WEST SENECA
ZONING BOARD OF APPEALS
1300 Union Road, West Seneca, NY 14224
6:00 PM in the Community Center
October 28, 2026

AGENDA

Meeting # 2026-10

CALL TO ORDER

OPENING OF PUBLIC HEARING

APPROVAL OF PROOFS OF PUBLICATION

APPROVAL OF MINUTES

1. Minutes of Meeting #2026-09

OLD BUSINESS

NEW BUSINESS

2026-041
Request of Julie Slisz for property located at 33 Florence Ave to allow for construction of patio roof with 6' separation from existing roof off of house. (10' separation is required)

2026-042
Request of Thomas Fitzgerald for property located at 89 Thorndale Ave to allow for construction of an enclosed porch in front with 18' front setback. (30' setback required)

2026-043
Request of Emily Kawa for property located at 30 Woodcrest Dr. to allow for expansion of driveway 0' to lot line. (3' separation required)

2026-044
Request of Patricia and Kevin Engleka for property located at 168 Charlescrest Ct. to allow for the installation of a pool with 7' separation to deck/house. (10' separation required)

2026-045
Request of Jeffrey Stange for property located at 95 Thomas Dr. to allow a variance to erect a 6' fence in the front/side yard and with a 16' projection past house. (maximum 4' height allowed in the front/side yard and no projection allowed)

2026-046

Request of Jason Havens for property located at 4350 Seneca St. to allow for construction of an addition with 5' side yard setback. (25' side yard setback required)

2026-047
Request of Debbie Wolcott for property located at 182 Tampa Dr. to allow construction of a patio roof off of house with a 6.5' separation from detached garage. (10' separation required)

2026-048
Request of Lawrence Monaco for property located at 94 Villa Maria Road to allow the installation of a generator 2' from lot line. (5' setback required)

2026-049
Request of Stan Sajecki for property located at 238 Schultz Road to allow the construction of a new single family home with 38.79 front setback. (40' front setback required)

2026-050
Request of Jason Zurek and Bonnie Sullivan for property located at 162 Tampa Drive to allow construction of a covered front patio roof with 25' front yard setback. (30' setback required)

2026-051
Request of Ari Goldberg with Barclay Damon LLC for interpretation of the proposed use for property located at 1100 Southwestern Blvd.

ADJOURN

Future meetings are held the fourth Wednesday of the month at 6:00 pm

WEST SENECA
ZONING BOARD OF APPEALS
1300 Union Road, West Seneca, NY 14224
6:00 PM in the Community Center
September 23, 2026

September 23, 2026, Draft Meeting Minutes

Start Time: 6:00 PM

Roll Call

- **Chairperson Stephen Stachowski**
- **Zoning Board Member Joette Tronolone**
- **Zoning Board Member Amelia Greenan**
- **Zoning Board Member Edmund Bedient**
- **Zoning Board Member Paul Lang:** Absent (Excused)
- **ZBA Counsel Joseph Trapp**
- **Code Enforcement Representative Doug Busse**

Opening of Public Hearing

- **Motioned by:** Tronolone
- **Seconded by**: Greenan to open the Public Hearing.
- **Vote:** Ayes: 4, Noes: 0. The motion carried.

Approval of Proofs of Publication

- **Motioned by:** Greenan, and
- **Seconded by:** Bedient to approve proofs of publication.
- **Vote:** Ayes: 4, Noes: 0. The motion carried.

Approval of Minutes from previous meeting

- **Motioned by:** Tronolone
- **Seconded by**: Bedient for approval of the August 2026 Minutes.
- A correction was made to change an agenda item number under Old Business from 2026-029 to 2026-22 for 29 Class Avenue. The motion was amended to include this correction.
- **Vote:** Ayes: 4, Noes: 0. The motion carried as amended.

OLD BUSINESS

There was no old business to discuss.

NEW BUSINESS

Agenda Item 2026-038: 91 Circle End Drive

The applicant's representative, contractor Pearson Wing, requested a height variance for a new detached garage. The original garage was dilapidated and non-compliant, located one foot from the property line. The new garage is being built 10 feet from the house and three feet from the property line to meet code. However, a significant dip in the property's grade causes the rear of the new garage to exceed the height limit. Signatures of support were provided from all adjacent neighbors, and Erie County had no objections.

AREA Variance Balancing Test

1. **Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties?** No. Replacing a dilapidated structure with a new, mostly compliant one is an improvement. The applicant provided letters of support from neighbors.
2. **Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than an area variance?** No. The applicant explored other placements, but they would either create drainage issues for neighbors or be unsafe due to the steep grade. This location is the best option.
3. **Is the requested area variance substantial?** No. The request is modest, with only the rear portion of the garage exceeding the height limit by approximately two feet.
4. **Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?** No. Any potential drainage or environmental issues will be addressed during the standard inspection process. The slight height increase is not expected to affect neighbor sight lines.
5. **Was the alleged difficulty self-created?** Partially. While the applicant chose to build the garage, the difficulty is primarily caused by the property's natural topography, which is not the applicant's fault. The contractor acted in good faith by stopping work when the issue was discovered.

- **Motioned by:** Greenan
- **Seconded by**: Tronolone for approval.
- **Vote:** Ayes: 4, Noes: 0. The motion carried.

Agenda Item 2026-039: 1151 Center Road

The applicant, property owner Kevin Smith, requested a variance to install a six-foot privacy fence that extends 13 feet past the rear of the house into the side yard. Town code requires fences in the side yard to be no more than four feet tall. The purpose is to provide privacy and screen a new gas generator from view. The applicant provided signatures of support from neighboring properties, and Erie County offered no objection.

AREA Variance Balancing Test

1. **Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties?** No. Fences are common, and this one will improve curb appeal by hiding a generator and providing privacy.
2. **Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than an area variance?** No. A compliant four-foot fence would not provide the desired level of privacy or effectively screen the generator.
3. **Is the requested area variance substantial?** No. The increase from a four-foot to a six-foot fence is not considered substantial.
4. **Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?** No. The professionally installed fence will not have any adverse physical or environmental impact.
5. **Was the alleged difficulty self-created?** Yes, but this was not the determining factor in the board's decision.

- **Motioned by:** Tronolone
- **Seconded by**: Greenan for approval.
- **Vote:** Ayes: 4, Noes: 0. The motion carried.

Agenda Item 2026-040: 111 Summit Avenue

Mark Filipski, representing his daughter (the homeowner), requested a variance for a six-foot privacy fence on a corner lot. The proposed fence would extend 40 feet along the side yard, connecting to an existing fence. The purpose is to create privacy. The fence will match the neighbor's existing fence. Letters of support were provided from multiple neighbors.

