

APPLICATION TO BOARD OF APPEALS

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Appeal No. _____

Date October 8, 2019

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

I (we) JSEK West Seneca 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 Oct. 8, 2019, WHEREBY THE BUILDING INSPECTOR DID DENY TO

a request for a building permit for a proposed car wash facility as depicted on the Site Layout Plan [Drawing C-2]

- | | |
|--|---|
| <input checked="" type="checkbox"/> A PERMIT FOR USE for a proposed commercial 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 1343, 1347 and 1353 Union Road & 0 Fremont Avenue

[Zoning Classification: C-2]

3. State in general the exact nature of the permission required, A description of the proposed car wash facility project and the requested area variances is provided at Exhibit "1". A reduced size Site Plan is provided at Exhibit "3" and a full size copy is also attached.

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

5. REASON FOR APPEAL.

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

A description of the requested area variances for the proposed car wash facility project is provided at Exhibit "1" and justification for 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 "2" of this Variance Application. The Project Site is zoned C-2 pursuant to the decision of the Town Board issued on July 15, 2019.

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: _____



Counsel for Applicant *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 _____

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 _____

**Exhibit 1 – Project Description, Project
History and Description of the Two
Requested Area Variances**

EXHIBIT 1 OF VARIANCE APPLICATION

PROJECT DESCRIPTION, PROJECT HISTORY AND DESCRIPTION OF THE TWO REQUESTED AREA VARIANCES

PROPOSED CAR WASH FACILITY REDEVELOPMENT PROJECT 1343, 1347 AND 1353 UNION ROAD & O FREEMONT AVENUE

I. Description of Proposed Car Wash Redevelopment Project¹:

The proposed car wash redevelopment project includes a new car wash building consisting of a two-story structure along the Union Road frontage the parcels located at 1343, 1347 and 1353 Union Road and O Freemont Avenue (collectively the “Project Site”) of the Project Site and the remainder of the car wash building will be a single-story structure. The size of the proposed car wash building will be approximately 6,500 sq. ft. The layout of the redevelopment project including the proposed site improvements is depicted on the full size copy of the Site Layout Plan [Drawing C-2] prepared by Schenne & Associates attached to this Variance Application. A reduced size copy of the Site Layout Plan is attached as Exhibit “3”.

The Project Site is zoned C-2(S) pursuant to the decision of the Town Board issued on July 15, 2019. The Town Board also issued a negative declaration pursuant to the State Environmental Quality Review Act (“SEQRA”). A copy of the resolution adopted by the Town Board on July 15, 2019 approving an amendment of the zoning classification of the Project Site from C-1 and R-65 and C-2 and granting a special use permit for the proposed car wash facility is attached as Exhibit “4”. A copy of the resolution adopted by the Town Board issuing a negative declaration pursuant to SEQRA is attached as Exhibit “5”. The Project Site is also located in the Union Road

¹ A description of the two requested area variances is provided in Part II below.

Corridor, which includes site development standards as set forth in Section 120-70 of the Town of West Seneca Zoning Code (“Zoning Code”).

II. Description of Requested Area Variances:

The Applicant is seeking the following two area variances from the ZBA in connection with the proposed car wash facility redevelopment project:

- 1. The southern side yard setback of the driveway and stacking lane for vehicle ingress on property zoned C-2 is less than required pursuant to Section 120-31B(3)(c) of the Zoning Code [12 ft. setback required vs. 6’ 10” setback proposed].**

Note: A copy of Section 120-31 of the Zoning Code (titled “Minimum yards for other principal buildings” is attached as Exhibit “6”).

- 2. The northern side yard setback of the driveway for vehicle egress on property zoned C-2 is less than required pursuant to Section 120-31B(3)(c) of the Zoning Code [12 ft. setback required vs. 9’ 9” setback proposed].**

**Exhibit 2 – Justification for Requested
Area Variances Pursuant to the Statutory
Mandated Balancing Test and
Five Criteria Contained In NYS Town
Law Section 267-b(3)(b)**

EXHIBIT 2 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)**

**PROPOSED CAR WASH FACILITY REDEVELOPMENT PROJECT
1343, 1347 AND 1353 UNION ROAD & 0 FREEMONT AVENUE**

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 redevelopment of the Project Site as a car wash facility as depicted on the full size copy of the Site Layout Plan [Drawing C-2] prepared by Schenne & Associates attached to this is Variance Application will result in substantial benefits to the Applicant without any resulting detriments to the health, safety and welfare of the community.¹ The benefits that will be received by Applicant if the Zoning Board of Appeals (“ZBA”) grants the two requested area variances include the following:

1. The Applicant will be able to develop the Project Site as a state-of-the-art car wash facility with related site improvements as depicted on the Site Layout Plan [Drawing C-2] prepared by Schenne & Associates attached to this is Variance Application.
2. The approval of the redevelopment project as proposed will result in the dilapidated Project Site consists of a former greenhouse with asbestos to be completed, resulting in a dramatic improvements of the appearance of the Project Site.
3. The Applicant will be able to develop the Project Site in a manner consistent with the project layout that has been presented to the Town Board as well as nearby

¹ A reduced size copy of the Site Layout Plan is attached as Exhibit “3”.

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

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the requested area variance.

The granting of the requested area variances by the ZBA will not create an undesirable change in the character of the neighborhood or a detriment to nearby properties. An effort has been made during the past several months to advance the redevelopment project based on input received from many stakeholders including nearby property owners. The requested area variances will not result in any detriments to nearby properties and screening consisting a fence and landscaping on the relevant portion of the southern property line and landscaping on the relevant portion of northern property line will be provided.

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 redevelop the Project Site in manner that would result in the Applicant receiving the benefits described above without the granting of the requested area variances. The area variances are needed in order to provide adequate stacking for the car wash facility on the southern portion of the Project Site and also provide an internal access aisle on the northern portion of the Project Site that does require vehicles exiting the car wash facility to exit directly onto Union Road.

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. The two requested area variances will result in a project that is inappropriate 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 on 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 the granting of the two requested area variances in furtherance of the proposed car wash facility redevelopment project 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. The Town Board has previously issued a negative declaration pursuant to the State Environmental Quality Review Act (“SEQRA”) based on its determination that the redevelopment project will not result in any potentially significant adverse environmental impacts.² Additionally, the Planning Board is in the process of reviewing the pending request for Site Plan Approval, which will ensure compliance with applicable technical standards including stormwater management, landscaping and screening, lighting, etc.

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 can be viewed as not being self-created given that the project is a redevelopment project on a previously developed site that is in a dilapidated condition. Nonetheless, if the ZBA determines that the alleged difficulty resulting

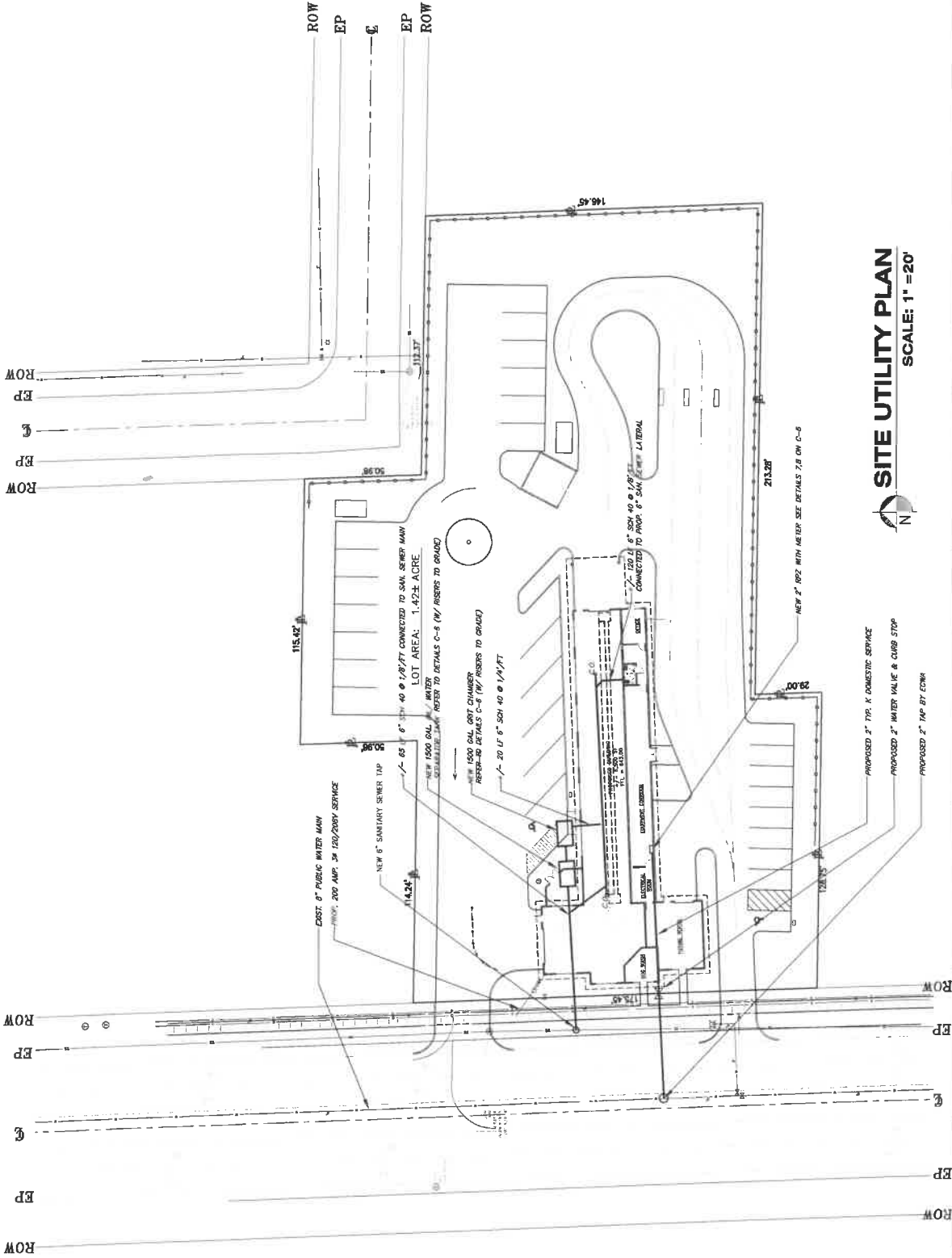
² A copy of the resolution adopted by the Town Board issuing a negative declaration pursuant to SEQRA is attached as Exhibit “5”.

