

APPLICATION TO BOARD OF APPEALS

Tel. No. _____

Appeal No. 2024-036
Date 6/20/24

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

I (we) Embury Holdings, LLC of 63 Tanglewood Dr. W
Orchard Park, NY 14127

, 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: _____

- | | |
|------------------------------------------------------------------|-------------------------------------------------------------|
| <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 287 Center Road

3. State in general the exact nature of the permission required, Parking and setback variances from Code Sections 120-41(D)(1), 120-44(B)(1)(b), 120-31 and 120-67(B)(2) as set forth more fully in attached letter of intent.

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: _____

See letter of intent

B. Interpretation of the Zoning Ordinance is requested because: N/A

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: N/A

[Signature]
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 R125A

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 [Signature]



Phillips Lytle LLP

June 18, 2024

Via E-Mail and Hand Delivery

Town of West Seneca
Zoning Board of Appeals
Chair Evelyn Hicks
1250 Union Road
West Seneca, NY 14224
c/o Kate Newton, Secretary

Town of West Seneca
Planning Board
Chair Margaret Bekak
1250 Union Road
West Seneca, NY 14224
c/o Kate Newton, Secretary

Re: Embury Family Dentistry Application to the ZBA for Area Variances at
287 Center Road

Dear Chairs Hicks and Bekak, and Members of the Zoning Board of Appeals and Planning Board:

We represent Embury Family Dentistry together with Embury Holdings LLC, (“Embury” or “Applicant”) with respect to the proposed expansion of the existing Embury Family Dentistry office (“Project”) located at 287 Center Road (“Site”) in the Town of West Seneca (“Town”). Embury Family Dentistry is a general dentistry practice owned and operated by Drs. Carl and Caitlin Embury (DDS) who propose the Project to facilitate the organic growth of the long standing dental practice on Site. The Project involves the demolition of a dated garage structure, the construction of a 1,410 sq. ft. addition to the existing building, and a limited footprint for parking spaces in the Site’s front yard, all as set forth more fully below.

On behalf of Embury, we submit this letter of intent and application with supporting documentation (collectively, the “Application”) to request that the Zoning Board of Appeals (“ZBA”) issue a Parking Reduction Variance, Front Yard Parking Variance, Parking Setback Variances, and Parking Frontage Variance (the “Requested Variances” as defined more particularly below). Further, the Project will ultimately require site plan approval from the Town Planning Board pursuant to the Town Code Section 102-2, and therefore we also respectfully submit a request to the Planning Board for a sketch

ATTORNEYS AT LAW

KIMBERLY R. NASON PARTNER DIRECT 716 504 5784 KNASON@PHILLIPSLYTLE.COM



plan review to outline the Project for an informal review and comment by the Planning Board as recommended by Code Section 102-8.

Enclosed please find checks in the amount of \$160 for the ZBA's review fee for the Requested Variances, and \$600 for the Planning Board's sketch plan review fee, together with 12 copies of this Application. The following exhibits are attached hereto and made a part of the Application:

- Exhibit A:** Area Variance Application Form with Authorization
- Exhibit B:** Sketch Plan Application Form
- Exhibit C:** Short Environmental Assessment Form
- Exhibit D:** Sketch Plan & Survey
- Exhibit E:** Site Plan with Setbacks for Area Variance Analysis
- Exhibit F:** Area Variance Standards & Analysis
- Exhibit G:** Photographs of Surrounding Area

PROJECT DETAILS

Applicant: Embury Holdings LLC

Attorney Contact: Phillips Lytle LLP
Attn: Kimberly Nason, Esq.
One Canalside
125 Main Street
Buffalo, New York 14203
(718) 504-5784
knason@phillipslytle.com

Project Location: 287 Center Road
West Seneca, New York 14224

Parcel ID: 134.14-3-19.1



Zoning District: R-65A Residence District

SITE & APPLICANT BACKGROUND

The Site at 287 Center Road is located in the Town's R-65A Residence District, and has been home to a dental practice for more than forty years. The surrounding area includes residences, but has a distinct commercial character. Directly opposite the Site on Center Road is the Wimbeldon Plaza with a variety of commercial and retail uses and a large parking area for 100+ vehicles. To the east along Center Road, there are several institutional uses, including places of worship and West Seneca West Middle School, and to the west on Center Road there are multifamily residences, vacant land, railroad tracks and commercial uses. See **Exhibit G** for photographs to depict the character of the area around the Site.

From 1984 until 2021 Dr. Warren Krutchick ran a successful dental practice on Site pursuant to a Use Variance issued by the Town in 1983, as modified in 2006 (the "Use Variance"). The Town first issued the Use Variance for the Site in 1983 to allow Dr. Krutchick to develop his practice there and permitted the dental practice in the R-65A District, together with 900 sq. ft. of habitable living space on the second floor of the building. In 2006 the Use Variance was modified to relieve the requirement for habitable living space on Site, but otherwise continued to authorize use of the Site as a dental practice.¹

In approximately 2021 as he prepared to transition out of his practice at the Site, Dr. Krutchick personally approached the Applicants to offer the opportunity for the

¹ Accordingly, Embury continues to operate its practice on Site pursuant to the Use Variance and the Project is an authorized use on Site. We note the ZBA's discussion on the 2006 modification at the September 27, 2006 meeting expressly noted that a future owner of the Site would be required to return to the ZBA where the new owner proposed a new or different use other than dentistry. It is well established that a use for which a use variance has been granted is a conforming use and no further use variance or amendment is required for expansion of the use. See *Scarsdale Shopping Ctr. Assocs., LLC v. Bd. of Appeals on Zoning for City of New Rochelle*, 882 N.Y.S.2d 308, 310 (2d Dep't 2009). Unlike a nonconforming use, the expansion of a use pursuant to an existing use variance is only limited by the terms of the use variance. *Id.* Beyond the terms of the variance, expansion of the use cannot be prohibited. *DelVecchio v. Collins*, 116 N.Y.S.3d 414, 418 (3d Dep't 2019); *Angel Plants, Inc. v. Schoenfeld*, 546 N.Y.S.2d 112, 113 (2d Dep't 1989).



Applicants to acquire the Site and develop their own practice there. In May 2021, the Applicants acquired the Site to continue Dr. Krutchick's legacy of providing quality dental care on Center Street in the Town.

The Applicants have been exemplary neighbors since they acquired the Site and have developed a low volume, private-pay practice that fits in with the neighborhood and surrounding uses. Embury Family Dentistry currently has a second location in the Town at 664 Center Road but now proposes the Project to allow the Embury's to consolidate both practices under one roof at the Site.