AREA Variance Balancing Test

1. **Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties?** No. With letters of support from neighbors, the board viewed the fence as an improvement to the property's appearance.
2. **Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than an area variance?** No. Alternatives like shrubbery would require more maintenance and might not provide the same level of privacy or aesthetic appeal.

3. **Is the requested area variance substantial?** No. The request for a fence is not considered substantial.
4. **Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?** No. The fence is seen as a visual improvement with no negative environmental effects.
5. **Was the alleged difficulty self-created?** No. The difficulty arises from the property being a corner lot, a pre-existing condition not created by the homeowner.

- **Motioned by:** Bedient
- **Seconded by:** Stachowski for approval.
- **Vote:** Ayes: 4, Noes: 0. The motion carried.

Other Business

- Chairperson Stachowski reminded the board to complete their annual training.
- The board discussed improving the variance application form, potentially modeling it after the City of Buffalo's form, which asks applicants to address the area variance test questions directly.
- A discussion was held regarding clarifying the meeting schedule on future agendas. The board typically meets on the fourth Wednesday of the month, but there is no meeting in November, and the December meeting is on the first Wednesday. The board secretary and counsel agreed to ensure the public schedule is clear on the website and in official notices.

Adjournment

- **Motioned by:** Bedient
- **Seconded by** Greenan to close the Public Hearing.
- **Vote:** Ayes: 4, Noes: 0. The motion carried.
- The meeting was adjourned.

End Time: 6:29 PM

APPLICATION TO BOARD OF APPEALS

X Tel. No. 716-713-4637

Appeal No. 2026-041

Date 9/15/26

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

X I (we) Julie Slisz of 33 Florence Ave.

, 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 SAME
3. State in general the exact nature of the permission required,
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)

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:

Julie Slisz
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
   120-39 A(2) Patio Roof Request 6' from roof/house
   10' separation required
2. Zoning Classification of the property concerned in this appeal RLS
3. Type of Appeal:
   - ☒ Variance to the Zoning Ordinance.
   - ☐ Interpretation of the Zoning Ordinance or Zoning Map.
   - ☐ Special or Temporary Permit or an xtension thereof under the Zoning Ordinance.
4. A statement of any other facts or data which should be considered in this appeal.

Building Inspector DJB

9-15-26

To Whom it may concern;

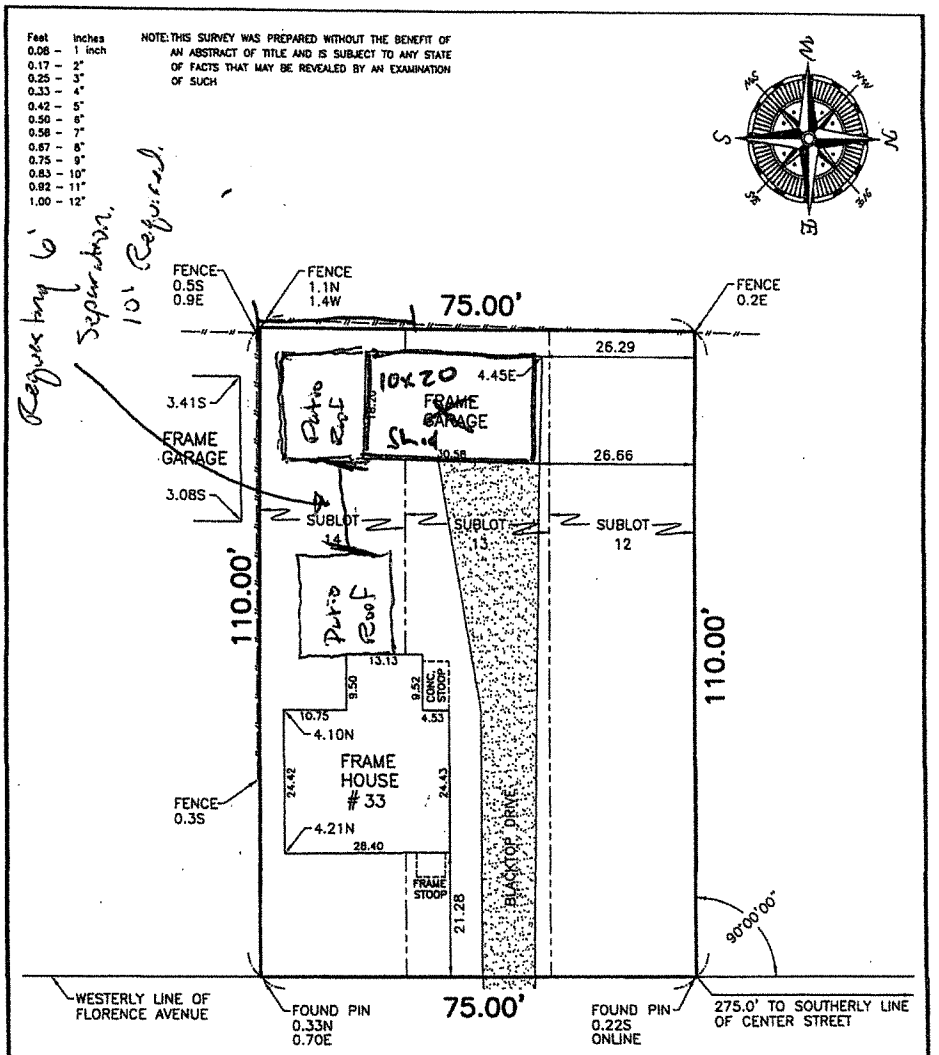
I am writing to respectfully request an area variance regarding the required separation between my patio roof and the roof covering over my hot tub. The current requirement is that these structures be at least 10 feet apart. Due to the layout of my property, the two structures are approximately 6 feet apart. I am asking the Town to consider granting a variance because of the limited amount of usable space in my back yard. The size and the configuration of my property make it difficult to maintain the required 10-foot separation while still making practical use of my backyard. The new structure was also designed and positioned to line up with the existing building creating a more consistent and orderly appearance on the property. Moving either structure farther apart would be extremely difficult because of the limited space available and it would negatively affect the overall layout and usability of the back yard.

I believe the requested variance would allow me to make reasonable use of my property while having little to no negative impact on neighboring properties or the surrounding area. The structures are located in a manner this practical for the existing property layout and I will make every effort to work within the Towns requirements.