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 two requested area variances are granted clearly outweigh any resulting detriments per the statutorily mandated balancing test. The Applicant requests that the ZBA grant the two requested area variances to allow it to move forward with the proposed car wash facility redevelopment project based on the layout depicted on the updated Site Layout Plan [Drawing C-2] attached to this Variance Application.

**Exhibit 3 – Reduced Size Copy of
Site Layout Plan [Drawing C-2] as
Prepared by Schenne & Associates**



SITE UTILITY PLAN
SCALE: 1" = 20'

DATE: 01-31-2011
DWG. C-4

PROJECT
OWNER: JSEK WEST SENECA LLC
PROPOSED CAR WASH
1353, 1347, 1343 UNION ROAD
WEST SENECA, NY 14224

OWNER: JSEK WEST SENECA LLC
5600 MAIN STREET, SUITE 100
WILLIAMSVILLE, NY 14221
shopkins@jst-legal.com
TEL: 510-4338 FAX: 242-0606

ENGINEER: SCHEMME & ASSOCIATES
CONSULTING ENGINEERS
887 Luther Road
East Aurora, NY 14052
(716) 854-4851, jse@scemma.com



THIS PLAN WAS PREPARED BY THE ENGINEER OR ARCHITECT NAMED HEREON AND IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. IT IS NOT TO BE USED FOR ANY OTHER PROJECT OR SITE WITHOUT THE WRITTEN CONSENT OF THE ENGINEER OR ARCHITECT NAMED HEREON.

NO.	DATE	DESCRIPTION
1	10-02-19	REVISION
1	9-24-19	REVISION
1		DESCRIPTION

**Exhibit 4 – Resolution Adopted by the Town
Board on July 15, 2019 for the Purpose of
Amending the Zoning Classification of the
Project Site from C-1 and R-65 to C-2 and
Granting a Special Use Permit
Subject to Four Conditions**

TOWN OF WEST SENECA



JACQUELINE A. FELSER
TOWN CLERK

RECEIVER OF TAXES
REGISTRAR OF VITAL STATISTICS
NOTARY PUBLIC
RECORDS MANAGEMENT OFFICER

TOWN SUPERVISOR
SHEILA M. MEEGAN

TOWN COUNCIL
EUGENE P. HART
WILLIAM P. HANLEY JR.

