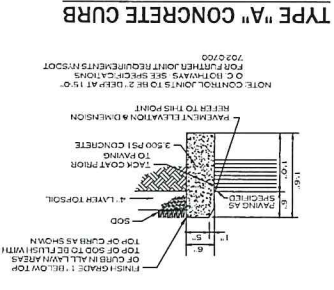
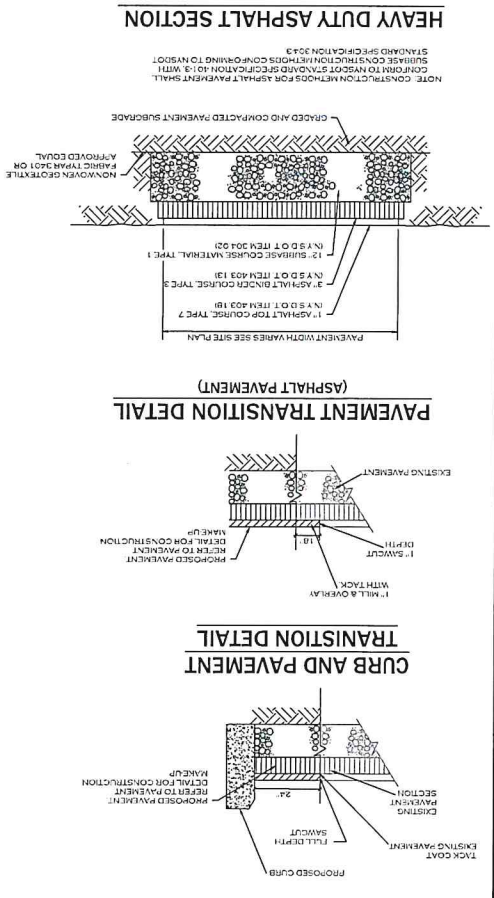
**PROPOSED NEW FREESTANDING SIGN**  
 TOWN OF CHEEKTOWAGA

101-105  
 landmark global  
 ProAmpac  
 CSC SERVICE WORKS  
 Garden VILLAGE  
 COMMERCE PARK



