

# APPLICATION TO BOARD OF APPEALS

Tel. No. 716-858-3801

Appeal No. 2018-62

Date \_\_\_\_\_

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

I (we) COREY AUERBACH of BARCOY DAMON LLP  
9276 MANST, CLARENCE, NY 14031, HEREBY APPEAL TO THE ZONING BOARD OF APPEALS FROM THE  
DECISION OF THE BUILDING INSPECTOR ON AN APPLICATION FOR A BUILDING PERMIT NO. \_\_\_\_\_,  
DATED \_\_\_\_\_, 20\_\_\_\_, WHEREBY THE BUILDING INSPECTOR DID DENY 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 type="checkbox"/> AREA PERMIT                        |

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

2. LOCATION OF THE PROPERTY 3400 TRANSIT RD, WEST SENECA, NY 14028 Clinton St.

3. State in general the exact nature of the permission required, Requesting less than 10' setback for parking lot. 4 Different locations (See Site Plan)

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: \_\_\_\_\_

T See Attachments

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: \_\_\_\_\_

Corey Auerbach  
Signature

### TO BE COMPLETED BY THE BUILDING INSPECTOR

- Provision(s) of the Zoning Ordinance Appealed, including article, section, subsection or paragraph of the Zoning Ordinance  
120 - 424 (B) (2) Off street parking to have required to have 10' to any street line or within any R district
- Zoning Classification of the property concerned in this appeal \_\_\_\_\_
- 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.
- A statement of any other facts or data which should be considered in this appeal. \_\_\_\_\_

Ray B...

BARCLAY DAMON<sup>LLP</sup>

Corey A. Auerbach  
Partner

October 9, 2018

**BY HAND DELIVERY**

Mr. Timothy Elling  
Chairman  
West Seneca Zoning Board of Appeals  
1250 Union Road  
West Seneca, NY 14224

Re: Royal Carwash  
3400 Transit Road/5028 Clinton Street

Dear Chairman Elling:

My office represents Daniele Family Companies in their application for site plan approval for the construction of an automated Royal Car Wash at the above location. As part of the Code Enforcement Officer's review, it was determined that a 10' setback was required from the off-street parking requirement of §120-44(B)(2), to wit "[n]o open or enclosed off-street parking space shall be permitted within 10 feet of any street line or within 10 feet of any R District boundary." As noted on the attached plan, the proposed 8 parking stalls are located on the south west side of the proposed building, more than 50 feet from the western property line.

It is my understanding, however, that the referenced provision has historically been made applicable to all parking lot/blacktop-paving disturbance, despite the fact that, by its terms, §120-44(B)(2) applies only to any "open or enclosed off-street *parking space*" (emphasis supplied). The term "*parking space*" is an expressly defined term in section 120-71(B), as follows: "[a]n off-street space used for the temporary location of one licensed motor vehicle, *not including access driveways* (emphasis supplied)."

Please allow this letter to serve as my client's appeal from the Code Enforcement Officer's determination that §120-44(B)(2) applies to all paved areas (as opposed to being limited, by its terms, to any "open or enclosed parking space.") In the alternative, please accept this letter and supporting application as our request for a variance from the 10 foot setback requirement. If you have any questions or if I can provide any additional information, please do not hesitate to contact me.

Mr. Timothy Elling  
October 9, 2018  
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Very truly yours,

A handwritten signature in black ink that reads "Corey Auerbach". The signature is written in a cursive, flowing style.

Corey A. Auerbach

CAA:ca

cc: Jeffrey Schieber, Building Inspector  
John Fenz, Town Attorney (via e-mail)

## Area Variance Analysis

The applicant Daniele Family Companies is proposing the construction of an automated Royal Car Wash at the corner of Transit Road and Clinton Street. To authorize the proposed parking area, a variance is requested from §120-44(B)(2), to wit “[n]o open or enclosed off-street parking space shall be permitted within 10 feet of any street line or within 10 feet of any R District boundary.” As depicted on the attached plan, the proposed setbacks are as 6.3’ to the north, 6.7’ to the south, 2.4’ to the east and 3.2’ to the west.

### Variance Standard

As the ZBA is aware, the standard for reviewing variance requests is set forth in New York State Town Law §267-b(3)(b). In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider:

**(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 area variance.**

Granting a variance to authorize the requested off-street parking setbacks will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Presently, the parking area for the existing restaurant is paved all the way to the property line on all sides. As proposed, existing impervious area will be replaced with a grass buffer to the north, south and west and the proposed access drive from Transit Road to the east will be buffered by additional right-of-way between the property line and the concrete sidewalk. The setback on the west side of 5028 Clinton will strictly comply with the 10’ setback requirement. Since the existing site is currently paved to the property boundary and the nearest residential structure is more than 100 yards to the west, no undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties by the granting of the requested variance.

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

There is no other method, feasible for the applicant to pursue, other than the requested variance. The proposed paved areas are needed to facilitate suitable site access and sufficient stacking spaces to meet minimum requirements. No alternative site design could accommodate the proposed use and strictly comply with the pavement setback.

**(3) whether the requested area variance is substantial.**

As this board is well aware, the law in New York is clear that a pure mathematical formula cannot be the basis of a determination of whether a variance should be considered substantial. The zoning board of appeals must consider the magnitude of the requested variance in light of its impact. 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. Here, there will be absolutely no harm to the neighborhood or nearby properties. The existing site is currently paved to the property boundary and the nearest residential structure is more than 100 yards to the west.

**(4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.**

The proposed variance will not adversely affect or impact the environment. Authorizing abbreviated pavement setbacks will not impact drainage, flooding, and runoff or any other topographical changes such as grading, trees, and vegetation. Similarly, the variance will have no negative impact on traffic conditions.

**(5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.**

The alleged difficulty has not been created by the applicant. The proposed paved areas are needed to facilitate suitable site access and sufficient stacking spaces to meet minimum requirements. No alternative site design could accommodate the proposed use and strictly comply with the pavement setback. Should the board determine that the difficulty is self-created, it should be noted that such a determination does not preclude the granting of the area variance.

**Balancing.**

As stated above, the requirements of Town Law §267-b require the ZBA to balance the benefit to the applicant if the variance is granted against the detriment to the health, safety and general welfare of the community. Here, substantial benefit runs to the applicant if the variance is approved. The property cannot be developed for its intended use without the requested relief. Conversely, there is no identified detriment to the health, safety and general welfare of the community. The existing site is currently paved to the property boundary and the nearest residential structure is more than 100 yards to the west. With great benefit to the applicant if the variance is granted and no detriment to the health, safety and general welfare of the community, it is respectfully requested that the proposed variance be approved.