I respectfully ask the board to consider these circumstances and grant the requested variance allowing the patio roof and the hot tub roof to remain 6 feet apart.
Thank you for taking the time to consider my request. I appreciate your consideration.

Respectfully,

Julie Slisz



LOCATION: TOWN OF WEST SENECA	MAP COVER: 1322		JOB NO.: 18-4222
COUNTY OF ERIE, STATE OF NEW YORK	SUBLOT(S): 12,13,14		
PART OF LOT 118, TOWNSHIP 10, RANGE 7	DATE: JULY 26, 2018	SCALE: 1"=20'	DRAWN BY: J. HARTWLL
OF THE BUFFALO CREEK RESERVATION	REVISIONS:		CHECKED BY: S. CARVER

STEVE A. CARVER PLS.
LAND SURVEY SERVICES
965 RUIE ROAD, NORTH TONAWANDA NY 14120
TEL. 716-525-1250 FAX 716-525-1275
CELL 716-361-2939 EMAIL CARVERSURVEY@GMAIL.COM

Unauthorized alteration or addition to any survey, drawing, design, specification, plan or report is a violation of Section 7209, Provision 2 of the New York State Education Law. Only copies from the original of this survey map marked with an original of the land surveyor's embossed seal and signature shall be considered to be valid true copies.

Copyright Steve A. Carver PLS, all rights reserved. No portion of this drawing may be reproduced, stored or transmitted by any means without prior written permission of the surveyor.
This survey is a report of the findings in the field and is not a guarantee of title.
This survey is null and void with an affidavit of no change.

* * * RECEIPT * * *

Date: 09/15/26 **Receipt#:** 103236

Quantity	Transactions	Reference	Subtotal
1	Zoning Board of Appeals	20161920	$160.00
		Total Paid:	$160.00

Notes: 2026-041

Payment Type	Amount	Paid By
CASH	$160.00	Slisz, Julie

Thank you for allowing the West Seneca Town Clerk's office to serve you. Have a wonderful day!
1250 Union Road, Room 212 West Seneca, NY 14224

Name: Slisz, Julie
33 Florence Ave
West Seneca, NY 14224

Clerk ID: CLAIRE

Internal ID: 20161920

APPLICATION TO BOARD OF APPEALS

Tel. No. 716 823-0201

Appeal No. 2026-042

Date Sept 17, 2026

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

I (we) Thomas Fitzgerald of 89 Thorndale Ave

_____, 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: Enclose front porch in front setback

- ☐ 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 89 Thorndale Ave
3. State in general the exact nature of the permission required, _____

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 Enclosed

B. Interpretation of the Zoning Ordinance is requested because: Front Porch in front setback, uncovered unenclosed permitted 18

C. A Special or Temporary Permit or an Extension thereof Under the Zoning Ordinance is requested pursuant to Article _____, Section 120, Subsection 30, Paragraph _____ of the Zoning Ordinance, because: R-50 30 setback required, 18 feet requested

Thomas Fitzgerald
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 Tows Zoning Ordinance 120-30 zoning table
2. Zoning Classification of the property concerned in this appeal R-50
3. Type of Appeal:
   - ☒ Variance to the Zoning Ordinance.
   - ☐ Interpretation of the Zoning Ordinance or Zoning Map.
   - ☐ Special or Temporary Permit or an xtension thereof under the Zoning Ordinance.
4. A statement of any other facts or data which should be considered in this appeal. _____

Building Inspector _____

16 SEP 2026

I, THOMAS FITZGERALD
WISH TO ENCLOSE MY
FRONT PORCH SO I CAN
ENJOY IT.

Thomas Fitzgerald

* * * RECEIPT * * *

Date: 09/17/26 **Receipt#:** 103305

Quantity	Transactions	Reference	Subtotal
1	Zoning Board of Appeals	20161945	$160.00
		Total Paid:	$160.00

Notes:

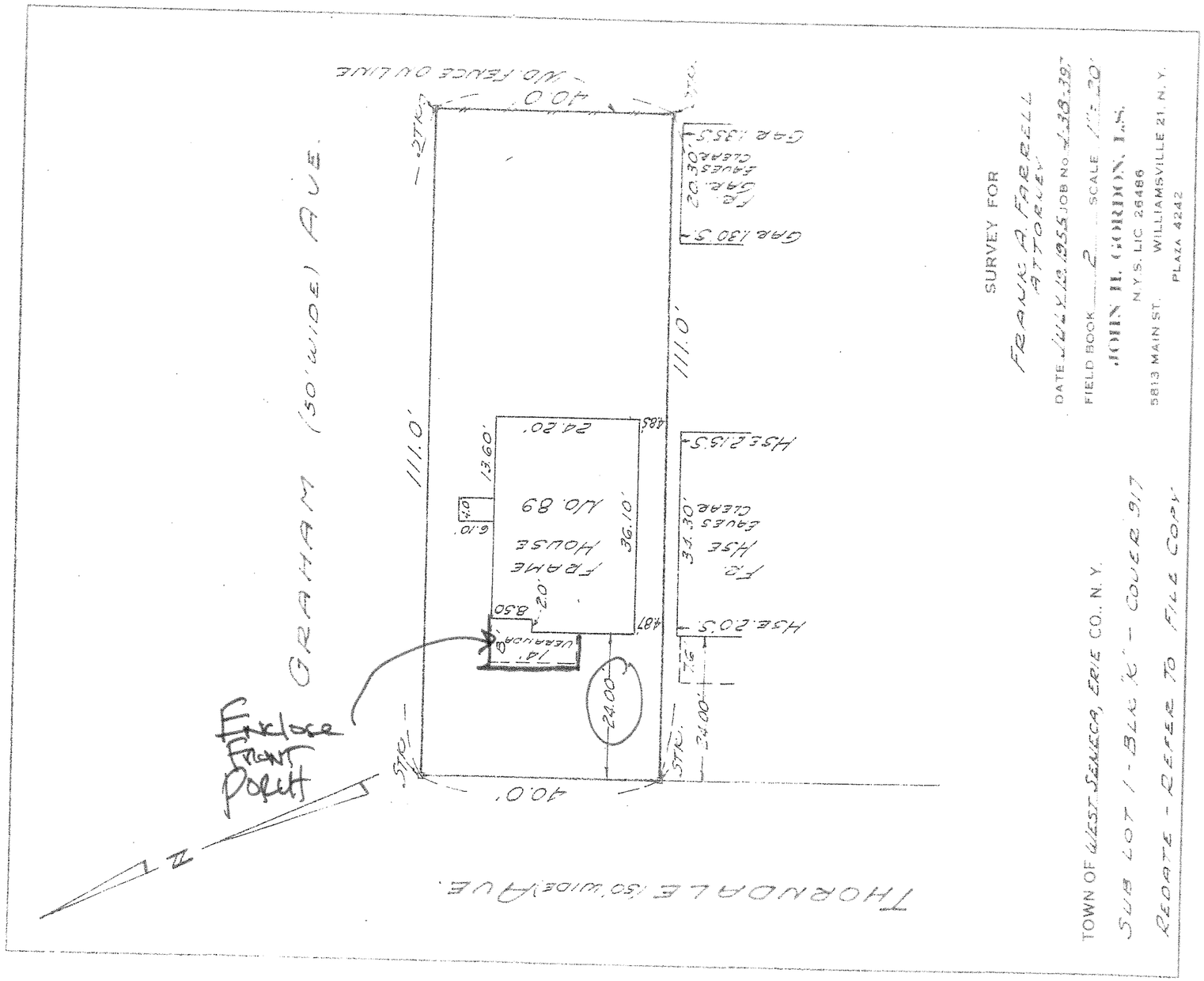
Payment Type	Amount	Paid By
CK #1003	$160.00	Fitzgerald, Thomas