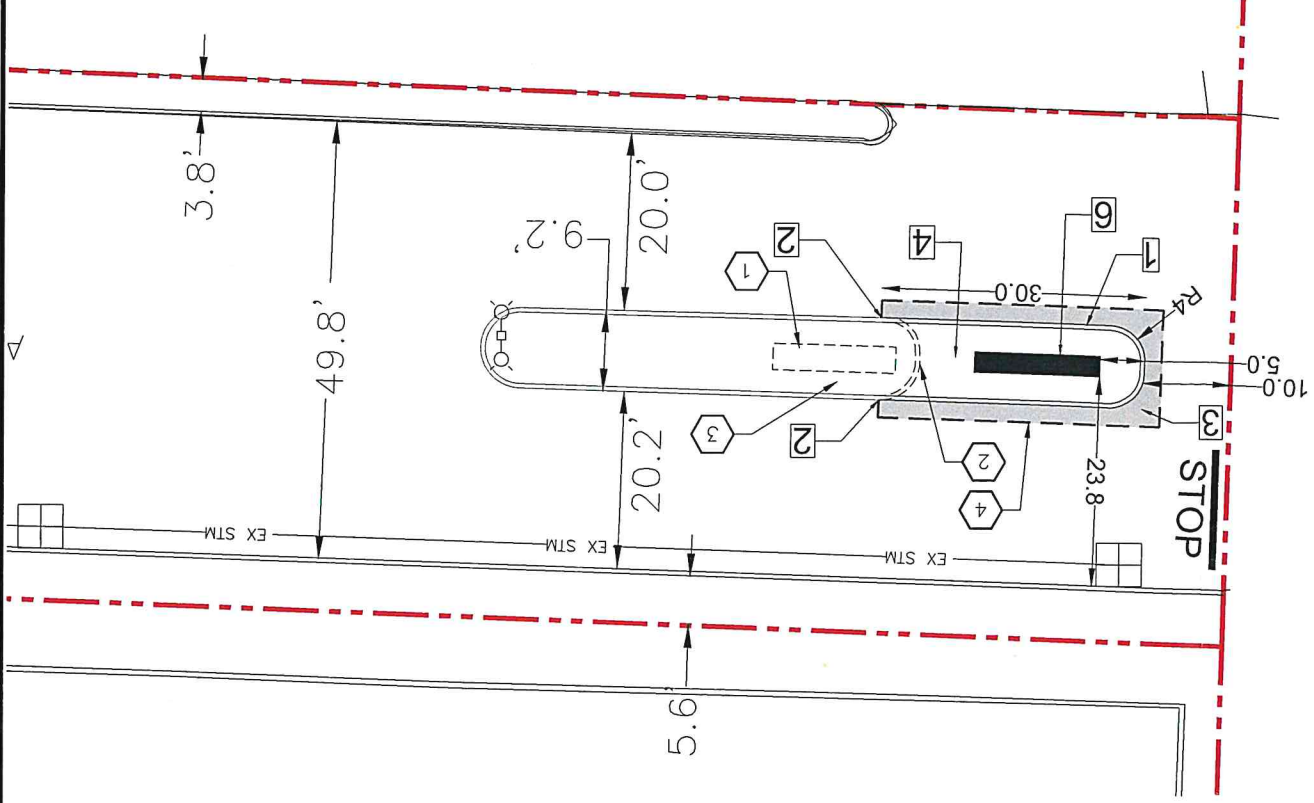


OVERALL SITE PLAN



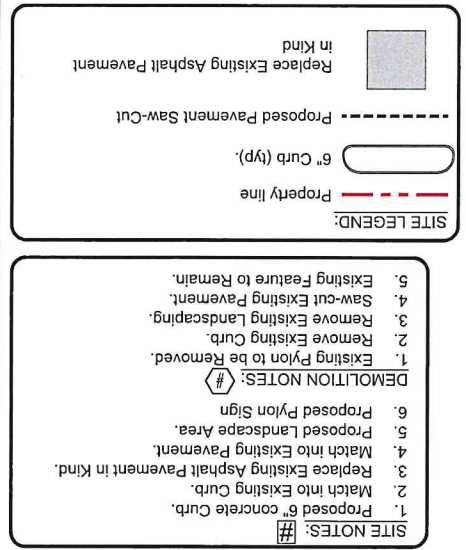
TYPE "A" CONCRETE CURB

UNION ROAD



DETAILED SITE PLAN

- GENERAL NOTES:**
1. INSTALL ALL MATERIALS TO MANUFACTURER'S RECOMMENDATIONS AND BEST STANDARDS OF TRADE INVOLVED.
  2. SUBSTITUTIONS SHALL BE MADE ONLY WITH OWNER'S APPROVAL AND BE OF EQUIVALENT QUALITY TO WHAT IS SPECIFIED.
  3. WORK SHALL BE COMPLETED IN STRICT ACCORDANCE WITH ALL LOCAL CODES AND OSHA SAFETY RULES AND REGULATIONS.
  4. CONTRACTOR SHALL VERIFY ALL EXISTING CONDITIONS AND DIMENSIONS AT THE SITE. NOTIFY OWNER & ENGINEER OF DISCREPANCIES IN CONDITIONS SHOWN ON DRAWINGS PRIOR TO PROCEEDING WITH THE WORK.
  5. CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTION OF ANY EXISTING STRUCTURES TO REMAIN AND ANY FINISH MATERIAL INSTALLED WHILE WORKING ON OTHER COMPONENTS.
  6. CONTRACTOR SHALL KEEP JOB FREE OF DEBRIS AND MAKE FINAL CLEANUP TO THE SATISFACTION OF OWNER.
  7. CONTRACTOR SHALL ASCERTAIN THE LOCATION OF ALL UTILITIES PRIOR TO CONSTRUCTION SO THAT THIS WORK WILL NOT DISTURB EXISTING LINES AND/OR INSTALLATIONS EXCEPT AS DETAILED ON THE PLANS. COORDINATE ALL WORK WITH THE APPLICABLE UTILITY COMPANIES.
  8. CONTRACTOR SHALL OBTAIN AND PAY FOR ALL REQUIRED PERMITS NECESSARY TO PERFORM THE WORK.
  9. BUILDING DIMENSIONS ARE APPROXIMATE. REFER TO ARCHITECTURAL DRAWINGS FOR LAYOUT DIMENSIONS.