PROJECT DESCRIPTION

The Project proposes the limited expansion of the Embury's existing practice at the Site from five existing examination rooms to ten total examination rooms (up to two examination rooms will initially remain unequipped). To accommodate the extra exam rooms, the Project proposes a 1,410 square foot addition at the rear of the existing 1,889 square foot office building, demolition of a dated garage structure, and the addition of 10 off street parking spaces in the front yard to accommodate additional patients. See Exhibits D & E. Once the Project is completed, Embury anticipates employing up to 10 professionals (including the owners) with the capacity to treat between 5 to 7 patients per hour.

On May 14, 2024, Embury met with the Town Supervisor, Attorney, and Code Enforcement Officer to preliminarily discuss the Project and particularly the quantity and orientation of parking options available to service the Site. Multiple options were discussed with the Town for input and consideration. One such option was the addition of a more limited number of parking spaces in the rear yard, and another considered a potential rezoning of the Site to a commercial designation that might facilitate the Project as proposed, but without the necessity of the Requested Variances regarding parking. Upon careful consideration of the Town's suggestions and input regarding the number of parking spaces needed, and the intent to limit the commercial use at the Site to a dental office, the Applicants have elected to pursue the Requested Variances described below to facilitate the Project, instead of an alternate parking arrangement or a rezoning of the Site to a commercial designation.



SKETCH PLAN REVIEW REQUEST

In light of the foregoing and pursuant to Code Section 102-8, we respectfully request the Planning Board commence a review of the Project's sketch plan. Attached hereto as **Exhibit B** please find a Site Plan Application Form, and attached as **Exhibit D** please find a Sketch Plan and Site Survey for the Planning Board's review. The Applicants request the Planning Board's comments on the Project at this preliminary phase of development so that the Applicants can incorporate board feedback prior to finalizing a formal site plan submission in support of the Project.

REQUESTED VARIANCES

The Project's proposed parking areas would require several departures from the strict application of the Zoning Code. The Applicants prepared the attached **Exhibit E** which depicts the Project's proposed parking areas, including setbacks to each property line.

Pursuant to the Zoning Code § 120-41(D)(1), dental offices are required to have a minimum of three off-street parking spaces for each office and three off-street parking spaces for each treatment room. A strict application of the Code would require 36 off-street parking spaces (for 2 offices and 10 treatment rooms). Accordingly, the Project's proposed 26 parking spaces require a variance to permit a reduction of 10 parking spaces ("**Parking Reduction Variance**").

Pursuant to Code § 120-44(B)(1)(b), no open-off street parking spaces shall be permitted in a required front yard in any R district, and accordingly the Project requires a variance to permit 10 parking spaces as proposed in the Site's front yard ("**Front Yard Parking Variance**").²

Pursuant to Zoning Code § 120-31, the Site in the R-65A District requires a front yard setback of 40 ft., a rear yard setback of 30 ft., and side yards of 30 ft. The Project's proposed orientation of parking spaces on Site features a 20 ft. front yard setback (where 40 ft. is required); a 0 ft. west side yard setback and a 5 ft. east side yard setback

² We note that Code Section 120-67 sets the Code's standards for nonresidential parking design and expressly allows parking spaces in any front, side or rear yard.



(where 30 ft. is required), and a 0 ft. rear yard setback (where 30 ft. is required). Accordingly, the Project requires setback variances to relieve the strict application of applicable setback provisions at Code Section 120-31 (together the “**Parking Setback Variances**”).

Further, pursuant to Code § 120-67(B)(2), front yard parking shall not exceed 30% of the frontage of the lot on which it serves. Front yard parking as proposed by the Project would exceed the 30% threshold, and therefore the Project requires a variance from the strict application of Code § 120-67(B)(2) (the “**Parking Frontage Variance**”).

Collectively the Parking Reduction Variance, Front Yard Parking Variance, Parking Setback Variances, and Parking Frontage Variance (the “**Requested Variances**”) amount to a simple request to maintain existing setbacks of 0 ft. to parking areas along the rear and side lot lines, with the addition of front parking to facilitate the Embury Family Dentistry office’s low volume, long standing, family-oriented dental practice.

Pursuant to Code § 120-56(B), the ZBA is authorized to review and approve such area variances. The standards for granting area variances are well established. Pursuant to New York Town Law § 267-b(3)(b), the ZBA must engage in a balancing test, weighing the benefit to the applicant against the determinant to the health, safety and welfare of the community or neighborhood if the area variance is granted. Code § 120-56(B)(2) employs a substantially similar balancing test and provides certain relevant factors that the ZBA must consider when evaluating a request for an area variance. For the ZBA’s consideration, please see the attached **Exhibit F** for a full analysis of each of the relevant standards with Embury’s response thereto.

Considering each of the relevant factors in balance, we respectfully submit that approval of the Requested Variances is appropriate here.

STATE ENVIRONMENTAL QUALITY REVIEW ACT

Prior to taking action on an application, the New York State Environmental Quality Review Act (“**SEQRA**”) requires a governmental agency to undertake an environmental review of a project to assess whether the action has the potential to have a significant adverse impact on the environment. A Short Environmental Assessment Form (“**EAF**”)



is attached as **Exhibit C** to aid the ZBA in its evaluation of the Project. The expansion of a primary, nonresidential structure involving less than 4,000 square feet of gross floor area and not involving a change in zoning or use variance, is a Type II action not subject to further SEQR review; and similarly, the granting of individual setback and lot line variances are Type II Actions, which are not subject to SEQRA review. *See* 6 NYCRR §§ 617.5(c)(9), (16).

We respectfully submit that the Project is a Type II action because it proposes a limited expansion of a primary nonresidential structure and is well under the applicable thresholds. Further, the Requested Variances seek only certain dimensional relief to facilitate the continued use of the Site as a dental practice consistent with the Use Variance, and the Project does not, therefore, propose any rezoning or use variance. Accordingly, we respectfully submit that it is a Type II action, not subject to further SEQR review. In the alternative, should the Town find the Project requires further SEQR review, we note that the EAF indicates the Project is limited in scale and scope and does not have any potential for significant adverse impacts to the environment, and a negative declaration is warranted.

GENERAL MUNICIPAL LAW REFERRAL

To the extent this Application requires referral under GML 239-m to the Erie County Department of Environment and Planning, we ask that it be so referred.

CONCLUSION

On behalf of Embury, we look forward to engaging with the Planning Board for a sketch plan review and we respectfully request that the ZBA grant the Requested Variances to allow the continued use of the Site as a long-standing and essential dental resource in the Town. In the meantime, please do not hesitate to contact the undersigned to discuss the Project.