Thank you for allowing the West Seneca Town Clerk's office to serve you. Have a wonderful day!
1250 Union Road, Room 212 West Seneca, NY 14224

Name: Fitzgerald, Thomas
89 Thorndale Ave
West Seneca, NY 14224

Clerk ID: MAM

Internal ID: 20161945



SURVEY FOR
FRANK A. FARRELL
ATTORNEY

DATE 4/17/58 JOB No. 4-38-38

FIELD BOOK 2 SCALE 1" = 30'

JOHN H. [illegible], L.S.
N.Y.S. LIC. 26486
5813 MAIN ST. WILLIAMSVILLE 21, N.Y.
PLAZA 4242

TOWN OF WEST SENECA, ERIE CO., N.Y.
SUB LOT 1 - BLK 'K' - COLLEGE VIEW
REDATE - REFER TO FILE Copy

APPLICATION TO BOARD OF APPEALS

Tel. No. X 716 598-4959

Appeal No. 2026-043

Date X 9/18/2026

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

I (we) X Emily Kawa of X ~~West Seneca~~ 30 Woodcrest Dr WS 14220, 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: extend driveway to 0 foot

- ☐ 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 30 Woodcrest Dr
3. State in general the exact nature of the permission required, extend the driveway to 0 foot setback 3' required
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:

X I would like to expand my driveway to the property line to allow for a second car to fit. The restaurant at the corner is taking up all the street parking.

B. Interpretation of the Zoning Ordinance is requested because:

R district parking setbacks

C. A Special or Temporary Permit or an Extension thereof Under the Zoning Ordinance is requested pursuant to Article _____, Section 120, Subsection 44, Paragraph B of the Zoning Ordinance, because:

X Emily Kawa
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

TOWS Zoning 120-44(B)

2. Zoning Classification of the property concerned in this appeal R-7S
3. Type of Appeal:
   - ☒ Variance to the Zoning Ordinance.
   - ☐ Interpretation of the Zoning Ordinance or Zoning Map.
   - ☐ Special or Temporary Permit or an xtension thereof under the Zoning Ordinance.
4. A statement of any other facts or data which should be considered in this appeal. Business on corner using all street parking

Building Inspector [signature]

RECD WS TOWN CLERK '26 SEP 18 PM 12:58

Page 15 of 132

Miscellaneous Notes

(MN1) All dimensions are in the "U.S. Survey Foot" unless specified otherwise.

(MN2) Certain easements and /or utility lines, may or may not be shown hereon. However this shall not imply that all easements or utilities affecting premises are shown.

(MN3) Unauthorized Alteration or Addition to this Survey Map is a Violation of Section 7209 Provision 2 of the New York State Education Law

(MN4) This Survey was prepared without the benefit of an up-to-date abstract of title and is subject to any state of facts that may be revealed by an examination of such.

(MN5) Maps and notes from the Holland Land Company Survey

(MN6) THIS MAP IS NOT VALID WITH AFFIDAVIT OF NO CHANGE

Legend of Symbols & Abbreviations

N	North
S	South
E	East
W	West
R	Record
M	Measured
P	Plat
Ex.	Existing
Ex. ROW	Existing Right-of-Way
Encroachment	Concrete Walk Over Property Line
IP / Rebar	Iron Pin / Rebar Found
Power Pole	
Property Boundary	
Line of Record	
Edge of R.O.W.	
Holland Land Co. Lot Line	
Road Centerline	
Fence	
Indicates Various Owner	
N/F	Now or Formerly
One Chain = 66.0 Ft.	
One Meter = 3.2808333 Ft.	
One Acre = 43,560.0 Sq.Ft.	

Map of 30 Woodcrest Drive

Being Part of
Lot 273 Township 10 Range 7
Buffalo Creek Reservation
Town of West Seneca
Erie County, New York

Surveyor's Certification

I hereby certify

that this survey was prepared in accordance with the current Code of Practice for Land Surveyors.

This certification does not extend to subsequent owners, mortgagees, or insurers unless the survey has been re-certified by the surveyor. This certification is void unless signed by the surveyor listed below. This certification is null and void if the seal has been defaced or is not valid.

Survey Prepared By:
Licensed Surveyor: David S. Freeman
License No.: 50480
In the State of: New York
Date of Survey: December 16, 2025
Date of Last Revision:
Drawing Scale: 1" = 20'
Freeman Job No. 16259

Freeman Land Surveying PLLC Copyright 2025

Freeman Land Surveying PLLC
Resurveying the Holland Land Company for the 21st Century
19432 Crump Road - Glenwood, N.Y. 14069
Phone: (716) 592-7740 Email: Survey@FreemanSurveyors.com

* * * RECEIPT * * *

Date: 09/18/26 **Receipt#:** 103331

Quantity	Transactions	Reference	Subtotal
1	Zoning Board of Appeals	20161955	$160.00
		Total Paid:	$160.00

Notes: 2026-043

Payment Type	Amount	Paid By
Credit Card-Ref #30	$160.00	Kawa, Emily

Thank you for allowing the West Seneca Town Clerk's office to serve you. Have a wonderful day!
1250 Union Road, Room 212 West Seneca, NY 14224