  10. SIDEWALK DIMENSIONS ARE APPROXIMATE. REFER TO ARCHITECTURAL DRAWINGS FOR THE SIDEWALK PLAN.
  11. CONCRETE SIDEWALK SEALERS: (REFER TO ARCHITECTURAL PLANS FOR LOCATION OF CONCRETE TYPES)
  - 11.1. GREY CONCRETE SIDEWALKS SHALL HAVE CHEMMASTERS - SILENCURE WITHIN 2HRS AFTER FINAL FINISHING OF CONCRETE AND ALL BLEED WATER HAS DISSIPATED.
  - 11.2. EXPOSED AGGREGATE/TAMPED CONCRETE SIDEWALKS SHALL HAVE ONE (1) COAT CHEMMASTERS - SILENCURE AS SOON AS CONCRETE HAS DRIED AFTER PRESSURE WASHING THE RELEASE AGENT OFF. APPLX 30 DAYS AFTER THIS (IF WEATHER PERMITS) APPLY ONE (1) COAT OF CHEMMASTERS - POLYSEAL EX.
  12. LIGHTING FIXTURE ARROW SYMBOLS REFER TO THE DIRECTION THAT THE FIXTURES ARE REQUIRED TO FACE. SPECIFIC MOUNT BRACKETS WILL BE REQUIRED DEPENDING ON ORIENTATION AND FIXTURE COUNT.
  13. CURB ISLAND DIMENSIONS ARE FROM INSIDE OF CURB TO INSIDE OF CURB.



**PROPOSED SIGNAGE**

GARDEN VILLAGE  
COMMERCE PARK  
101-105 FRENCH ROAD  
CHEEKTOWAGA, NY 14227

CONSULTANT

**JAMES ALLEN RUMSEY ARCHITECT**  
DEVELOPMENT

570 DELAWARE AVE., BUFFALO, NY 14202  
(716) 886-0211

SEAL

**SK-1**

SITE PLAN

SCALE: 1" = 10'

DRAWN BY: DMZ  
CHECKED BY: MAO  
DATE: 2.16.24

**DRAWING REVISIONS:**

No.	DATE	BY	REMARKS

**SPECIAL INFORMATION:**

ALL CONTRACTORS SHALL GUARANTEE THEIR WORK FOR A PERIOD OF ONE YEAR FROM THE DATE OF OWNER'S ACCEPTANCE.

**NOTICE:**

UNAUTHORIZED ALTERATIONS OF THIS DOCUMENT ARE IN VIOLATION OF SECTION #209 OF THE STATE EDUCATION LAW.