Town of West Seneca
Page 8

June 18, 2024

Very truly yours,

Phillips Lytle LLP

A handwritten signature in black ink, appearing to read 'Kimberly R. Nason'.

By

Kimberly R. Nason

KRN

Enclosures

cc: Brad Humberstone
Carl Embury

Doc #11968828

EXHIBIT A

APPLICATION TO BOARD OF APPEALS

718-504-5784

Tel. No. _____

Appeal No. _____

Date 6/20/24

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

I (we) Embury Holdings, LLC of 63 Tanglewood Dr. W

Orchard Park, NY 14127

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: _____

- A PERMIT FOR USE
- 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) _____

2. LOCATION OF THE PROPERTY 287 Center Road

3. State in general the exact nature of the permission required, Parking and setback variances from Code Sections 120-41(D)(1), 120-44(B)(1)(b), 120-31 and 120-67(B)(2) as set forth more fully in attached letter of intent.

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: _____

See letter of intent

B. Interpretation of the Zoning Ordinance is requested because: N/A

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: N/A

[Signature]
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 R-1.5A

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. _____

[Signature]
Building Inspector

Town of West Seneca
Zoning Board of Appeals
Chair Evelyn Hicks
1250 Union Road
West Seneca, NY 14224
c/o Kate Newton, Secretary

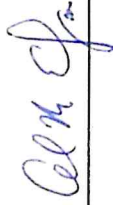
Town of West Seneca
Planning Board
Chair Margaret Bekak
1250 Union Road
West Seneca, NY 14224
c/o Kate Newton, Secretary

Re: Embury Family Dentistry Application to the ZBA for Area Variances and to the Planning Board for Sketch Plan Review of proposed expansion of existing dental office at 287 Center Road

Dear Chairs Hicks and Bekak, and Members of the Zoning Board of Appeals and Planning Board:

I, Carl Embury (DDS), as principal for Embury Holdings LLC and Embury Family Dentistry, authorize Brad Humberstone (AIA), BH Architecture, PLLC, and affiliates to make submissions and communicate with the Town on behalf of the Applicants regarding the above referenced Application.

Sincerely,



Carl M. Embury, DDS

Dated: June 18, 2024

EXHIBIT B

TOWN OF WEST SENECA

APPLICATION FOR SITE PLAN REVIEW APPROVAL

Sketch Plan Review

TO BE COMPLETED BY APPLICANT

DATE 6/18/2024

FILE #

PROJECT NAME Embury Family Dentistry Office Expansion Request for Sketch Plan Review

PROJECT LOCATION (Include address and distance to nearest intersection) 287 Center Rd, West Seneca, NY 14224
550 ft east of Lind Avenue

APPLICANT Embury Holdings, LLC by its agent Brad PH/FAX 585-703-0914
Humberstone, Ala
ADDRESS 1520 Whitney Road E, Fairport, NY 14450

PROPERTY OWNER Embury Holdings, LLC PH/FAX _____
ADDRESS 63 Tanglewood Dr W, Orchard Park, NY 14127

ENGINEER/ARCHITECT BH Architecture PH/FAX 585-703-0914
ADDRESS 1520 Whitney Road E, Fairport, NY 14450

SBL # 134.14-3-19

PROJECT DESCRIPTION (Include all uses and any required construction)

Owner is proposing to expand existing dental practice and increase existing building footprint by 1,400 sf. in addition to demolition of existing detached masonry garage. Operational expansion requires additional parking in the front yard and modified drainage to satisfy Town codes.

SIZE OF LOT (acres) 0.618 ACREAGE TO BE REZONED _____

ADJACENT ROAD NAMES AND AMOUNT OF FRONTAGE ON EACH Center Road: 100.5'

EXISTING ZONING R-65A PROPOSED ZONING R-65A

EXISTING USE(S) ON PROPERTY Dental practice

PROPOSED USE(S) ON PROPERTY Dental practice, no change in use

EXISTING USE(S) AND ZONING ON ALL PROPERTY WITHIN 500 FEET

R-50, R-60, R-65, R-65A, C-1, C-2, M-1, M-2

PUBLIC SEWER YES NO PUBLIC WATER YES NO

VARIANCES AND OTHER APPROVALS OR PERMITS REQUIRED

Area variances to allow front yard parking, reduced setbacks
to parking all as set forth here fully in attached letter of

APPLICATIONS WILL NOT BE ACCEPTED WITHOUT COMPLETION OF ALL REQUIREMENTS LISTED HEREIN

TO BE COMPLETED BY THE TOWN OF WEST SENECA

DATE RECEIVED _____ BY _____

PLANNING BOARD MEETING DATE _____

TOWN BOARD MEETING DATE _____

TOWN BOARD RESOLUTION DATE _____

NON - REFUNDABLE FILING FEE (Payable to the Town Clerk): \$ _____

TOWN OF WEST SENECA

APPLICANT CHECKLIST FOR SITE PLAN REVIEW

PLEASE REFER TO APPENDICES A, B, & C AND THE TOWN OF WEST SENECA ZONING ORDINANCE FOR ADDITIONAL DESIGN INFORMATION. THE APPLICANT/ AGENT MUST INITIAL EACH ELEMENT AS PROOF THAT ALL REQUIREMENTS HAVE BEEN MET.

I. SITE PLAN All site plan drawings shall be prepared, signed, and sealed by an architect, landscape architect, engineer, or surveyor licensed in the State of New York, drawn to scale, and must include the following elements (also see checklist in Appendix A) :

- _____ Title of drawing.
- _____ Name, address, and telephone number of applicant, owner of record, and person who prepared the drawing. If owner of record is different from applicant, a letter of authorization from the owner or a contract of sale is required.
- _____ North arrow, scale, revisions block and date.
- _____ Site location map.
- _____ Name, location, width, and jurisdiction of existing roads and sidewalks.
- _____ Location of curb cuts on project site and on adjacent properties (including properties across the street).
- _____ Location of all existing and proposed buildings and structures, paving, curbs, and pedestrian and bicycle facilities with those to be removed clearly identified.
- _____ Show all zoning district boundaries, zoning classifications for all adjacent properties (including across the street), and zoning setback dimensions. If a portion of the site is proposed to be rezoned, the new zoning district boundaries should be shown.
- _____ Zoning data block comparing existing and proposed requirements, including greenspace and parking calculations.
- _____ Location of any areas proposed for outdoor display and sale of merchandise, if applicable.
- _____ Layout of all off-street parking areas showing access drives, aisles, parking spaces, handicapped accessible spaces, and loading areas (conforming to all requirements of the Town of West Seneca Zoning Ordinance). A cross-section of proposed pavement must be provided.
- _____ Existing and proposed rights-of-way and easements and location of areas to be in common ownership or to be offered for dedication.
- _____ Existing and proposed watercourses including wetlands, floodways, and floodplains (this information should also appear in the drainage plan and grading plan).
- _____ Location of all proposed signage (conforming to all requirements of the Town of West Seneca Zoning Ordinance).
- _____ Any other information as might be required by the Planning Board.