Name: Kawa, Emily
30 Woodcrest Dr
West Seneca, NY 14220

Clerk ID: AK

Internal ID: 20161955

APPLICATION TO BOARD OF APPEALS

Tel. No. 716 517 0325

Appeal No. 2026-04

Date 9/25/26

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

I (we) Patricia & Kevin Engleka of 168 Charlescrest Ct., West Seneca, 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 Same
3. State in general the exact nature of the permission required, _____
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 Attached Letter)

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: _____

Patricia Engleka
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
   120-39 (F) Pools shall be 10' away from house/deck
   Requesting 7' separation.
2. Zoning Classification of the property concerned in this appeal R-45
3. Type of Appeal:
   - ☒ Variance to the Zoning Ordinance.
   - ☐ Interpretation of the Zoning Ordinance or Zoning Map.
   - ☐ Special or Temporary Permit or an xtension thereof under the Zoning Ordinance.
4. A statement of any other facts or data which should be considered in this appeal. Required to be 19' 120' away from back property line due to NYSEG

Building Inspector _____

RECEIVED WEST SENECA TOWN CLERK'S OFFICE
2026 SEP 25 PM 1:47

Patricia Engleka
168 Charlescrest Ct.
West Seneca, NY
September 25, 2026

Town Of West Seneca
Code Enforcement/Zoning Board
1250 Union Rd
West Seneca, NY 14224

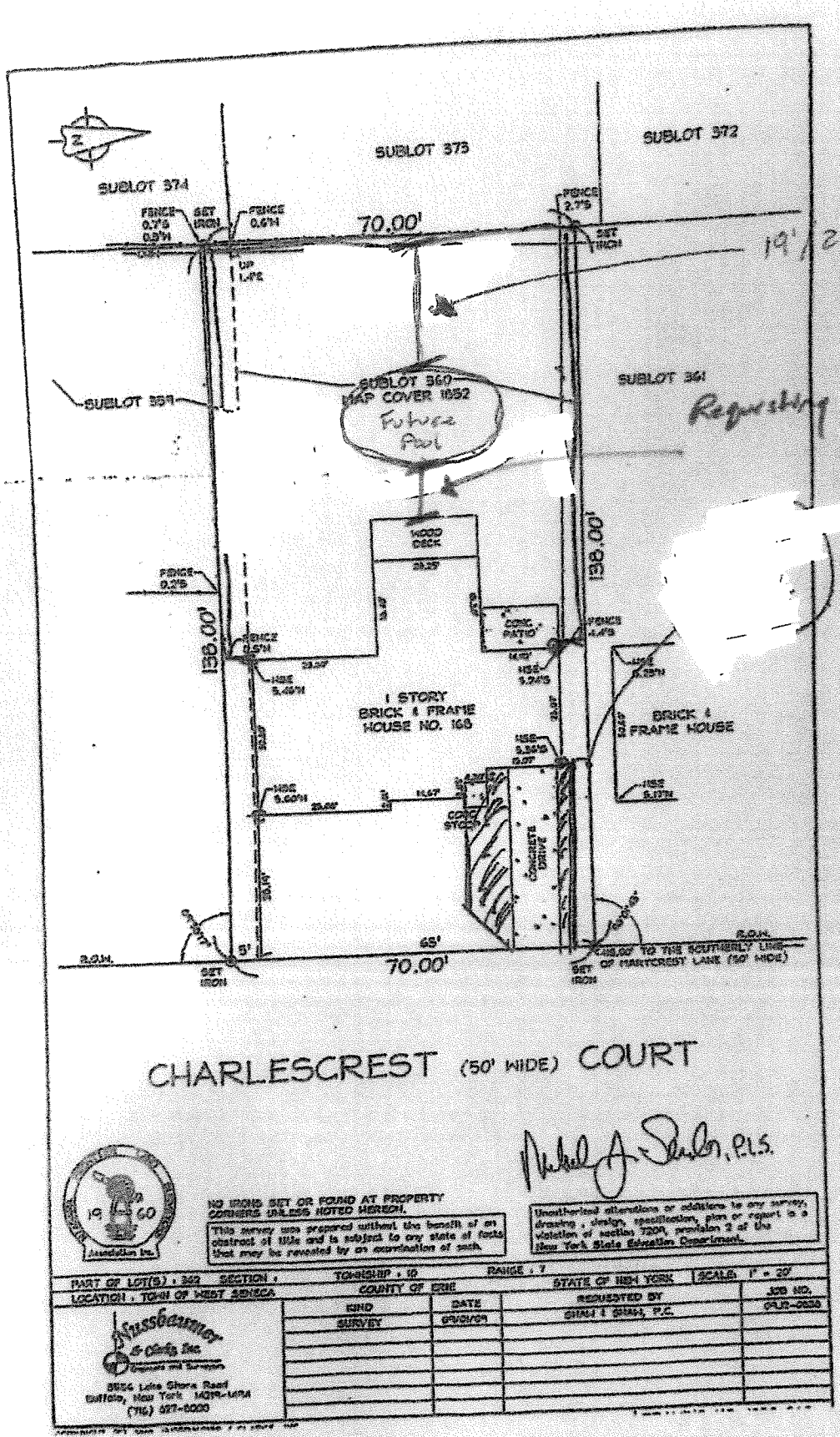
To the West Seneca Zoning Board;

I am writing this letter to request a variance for the required distance between my backyard deck and the edge of an in-ground pool.
I currently have an electrical pole in the right corner of my backyard. The electrical/cable/phone wires extend from the pole across the width of my yard stretching into my neighbor's yard and beyond.
The regulations state that the pool/waterline must be up to 19 feet from the pole, including the 4 feet from the pole then the additional 15 feet distance from the wires. The distance from the "service" wire, connected to the house, must be 10 feet to the edge of the pool.
The pool distance must be 10 feet from our deck.
In Lieu of these required distances from the wires, along the back of the yard to the pool, and the service wire, we do not have the required 10 feet distance from the deck to the pool line.
We are requesting a Variance of 3 feet, from our deck, to allow for the installation of our pool.
The installation of this pool will not affect any drainage with the neighboring properties. Our decision to install a pool will have no negative impact on the quality or character of my neighborhood. We have made continued structural and aesthetic improvements to our home since we purchased our property in 2009.
We appreciate the opportunity to apply for this Variance.
Thank you for your consideration.

Sincerely,

Patricia Engleka

Patricia Engleka



19' / 20' separation from Power lines Req.

Requesting 7' from deck

10' from deck Required.

Michael A. Stuber, P.L.S.

NO IRONS SET OR FOUND AT PROPERTY CORNERS UNLESS NOTED HEREON.