**811** Know what's below. Call before you dig.

PROPERTY NUMBER: #4049  
AREA: AVA

# BENDERSON DEVELOPMENT

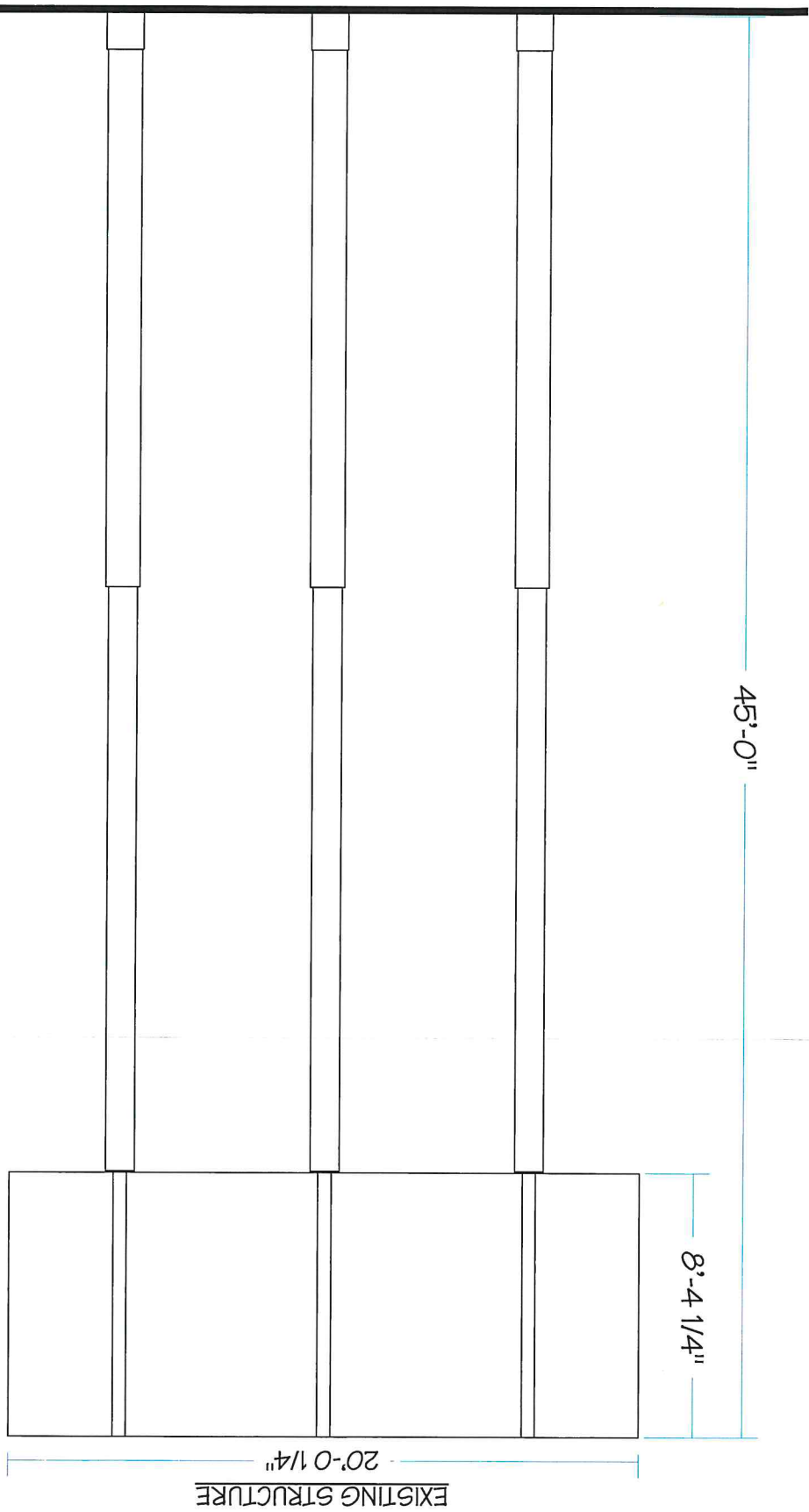
PROPERTY GARDEN VILLAGE

CHEEKTOWAGA/WEST SENECA, NY

PROP.# 4048

DRWG.# 4048 REMOVAL OF EXISTING

BY: C. KOZEK DATE: 01.29.24 REVISION



UNION RD. ENTRANCE  
REMOVE EXISTING STRUCTURE.  
CUT TO GRADE.