II. BOUNDARY SURVEY

_____ A topographic boundary survey and a written legal description. (metes and bounds)
Provide in Electronic Form as well as written

III. UTILITY PLAN – to include the following elements (also see checklist in Appendix A)

_____ Location of existing water mains, showing main size and material type, on-site and off-site fire hydrant locations, and on-site main line valve locations.

_____ Location of proposed water service showing material type and diameter of water main.

_____ Location of existing and proposed gas and electric service.

_____ Sanitary service showing location, proposed line, and existing main size. Include all manhole rim and invert elevations, pipe slope, and construction materials, if appropriate

_____ The estimated daily sanitary sewage flow calculations must be included in the site plan Engineering Report.

_____ Written confirmation that the process has been initiated with County or State Highway Departments for sanitary sewer connection, curb cuts, work permits, etc. (Applicant must furnish a letter from the appropriate County or State agency indicating their approval of the proposal prior to issuance of a Building Permit)(if necessary).

IV. GRADING PLAN – To include the following elements (also see checklist in Appendix A).

_____ Existing and proposed grade elevation with contour lines at 1-foot intervals.

_____ Finished floor elevations for all proposed and adjacent structures.

V. DRAINAGE PLAN – to include the following elements (also see checklist in Appendix A):

_____ All catch basins, line size, and proposed construction materials. No stormwater shall drain onto adjoining properties. All downspouts shall be connected to the stormwater collection system.

_____ Systems shall be designed for a minimum 10-year storm.

_____ Stormwater calculations, prepared by a person licensed to design a storm drainage system in New York State.

_____ Site plan Engineering Report (refer to requirements in Appendices A & B).

_____ Any proposed project that will involve one or more acres of soil disturbance is required to comply with NYSDEC SPDES General Permit requirements for stormwater discharges. A copy of the Notice of Intent (NOI) and Stormwater Pollution Prevention Plan (WPPP) must be provided with the site plan Engineering Report..

VI. LANDSCAPING PLAN – to include the following elements (also see Appendix C).

- _____ All existing and proposed tree lines.
- _____ All proposed trees, shrubs, and other plantings with appropriate labeling.
- _____ Planting schedule data block with legend key, species name (botanical and common names), quantity, size, and spacing.
- _____ Planting details for trees and evergreens must illustrate the crown of root ball at six (6) inches above finished grade; three (3) inches for shrubs.
- _____ Refer to the Town of West Seneca Zoning Ordinance for applicable landscaping and screening requirements.

VII. CLEARING 7 SOIL EROSION CONTROL PLAN - to include the following elements:

- _____ Site preparation and clearing shall be designed to fit with the vegetation, topography, and other natural features of the site and shall preserve as many of these features of the sight and shall preserve as many of these features as possible.
- _____ Show clearing limits, stock pile area, and all temporary and permanent drainage facilities. Erosion and sediment control facilities must be shown.
- _____ A time schedule that is keyed to the operation must be provided.
- _____ Include a note on the plan to indicate that stumps and brush may not be buried in the Town and that topsoil may not be removed from the work site without a permit.

VII. LIGHTING PLAN – to include the following elements:

- _____ Location of all lighting fixtures and standards on the property and structures, including a fixture schedule.
- _____ Photometric data for site illumination.

IX. BUILDING HEIGHT AND DESIGN

- _____ Building elevations and floor plans of all non – residential structures and all residential structures containing three (3) or more dwelling units (including net floor area calculations).

I, Carl M. Embury, DDS Carl M. Embury as owner/applicant of Embury Holdings LLC, located at 63 Tanglewood Dr. Orchard Park, NY of West Seneca, NY, to the best of my knowledge has submitted a complete application package for a site plan for review. n.b. I respectfully submit this request for Sketch Plan Review

EXHIBIT C

Short Environmental Assessment Form

Part 1 - Project Information

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.

Part 1 – Project and Sponsor Information			
Name of Action or Project: Embury Family Dentistry Office Expansion			
Project Location (describe, and attach a location map): 287 Center Rd, West Seneca, NY 14224			
Brief Description of Proposed Action: Property owner is proposing to expand existing dental practice and increase existing building footprint by 1,400 sf. in addition to demolition of existing detached masonry garage. Operational expansion requires additional parking in the front yard and modified drainage to satisfy Town codes.			
Name of Applicant or Sponsor: Embury Holdings, LLC through its agent BH Architecture, PLLC		Telephone: 585-703-0914	
Address: 1520 Whitney Road E		E-Mail: bradhumberstonresearch@gmail.com	
City/PO: Fairport	State: NY	Zip Code: 14450	
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"/>	NO <input checked="" type="checkbox"/> YES <input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval: Zoning Board of Appeals-area variance & Planning Board-site plan review		NO <input type="checkbox"/> YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/> YES <input checked="" type="checkbox"/>
3. a. Total acreage of the site of the proposed action? b. Total acreage to be physically disturbed? c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		_____ 0.618 acres _____ 0.130 acres _____ 0.618 acres	
4. Check all land uses that occur on, are adjoining or near the proposed action:			
5. <input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input checked="" 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			

	NO	YES	N/A
5. Is the proposed action,			
a. A permitted use under the zoning regulations?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Consistent with the adopted comprehensive plan?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?		NO	YES
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
If Yes, identify: _____		<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. a. Will the proposed action result in a substantial increase in traffic above present levels?		NO	YES
b. Are public transportation services available at or near the site of the proposed action?		<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. Does the proposed action meet or exceed the state energy code requirements?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
If the proposed action will exceed requirements, describe design features and technologies: _____ _____		NO	YES
10. Will the proposed action connect to an existing public/private water supply?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
If No, describe method for providing potable water: _____		NO	YES
11. Will the proposed action connect to existing wastewater utilities?		NO	YES
If No, describe method for providing wastewater treatment: _____		<input type="checkbox"/>	<input checked="" type="checkbox"/>
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places?		NO	YES
b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?		<input checked="" type="checkbox"/>	<input type="checkbox"/>
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?		NO	YES
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody?		<input checked="" type="checkbox"/>	<input type="checkbox"/>
If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____		<input checked="" type="checkbox"/>	<input type="checkbox"/>
_____ _____			

EAF Mapper Summary Report

Tuesday, June 11, 2024 9:45 PM

Disclaimer: The EAF Mapper is a screening tool intended to assist project sponsors and reviewing agencies in preparing an environmental assessment form (EAF). Not all questions asked in the EAF are answered by the EAF Mapper. Additional information on any EAF question can be obtained by consulting the EAF Workbooks. Although the EAF Mapper provides the most up-to-date digital data available to DEC, you may also need to contact local or other data sources in order to obtain data not provided by the Mapper. Digital data is not a substitute for agency determinations.

Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri Thailand, NCCO, IGN, OpenStreetMap contributors, and the GIS User Community, Esri, HERE, Garmin, ~~NAVTEQ~~, ~~NPS~~, ~~PBS~~, ~~urhuru~~

Part 1 / Question 7 [Critical Environmental Area]	No
Part 1 / Question 12a [National or State Register of Historic Places or State Eligible Sites]	No
Part 1 / Question 12b [Archeological Sites]	Yes
Part 1 / Question 13a [Wetlands or Other Regulated Waterbodies]	No
Part 1 / Question 15 [Threatened or Endangered Animal]	No
Part 1 / Question 16 [100 Year Flood Plain]	No
Part 1 / Question 20 [Remediation Site]	No

EXHIBIT D

EMBURY EXPANSION

287 CF

ISSUED F224

CONTACTS:

J.C.
AIA

E. FAIRFORD, NEW YORK 14450
EJFH@GMAIL.COM

J.C.

VEVA, ORCHARD PARK, NEW YORK 14127

LOCATION
SURVEY (TRUE NORTH, PLLC)
SOLUTION & PROPOSED



1520 Millbrook Road, Suite
Fairport, NY 14450
EmburyArchitecture@gmail.com

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PROJECT TITLE:
EMBURY FAMILY DENTISTRY EXPANSION

287 Center Road, West Seneca, NY 14224

DRAWING TITLE:
PROJECT INFORMATION

REVISIONS:

DATE:
6/19/2024

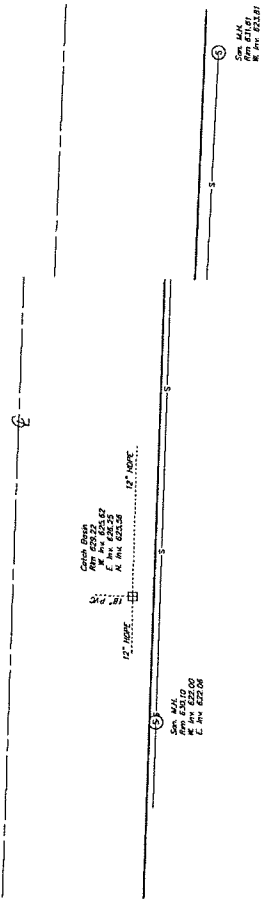
DRAWN BY:
BMH

SCALE:
AS NOTED

PROJECT:

SHEET:

G001



LEGEND

- | | | | |
|---|----------------------------|-------|----------------|
| Ø | UTILITY / SERVICE POLE | R.O.W | RIGHT OF WAY |
| — | WATER LINE VALVE | CONC. | CONCRETE |
| — | FIRE HYDRANT | M.W. | MANHOLE |
| — | D.I. (DROPP INLET - STORM) | — | GAS LINE |
| — | MANHOLE (STORM) | — | WATER LINE |
| — | MANHOLE (ELECTRIC) | — | TELEPHONE LINE |
| — | MANHOLE (TRAFFIC) | — | ELECTRIC LINE |
| — | MANHOLE (SANITARY) | — | UTILITY LINES |
| — | MANHOLE MARKER | — | CABLE LINES |
| — | GAS LINE VALVE | D. | DEED |
| — | LIGHT STANDARD | M. | MEASURED |
| — | SIGN | L. | LUBER |
| — | H.C. HANDICAP | P. | PAGE |

ELEVATION DATUM
 ELEVATIONS ON THIS MAP WERE DETERMINED UTILIZING GPS DATUM:
 NAD83 (2011) EPOCH 2010.0 DATUM
 STONEY 5960 CRS UNIT (CONUS 12B CEED)
 NAVD83 VERTICAL DATUM

UTILITIES

The underground utilities shown have been located from field survey information. It is the responsibility of the owner to verify the location and depth of all underground utilities shown on this map. The surveyor makes no guarantee that the underground utilities shown accurately represent all underground utilities. The surveyor further does not warrant that the underground utilities shown are in the exact location indicated although he does certify that they are located at approximately the indicated line information available. This surveyor has not physically located the underground utilities.

Note: Underground Utility information has been ordered from the respective utility companies. As the information is received, this map will be amended to reflect said information.

- | | |
|--------------------------|--------------------|
| Atkins Fuel | True Meter Cable |
| Attn: Chris Smith | Attn: Mark Dornan |
| (716) 851-8897 | (716) 810-8858 |
| Eric O'Leary Meter Dept. | Atkins Meter & Gas |
| Attn: Steve Dinger | Attn: Steve Cook |
| (716) 685-6999 | (716) 631-5338 |

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DATE: 12/15/2024
 BY: *Matthew J. Dornan*
 PROJECT NO: 202401

TRUE NORTH
LAND SURVEYING, PLLC
 150 AERO DRIVE
 BUFFALO, NEW YORK 14225
 (716) 831-5140 • truenorthsurvey.com

AMEND:
 SURVEY DATE: 3-22-24
 DRAWING DATE: 3-25-24
 SCALE: 1" = 20'
 ALL RIGHTS RESERVED

OF LOT 123 SECTION TOWNSHIP RANGE OF THE:
 Ebenezer Langes SURVEY - Erie COUNTY, N.Y.
 EX OF 287 Center Road, Town of West Seneca

THIS MAP WAS PREPARED IN ACCORDANCE WITH THE PROVISIONS OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK. THE SURVEYOR'S LIABILITY IS LIMITED TO THE ACCURACY OF THE DATA PROVIDED TO HIM BY THE CLIENT.

THIS MAP WAS PREPARED IN ACCORDANCE WITH THE PROVISIONS OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK. THE SURVEYOR'S LIABILITY IS LIMITED TO THE ACCURACY OF THE DATA PROVIDED TO HIM BY THE CLIENT.