This survey was prepared without the benefit of an abstract of title and is subject to any state of facts that may be revealed by an examination of such.

Unauthorized alterations or additions to any survey, drawing, design, specification, plan or report is a violation of section 7209, provision 2 of the New York State Education Department.

PART OF LOT(S) : 362 SECTION : TOWNSHIP : 10 RANGE : 7 STATE OF NEW YORK SCALE 1" = 20'

LOCATION : TOWN OF WEST SENECA COUNTY OF ERIE

KIND	DATE	REQUESTED BY	JOB NO.
SURVEY	9/9/2025	SHAH & SHAH, P.C.	2025-0536

Strassbaugher & Clarke, Inc.
Engineers and Surveyors
3554 Lake Shore Road
Buffalo, New York 14219-1494
(716) 827-6000

* * * RECEIPT * * *

Date: 09/25/26 **Receipt#:** 103459

Quantity	Transactions	Reference	Subtotal
1	Zoning Board of Appeals	20161997	$160.00
		Total Paid:	$160.00

Notes: 2026-044

Payment Type	Amount	Paid By
CK #6102	$160.00	Engleka, Patricia

Thank you for allowing the West Seneca Town Clerk's office to serve you. Have a wonderful day!
1250 Union Road, Room 212 West Seneca, NY 14224

Name: Engleka, Patricia
168 Charlescrest Ct
West Seneca, NY 14224

Clerk ID: PAM

Internal ID: 20161997

$160.00

APPLICATION TO BOARD OF APPEALS

Tel. No. 716 864 1379

Appeal No. 2026-045

Date 9-30-26

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

I (we) Jeffrey Stange of 95 Thomas Dr. West Seneca NY 14224, 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 95 Thomas Dr
3. State in general the exact nature of the permission required, FENCE 6FT FENCE ON CORNER LOT
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. NA, 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 ATTACHED LETTER

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: _____

X _____ *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 120-39 (B) -4FT FENCE PERMITTED // 6FT REQUESTED -NO PROJECTION ALLOWED // 16FT PROJECTION REQUESTED
2. Zoning Classification of the property concerned in this appeal R-75
3. Type of Appeal:
   - ☒ Variance to the Zoning Ordinance.
   - ☐ Interpretation of the Zoning Ordinance or Zoning Map.
   - ☐ Special or Temporary Permit or an xtension thereof under the Zoning Ordinance.
4. A statement of any other facts or data which should be considered in this appeal. _____

Building Inspector _____

Jeffrey Stange

95 Thomas Drive
West Seneca, N.Y. 14224

September 28, 2026

West Seneca zoning board

I would like to apply for a variance in regards to my property located at 95 Thomas Drive, which is a corner lot of Christopher Drive. My wife and I would like to put a six foot fence around our backyard. Being on the corner we would like this for the privacy it provides as well as the security aspect for our family. Our intention was to stay even with the back corners of our home and continue up the property line on the south and east sides. The north side (street side) we would like to come out from the house no more than sixteen feet. This will not obstruct and views for drivers going either direction down the street or around the nearby corner. I have spoke to my neighbor across the street who did the same height fence in the same manner.

Sincerely yours,

Jeffrey Stange

* * * RECEIPT * * *

Date: 09/30/26 **Receipt#:** 103518

Quantity	Transactions	Reference	Subtotal
1	Zoning Board of Appeals	20162013	$160.00
		Total Paid:	$160.00

Notes:

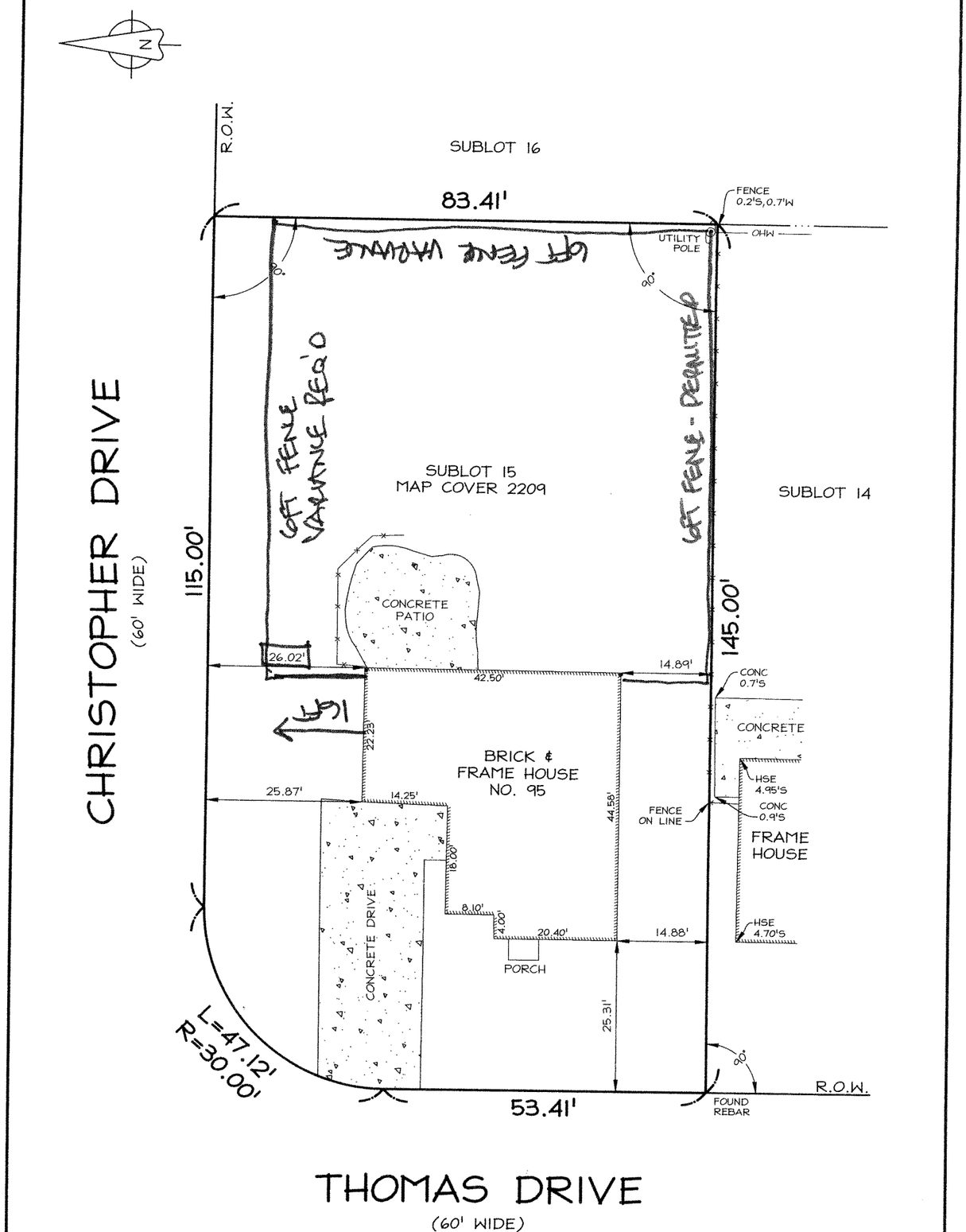
Payment Type	Amount	Paid By
Credit Card-Ref #m/c	$160.00	Stange, Jeffrey