July 22, 2019

TOWN BOARD PROCEEDINGS Meeting #2019-14 July 15, 2019

Legal Item #1

Motion by Supervisor Meegan, seconded by Councilman Hanley, to adopt the following resolution approving a rezoning and special permit for property located at 1343, 1347 & 1353 Union Road:

WHEREAS, JSEK West Seneca LLC made an application for rezoning of 1343, 1347 and 1353 Union Road and 0 Fremont Avenue, West Seneca, New York from R-65 and C-1 to C-2(S) with a special use permit for a car wash facility; and

WHEREAS, the matter was heard before the Planning Board and referred to the Town Board; now, therefore, be it

RESOLVED, the West Seneca Town Board does hereby adopt Local Law No. 2019-03 amending the zoning classification of 1343, 1347 & 1353 Union Road and 0 Fremont Avenue, West Seneca, New York from R-65 and C-1 to C-2(S) and grants a special use permit for a car wash facility, noting the special use permit is subject to the following conditions:

1. The only allowed principal use of the portion of the Project Site to be rezoned from R-65 to C-2 shall be a portion of the single-story portion of the car wash building. No other principal uses allowed in the C-2 zoning district as set forth in Section 120-20A (expressly permitted principal uses) and Section 120-20B (uses requiring a special use permit) of the Zoning Code shall be permitted on the portion of the Project Site to be rezoned from C-1 to C-2.
2. The only allowed accessory uses of the portion of the Project Site to be rezoned from R-65 to C-2 shall be those accessory uses incidental to the proposed car wash project such as stacking spaces, parking spaces, stormwater management improvements, landscaping and screening, lighting, etc.

TOWN OF WEST SENECA



JACQUELINE A. FELSER
TOWN CLERK

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TOWN SUPERVISOR
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TOWN COUNCIL
EUGENE P. HART
WILLIAM P. HANLEY JR.

- 3. There shall not be any driveway or roadway connection from the Project Site to Fremont Avenue. This condition shall be permanent.
- 4. The Applicant shall be required to record a Declaration of Restrictions at the Erie County Clerk's Office restricting the use of the Project Site in accordance with special use permit conditions No. 1, 2 and 3 upon receiving site plan approval for the proposed car wash project from the Planning Board. The Declaration of Restrictions shall state that the restrictions are enforceable upon the successors and assigns of the Applicant and shall run with the land and that the Declaration of Restrictions cannot be modified unless approved by a majority vote of the Town Board after holding a public hearing. A copy of the recorded Declaration of Restrictions and recording receipt shall be provided to the Town Clerk's Office, Town Attorney's Office and Code Enforcement Officer.

Ayes: All

Noes: None

Motion Carried

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
OFFICE OF THE CLERK OF THE
TOWN OF WEST SENECA

This is to certify that I, JACQUELINE A FELSER, Town Clerk and Registrar of Vital Statistics of the Town of West Seneca in said County of Erie, have compared the foregoing copy of resolution with the original resolution now on file in my office, and which was passed by the Town Board of the Town of West Seneca in said County of Erie, on the 15th day of July, 2019 and that the same is a correct and true transcript of such original resolution and whole thereof.

IN WITNESS WHEREOF, I HAVE HERE UNTO SET MY HAND AND AFFIXED THE SEAL OF SAID TOWN THIS 22ND DAY OF JULY, 2019.


TOWN CLERK AND REGISTRAR OF VITAL STATISTICS, TOWN OF WEST SENECA

**Exhibit 5 – Resolution Adopted by the
Town Board on July 15, 2019 for the
Purpose of Issuing a Negative Declaration
Pursuant to the State Environmental
Quality Review Act (“SEQRA”)**

TOWN OF WEST SENECA



JACQUELINE A. FELSER
TOWN CLERK

RECEIVER OF TAXES
REGISTRAR OF VITAL STATISTICS
NOTARY PUBLIC
RECORDS MANAGEMENT OFFICER

TOWN SUPERVISOR
SHEILA M. MEEGAN

TOWN COUNCIL
EUGENE P. HART
WILLIAM P. HANLEY JR.