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1920 Phillips Road East
 Suite 1050
 245 7th St. N
 Grand Rapids, MI 49503
 Brad@jhanarch.com

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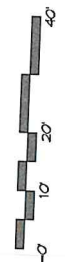


DRAWING TITLE: **SITE PLAN - DEMOLITION & PROPOSED**
 PROJECT TITLE: **EMBURY FAMILY DENTISTRY EXPANSION**
 287 Center Road, West Seneca, NY 14224

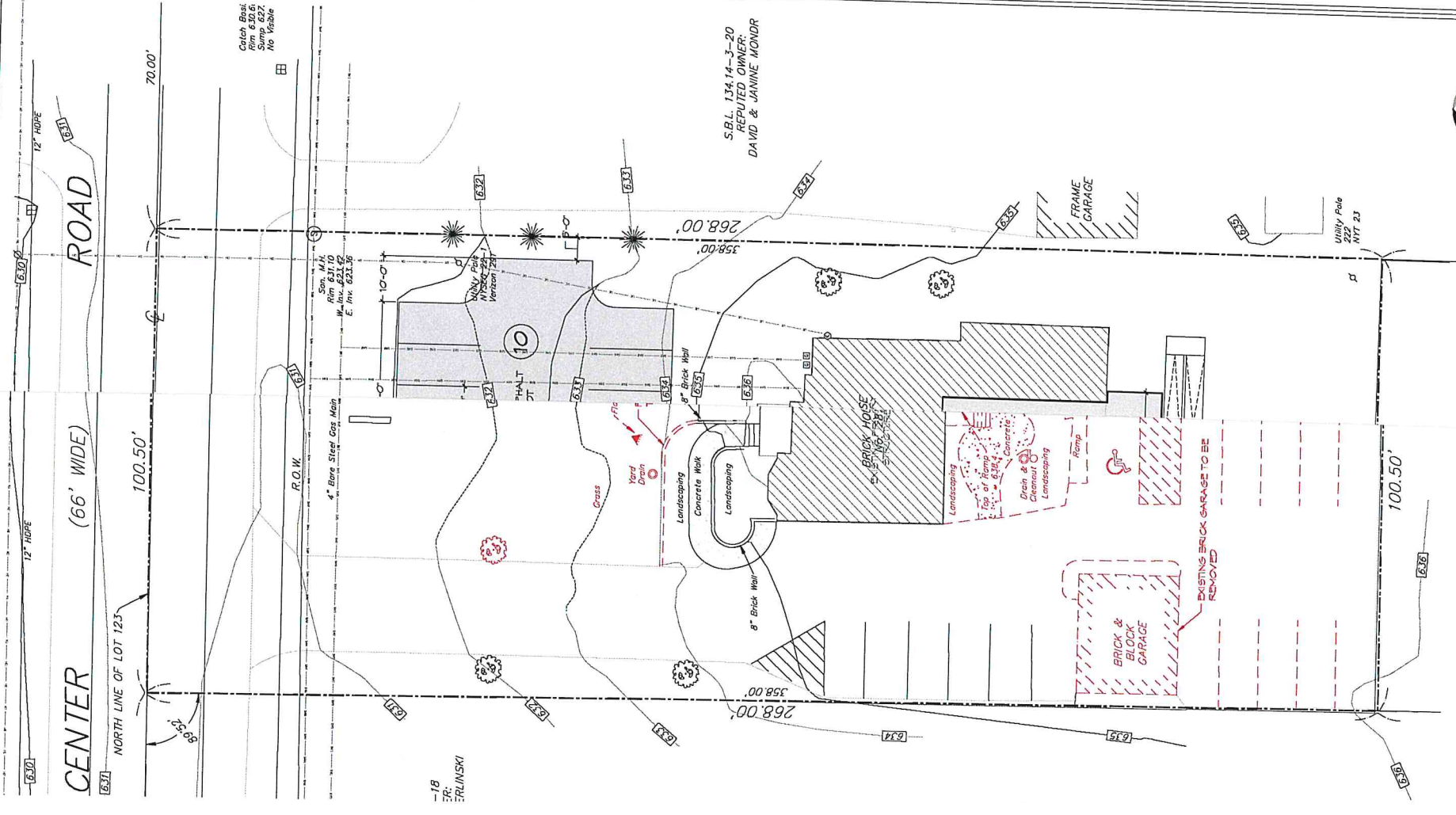
REVISIONS:

DATE: 6/19/2024
 DRAWN BY: BMH
 SCALE: AS NOTED
 PROJECT: AS NOTED

SHEET: **C101**



1 DEMOLITION SITE PLAN
 C101 SCALE: 1/8" = 1'-0"



-18
 ER: ERLINSKI

EXHIBIT E



1520 Penning Road East
 1485 700th Ave
 Branford, ME 04811
 Email: stb@stbarchitect.com

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DRAWING TITLE: SITE PLAN FOR ZONING BOARD OF APPEALS
 PROJECT TITLE: EMBURY FAMILY DENTISTRY EXPANSION
 287 Center Road, West Seneca, NY 14224

REVISIONS:

DATE: 6/19/2024
 DRAWN BY: BMH

SCALE: AS NOTED
 PROJECT: PROJECT#

SHEET: C101



1 DEMOLITION SITE PLAN
 C101 SCALE: 1/16" = 1'-0"

12" HDPE

CENTER

Catch Basin
 Rim: 6.00' @ 1.5'
 700 Viable Pipes



SECTION

1"

8" Brick Well

BRICK &
 BLOCK
 GARAGE

EXHIBIT F

Exhibit F

Code Section 120-56(B)(2) Area Variance Standards & Analysis in Support of the Requested Variances

Pursuant to Code § 120-56(B), the ZBA is authorized to review and approve the Requested Variances. The standards for granting area variances are well established. Pursuant to New York Town Law § 267-b(3)(b), the ZBA must engage in a balancing test, weighing the benefit to the applicant against the determinant to the health, safety and welfare of the community or neighborhood if the area variance is granted. Code § 120-56(B)(2) employs a substantially similar balancing test and provides certain relevant factors that the ZBA must consider when evaluating a request for an area variance. For the ZBA's consideration, each of the relevant factors are listed below, along with Embury's response to same included in italics. Considering each of these factors in balance, we respectfully submit that approval of the Requested Variances is appropriate.

A. Substantial. How substantial the variation is in relation to the requirement.

APPLICANT'S RESPONSE: Embury respectfully submits that, in the context of the Site and surrounding neighborhood, the Requested Variances are not substantial. The Site's parking has historically extended all the way to the west side and rear lot lines, with no issues arising from this layout. The Parking Setback Variances for the newly proposed parking would match the existing setbacks. Moreover, parking at the these two lot lines is separated from the adjoining properties by a 6 foot high wooden privacy fence to mitigate any impacts from the existing setbacks and ensure that parking does not cross the property lines.