Thank you for allowing the West Seneca Town Clerk's office to serve you. Have a wonderful day!
1250 Union Road, Room 212 West Seneca, NY 14224

Name: Stange, Jeffrey
95 Thomas Dr
West Seneca, NY 14224

Clerk ID: MAM

Internal ID: 20162013



THIS SURVEY IS NOT VALID WITH AN AFFIDAVIT OF NO CHANGE

NO MONUMENTS SET OR FOUND AT PROPERTY CORNERS UNLESS NOTED HEREON.

3556 Lake Shore Road, Suite 500, Buffalo, NY 14219
p (716) 827-8000 f (716) 270-6091 www.nussclarke.com

This survey was prepared without the benefit of an abstract of title and is subject to any state of facts that may be revealed by an examination of such.

Unauthorized alterations or additions to any survey, drawing, design, specification, plan or report is a violation of section 7209, provision 2 of the New York State Education Law.

NUSSBAUMER & CLARKE, INC.
ENGINEERS AND SURVEYORS
EST. 1933

BOUNDARY SURVEY

95 Thomas Drive

Part of Lot 371, Township 10, Range 7
Buffalo Creek Reservation
Town of West Seneca
County of Erie, State of New York

Date of Survey: 5/22/2026 Scale : 1" = 20'

Project No. : 08J2-0647A

Successors to the records of Graf Land Surveyors Successors to the records of James L. Shisler, Land Surveyor

APPLICATION TO BOARD OF APPEALS

Tel. No. (585) 305-5199

Appeal No. 2026-046

Date 9/30/26

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

I (we) Jason Havens of 4350 Seneca St.

West Seneca, NY 14224, 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 4350 Seneca St.
3. State in general the exact nature of the permission required, _____

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)

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: _____

Jason Havens
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
   120-31(B)(3)(b) C zoning district side yard setback adjacent to R Boundary is 25'; Requesting 5' setback
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 xtension thereof under the Zoning Ordinance.
4. A statement of any other facts or data which should be considered in this appeal. _____

Building Inspector _____

Date: 09/29/2026

Ashley Williams
Waves Architecture & Engineering
255 Rounds Ave
Buffalo, NY 14224
AWilliams@wavesae.com
954-441-7818

To:
Town of West Seneca Zoning Board of Appeals
c/o Code Enforcement Office
1250 Union Road
West Seneca, NY 14224

Subject: Request for Zoning Variance – 4350 Seneca Street (Rusty Nickel Brewing Co.)

Dear Members of the Zoning Board of Appeals,

Waves Architecture & Engineering, on behalf of the property owner, Havens Holding Group, formally requests an area variance for the property located at 4350 Seneca Street, home of Rusty Nickel Brewing Co. The property is zoned C-2 and adjoins the R-65A district to the east, where the Town Code requires a 25'-0" side yard setback. This requirement limits the ability to expand the existing building.

The request is for a 5'-0" side yard setback along the east lot line, a variance of 20'-0". The project includes a two-story addition to the existing building, the relocation of existing equipment that serves the kitchen on the east side of the building, and stepped block retaining walls to stabilize the slope. The east side is the only practical location for this work, as it keeps the equipment next to the kitchen and away from customer areas.

The request is not expected to negatively affect neighboring properties. The building is screened from neighboring homes by a mature tree buffer and a significant grade change. Any trees of significance removed during construction will be replaced per the Landscape Plan.

Enclosed for the Board's review are the property survey, site and grading plans (Sheets C-101A and C-102), and the landscape plan (Sheet L-101). On behalf of the owner, Waves respectfully requests the Board's consideration and approval of this variance and is available to discuss the request further, including any reasonable conditions the Board may find appropriate.

The Board's time and consideration are greatly appreciated.

Sincerely,

Ashley Williams
Junior Civil Engineer
Waves Architecture & Engineering
On behalf of Havens Holding Group

255 Rounds Ave | Buffalo, NY 14224 | 585.305.5199 | WavesAE.com

MAIN STREET
(66' WIDE)
(FORMERLY RIDGE ROAD)
181.53'
R.O.W.
FOUND IRON
NORTHEAST CORNER OF LANDS CONVEYED TO HAPISIK L:11351 P:8464
CONC POST 0.1'N
CONC POST 0.5'N
CONC POST 0.4'N
25' SIDE YARD SETBACK FROM R-65 A
5' SIDE YARD SETBACK REQUESTED BY VARIANCE
PAT.
FRAME BUILDING
STORAGE TRAILER
PATIO
IRREGULAR REFUSED OR BARBED FENCE
292.25'
FENCE POST 0.3'E
FENCE POST 0.5'E
FENCE END 1.7'E
SET IRON
0.81±ACRES
BLACKTOP PARKING
SOUTHERLY LINE OF LOT 60
NORTHERLY LINE OF LOT 104
BRICK BARBECUE AREA
PARALLEL WITH SENECA STREET
LIGHT POLE 2.0'E
SET IRON
125.00'
89.19'
25.00'
FENCE 4.9'S 1.9'E
FOUND IRON
20.00'
25.00'
20' WIDE EGRESS EASEMENT
20' WIDE INGRESS EASEMENT
DECK
FRAME BUILDING
200.00'
218.00'
SOUTHWEST CORNER OF LANDS CONVEYED TO FLUTIAN L 9610 P 565
15.00'
20.00'
R.O.W.
SET IRON 4.3'N
FOUND IRON
— 1613.10' TO THE EASTERLY LINE OF MILL STREET
SENECA STREET (66' WIDE)
(FORMERLY AURORA-BUFFALO PLANK ROAD)
124.91'
74.2"
77.11 1/4"
25'-0"

Revised Address: 2/14/22

NUSSBAUMER & CLARKE, INC. ENGINEERS AND SURVEYORS EST. 1933

3556 Lake Shore Road Suite 500, Buffalo, NY 14219
p (716) 827-8000 f (716) 270-6091 www.nussclarke.com

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Unauthorized alterations or additions to any survey drawing, specification, plan or report is a violation of section 7209, subdivision 2 of the New York State Education Law.