July 22, 2019

TOWN BOARD PROCEEDINGS
Meeting #2019-14
July 15, 2019

Legal Item #1

Motion by Supervisor Meegan, seconded by Councilman Hart, to adopt the following resolution issuing a negative declaration with regard to SEQR for the above project:

WHEREAS, the Town Board of the Town of West Seneca, as lead agency acting pursuant to the State Environmental Quality Review Act, Article 8 of the New York State Environmental Conservation Law, has reviewed Part I of the Short Environmental Assessment Form ("EAF") prepared by the applicant for property located at 1343, 1347 and 1353 Union Road and 0 Fremont Avenue ("Subject Property"), for construction of a car wash facility, associated parking, landscaping, storm water design and utilities (the "Project") and reviewed the draft completed Part II of the EAF analyzing the potential for the Project to result in any significant adverse environmental impacts and has otherwise taken a hard look at the identified potential environmental impacts utilizing the criteria specified in 6 NYCRR 617.7(c); and

WHEREAS, upon review of Parts I and II of the EAF and documentation and plans submitted by the applicant in connection with the review of the Project, the Town Board has not identified any potentially significant adverse environmental impacts associated with the proposed use of the Subject Property, has determined that preparation of an Environmental Impact Statement is not necessary and that the issuance of a Negative Declaration is therefore appropriate; now, therefore, be it

RESOLVED, that pursuant to 6 NYCRR 617.7(a) the Town Board does hereby adopt a Negative Declaration with respect to the Project based on its determination that the Project will not result in any potentially significant adverse environmental impacts.

Ayes: All

Noes: None

Motion Carried

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
OFFICE OF THE CLERK OF THE
TOWN OF WEST SENECA

This is to certify that I, JACQUELINE A FELSER, Town Clerk and Registrar of Vital Statistics of the Town of West Seneca in said County of Erie, have compared the foregoing copy of resolution with the original resolution now on file in my office, and which was passed by the Town Board of the Town of West Seneca in said County of Erie, on the 15th day of July, 2019 and that the same is a correct and true transcript of such original resolution and whole thereof.

IN WITNESS WHEREOF, I HAVE HERE UNTO SET MY HAND AND AFFIXED THE SEAL OF SAID TOWN THIS 22ND DAY OF JULY, 2019.

TOWN CLERK AND REGISTRAR OF VITAL STATISTICS, TOWN OF WEST SENECA

**Exhibit 6 – Copy of Section 120-31 of the
Town of West Seneca Zoning Code**

§ 120-31. Minimum yards for other principal buildings.

A. In R Districts.

- (1) Front yard in any R District: as required for dwellings.
- (2) Rear yard in any R District: as required for dwellings.
- (3) Side yards (two required).
 - (a) In R-50 or R-60A Districts: as required for multifamily dwellings.
 - (b) In all other R Districts: each side yard 30 feet or a distance equal to the height of such principal building, whichever is greater.
- (4) A thirty-foot drive for ingress and egress shall be provided for all multifamily and special developments. If separate drives are provided for ingress and egress, they shall be a minimum of 20 feet. **[Added 9-24-1990]**

B. In any C District.

- (1) Front yard: 40 feet.
- (2) Rear yard: 10 feet; except where a rear yard abuts an R District boundary, the rear yard shall be 30 feet or a distance equal to the height of the principal building, whichever is greater.
- (3) Side yards: none required, except:
 - (a) Where a side yard is provided, it shall be not less than five feet in width.
 - (b) Where a side yard abuts an R District boundary, its width shall be not less than that required for side yards for multifamily dwellings or buildings of mixed occupancy in such abutting R District.
 - (c) Where a side yard is used for either vehicular ingress or egress, it shall be not less than 12 feet in width.
 - (d) Where a side yard is used for ingress and egress, it shall be not less than 25 feet in width.
 - (e) A required side yard may not be used for ingress or egress in the multifamily or special development projects. The Town Board shall have the power to allow this, upon showing of special circumstances or hardship. **[Added 9-24-1990]**
- (4) A thirty-foot drive for ingress and egress shall be provided for all multifamily and special developments. If separate drives are provided for ingress and egress, they shall be a minimum of 20 feet. **[Added 9-24-1990]**

C. In M Districts:

- (1) Front yards: 25 feet; except when opposite any R District or when used for off-street parking, the front yard shall be not less than 50 feet.

- (2) Rear yard.
 - (a) In M-1 Districts: 10 feet; except where a rear yard abuts an R District boundary, the rear yard shall be not less than 50 feet.
 - (b) In M-2 Districts: 10 feet; except where a rear yard abuts an R District boundary, the rear yard shall be not less than 75 feet.
- (3) Side yards (two required).
 - (a) In M-1 Districts: 10 feet; except where a side yard abuts an R District boundary, the side yard shall be 50 feet.
 - (b) In M-2 Districts: 10 feet; except where a side yard abuts an R District boundary, the side yard shall be 75 feet.