With respect to the Parking Reduction Variance, the required number of off-street parking spaces for the Project (based on the proposed ten examination rooms and two private offices) is 36, whereas the Site will ultimately have 26 parking spaces. Though this will provide for a 25 percent variance in the required amount of spaces, the amount required under the Code is both unfeasible and unnecessary for Embury's low volume practice with stable patient counts. The proposed design reflects the most practicable utilization of the Site to maximize parking. Specifically, upon completion of the Project, Embury anticipates seeing 5-7 patients per hour. With 10 employees, including Drs. Carl and Caitlin Embury, there will likely be 15-17 parking spaces used per hour. Embury's patients rarely overlap with one another and many procedures finish early. Given the Site layout and Embury's anticipated patient flow based on its existing practice, the Parking Reduction Variance is not substantial.

With respect to the Front Yard Parking Variance, the need for this variance was only arrived at after input from the Town, a close look at all the available options, and an ultimate determination the front yard parking could best accommodate patient flow. The front yard parking is not substantial in light of the large commercial parking lot directly across Center Road and the remaining setback from the street line.

With respect to the Parking Frontage Variance, the size of the front yard parking relative to the lot frontage is primarily due to the existing Site layout and the limited availability of additional parking. Within the context of the design of the Site and the surrounding properties, the Parking Frontage Variance is not substantial.

B. Governmental Facilities. The effect, if the variance is allowed, of the increased population density thus produced on available governmental facilities (fire, water, garbage and the like).

APPLICANT'S RESPONSE: *The granting of the Requested Variances – and the Project as a whole – will not result in an increase in population density, and will therefore have no effect on available governmental facilities.*

C. Character of Neighborhood. Whether a substantial change will be produced in the character of the neighborhood or a substantial detriment to adjoining properties created.

APPLICANT'S RESPONSE: *Embury respectfully submits that the Requested Variances, if granted, will not produce a substantial change in the character of the neighborhood or a substantial detriment to adjoining properties. Most notably, the immediate area is dominated by existing commercial and retail parking on the opposite side of Center Road such that the Front Yard Parking Variance would be similar to existing conditions, but on a dramatically smaller scale appropriate for the Site. The Parking Setback Variances for the newly proposed parking spaces simply mirror an existing zero foot setback on Site from existing parking to the rear and west side property lines. Accordingly, the Parking Setback Variances will not produce any change in the Site or the neighborhood at large. The remainder of the Requested Variances will achieve the optimal balance between accommodating the growth of Embury's practice, preserving the existing character of the neighborhood, and minimizing the Project's impact on adjoining properties.*

D. Other Means. Whether the difficulty can be obviated by some method, feasible for the applicant to pursue, other than a variance.

APPLICANT'S RESPONSE: *Embury's ability to expand and reconfigure its off-street parking is significantly constrained by the layout of the Site. Therefore, we respectfully submit that the difficulty cannot be obviated without the Requested Variances. Embury considered utilizing existing off street parking available across Center Road, but due to safety concerns for patients crossing traffic to reach the dental office, that option was not feasible. We note that a potential rezoning of the Site to a commercial zoning designation might theoretically achieve the same relief as the Requested Variances and permit the Project to proceed, but a rezoning would forever open the Site up to future commercial development in a manner that may be inconsistent with the Town's larger land use goals. Accordingly, the Applicants request the more limited and specific relief as set forth by the Requested Variances, which would authorize only minor dimensional departures from the Code to serve a single and already authorized use on Site.*

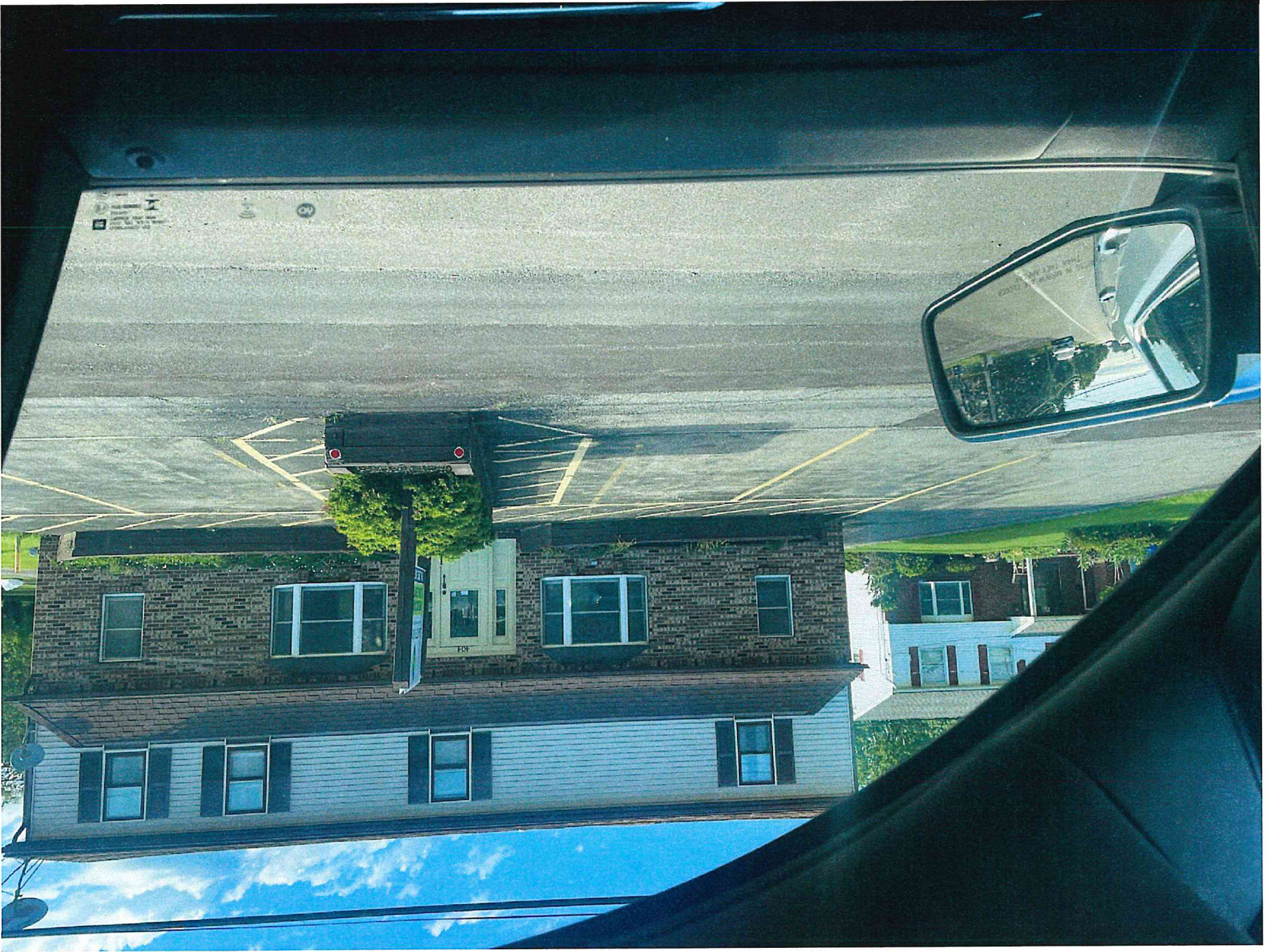
Accordingly, there are no other feasible methods, other than granting the Requested Variances, that would allow for the expansion of the Embury's practice.

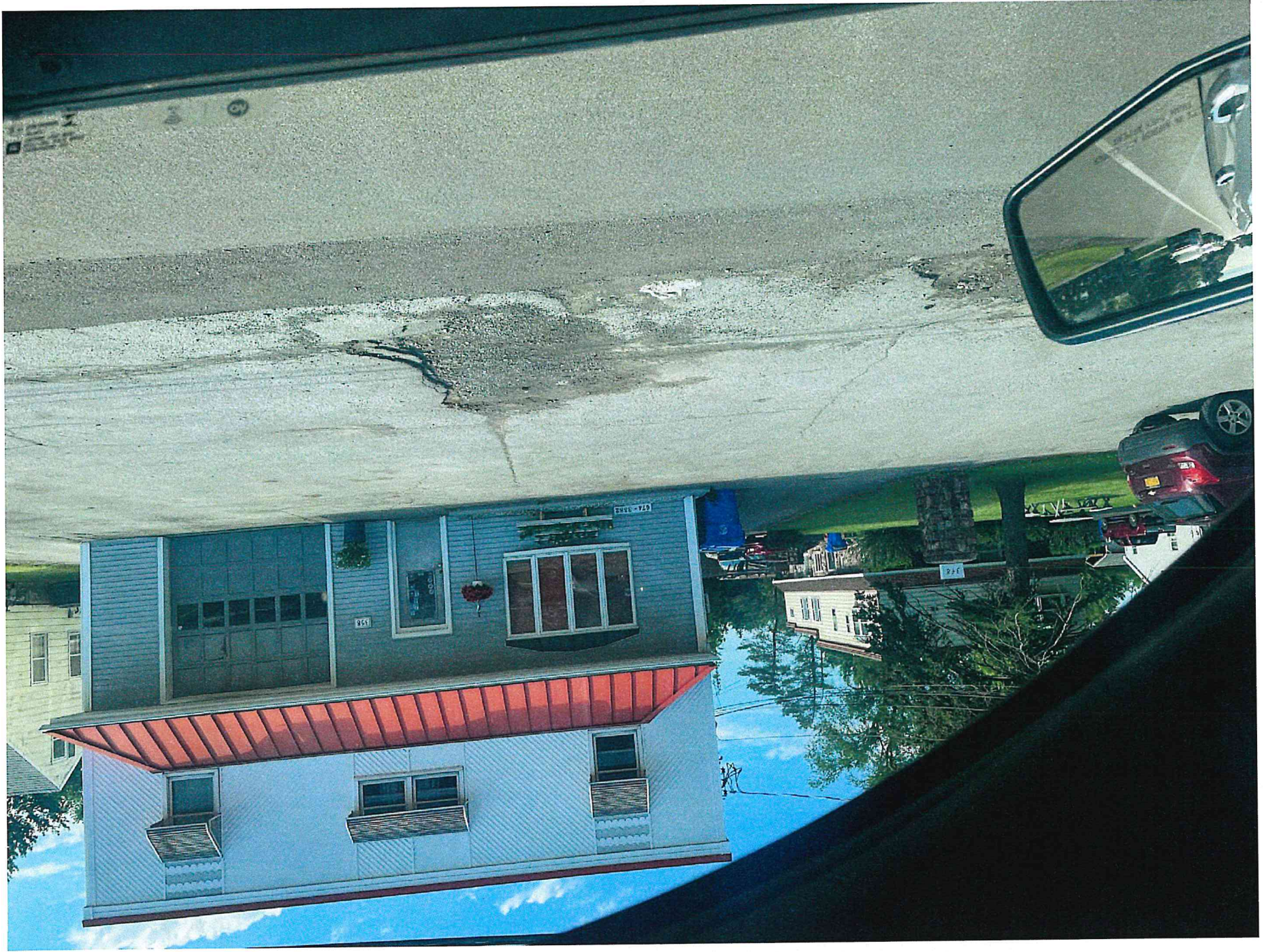
E. Interests of Justice. **Whether, in view of the manner in which the difficulty arose and considering all of the above factors, the interests of justice will be served by allowing the variance.**

APPLICANT'S RESPONSE: *Embury acknowledges there are challenges in conforming the Project's off-street parking needs to the Site layout and to the Code. However, it is well established that the fact that an applicant's difficulty was self-created does not necessarily preclude the granting of an area variance. See Sasso v. Osgood, 86 N.Y.2d 374, 385 (1995). The Requested Variances would permit the Project to go forward and the Site would remain in substantially the same form with only a limited expansion of the building footprint and the parking footprint in a manner that is tailored to the Site and consistent with the mixed-use character of the surrounding area. Embury respectfully submits that, given the benefits it expects from the Project, the long history of the Site's use as a dental office and a good neighbor, and the lack of any potential for a detriment to the neighborhood, issuance of the Requested Variances is appropriate.*

As detailed above, we respectfully submit that based on the relevant criteria analyzed herein, the benefit to Embury is clear and no corresponding detriments to the health, safety or welfare of the community would arise if the Requested Variances were granted, and as such, issuance of the Requested Variances is appropriate.

EXHIBIT A













***** RECEIPT *****

Date: 06/20/24 **Receipt#:** 87508

Quantity	Transactions	Reference	Subtotal
1	Zoning Board of Appeals	20156644	\$160.00
Total Paid:			\$160.00

Notes: 2024-036 / 287 Center Rd

Payment Type	Amount	Paid By
CK #179750	\$160.00	Embury Holdings, LLC

Thank you for allowing the Town Clerk's office to serve you. Have a wonderful day!

Name: Embury Holdings, LLC
63 Tanglewood Dr W
Orchard Park, NY 14127

Clerk ID: ELYSE

Internal ID: 20156644