NO IRONS SET ON FOUND A PROPERTY CORNERS, UNLESS NOTED HEREON

BOUNDARY SURVEY
4350 SENECA STREET
Part of Lots 60 & 104
Map Cover 101
Town of West Seneca
County of Erie, State of New York

Date of Survey: 06/30/2021 Scale: 1" = 40' Project No.: 2032-0104A-2

* * * RECEIPT * * *

Date: 09/30/26 **Receipt#:** 103547

Quantity	Transactions	Reference	Subtotal
1	Zoning Board of Appeals	20162026	$160.00
		Total Paid:	$160.00

Notes: 2026-046 / 4350 Seneca St

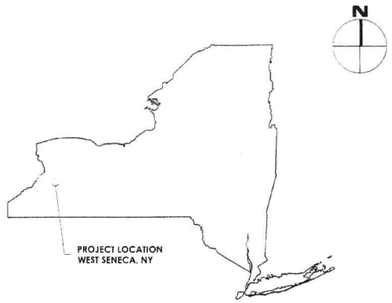
Payment Type	Amount	Paid By
CK #1151	$160.00	Havens, Jason

Thank you for allowing the West Seneca Town Clerk's office to serve you. Have a wonderful day!
1250 Union Road, Room 212 West Seneca, NY 14224

Name: Havens, Jason
Rust Nickel Brewing Co
4350 Seneca St
West Seneca, NY 14224

Clerk ID: MD

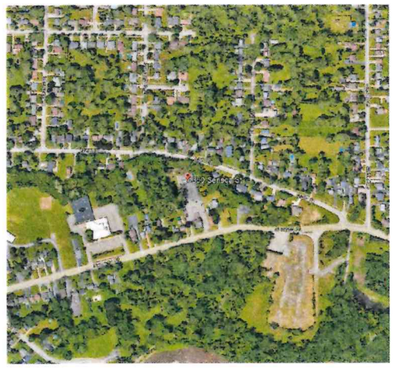
Internal ID: 20162026



LOCATION MAP
NTS



LOCATION MAP - 4350 SENECA ST
NTS



LOCATION MAP - 4350 SENECA ST
NTS

NOTES:
1. IT IS A VIOLATION OF THE NEW YORK STATE EDUCATION LAW FOR ANY PERSON, UNLESS ACTING UNDER THE DIRECTION OF A LICENSED PROFESSIONAL ENGINEER, TO ALTER AN ITEM ON THESE PLANS IN ANY WAY. IF ALTERATIONS TO THESE PLANS ARE REQUIRED, THE ALTERATIONS SHALL BE MADE IN ACCORDANCE WITH ARTICLE 145 - SUBSECTION 7209 OF THE NEW YORK STATE EDUCATION LAW.
2. PROJECT PARCEL (4350 WEST SENECA ST. WEST SENECA NY, 14224) HAS NO WETLANDS, FLOODWAYS, AND FLOOD PLAINS.

4350 SENECA STREET
BUILDING ADDITION



JULY 2026

4350 SENECA STREET
TOWN OF WEST SENECA, NY 14224

SHEET INDEX	
DWG. NO.	SHEET NAME
G-100	COVER
C-001	EXISTING CONDITIONS - SCALE 1:30
C-001A	EXISTING CONDITIONS - SCALE 1:20
C-002	DEMO PLAN AND EROSION AND SEDIMENT CONTROL PLAN
C-101	SITE PLAN
C-102	GRADING PLAN
C-103	DRAINAGE PLAN
C-104	UTILITY PLAN
C-105	PHOTOMETRIC PLAN
L-101	LANDSCAPE PLAN
A-101	1ST FLOOR PLAN
A-102	2ND FLOOR PLAN
A-201	ELEVATIONS PLAN

APPLICANT: HAVENS HOLDING INC. PH/FAX: 585-305-5199
ADDRESS: 255 ROUNDS AVE, BUFFALO NY 14215

OWNER: HAVENS HOLDING INC. PH/FAX: 585-305-5199
ADDRESS: 255 ROUNDS AVE, BUFFALO NY 14215

ENGINEER/ARCHITECT: WAVES ARCH & ENGINEERING PH/FAX: 585-305-5199
ADDRESS: 255 ROUNDS AVE, BUFFALO NY 14215

SITE DATA - RUSTY NICKEL BREWING CO.

SITE AREA = 35283.6 SF / 0.81 ACRES
CURRENT ZONING: C2-7.E
DESCRIPTION: COMMERCIAL ZONING AND SPECIAL USE (BREWERY)

ADDRESS: 4350 SENECA STREET, WEST SEENCA, NY 14224
SBL: 135.17-3-8.2
MINIMUM LOT SIZE: 9850 SF
ACTUAL LOT SIZE: 35283.6 SF
AREA OF DISTURBANCE: 3383.29 SF <= OR >= 0.078 ACRES
ARCES, SWPPP (NO)

		REQUIRED	PROVIDED
1.	LOT COVERAGE IN %		ACTUAL = 7.047%
	SETBACK REQUIREMENTS:		
2.	FRONT YARD	MIN. = 40 FT	ACTUAL = 315 FT
3.	SIDE YARD	MIN. = 5 FT	ACTUAL = 5 FT
4.	TOTAL SIDE YARD	MIN. = 10 FT	ACTUAL = 32 FT
5.	REAR YARD	MIN. = 38 FT	ACTUAL = 38 FT
6.	BUILDING SEPARATION	N/A	
7.	BUILDING HEIGHT	MAX = 40 FT	ACTUAL = 38 FT
8.	FINISHED GROUND FLOOR	MIN. 0, MAX. 4	ACTUAL = 0'-0"
9.	GROUND STORY HEIGHT	MIN.= 13	ACTUAL = 12'-0"
	BUILDING GROUND FLOOR TRANSPARENCY:		
10.	FRONT FACADE	MIN. 30%	ACTUAL = 36%
11.	PEDESTRIAN ACCESS LOCATION	MAIN ENTRANCE LOCATION	
12.	WALL SURFACE MATERIAL	BOARD AND BATTEN WOOD	
13.	EXISTING / PROPOSED BUILDING SF	EXISTING = 3,000 SF	ACTUAL = 4,808 SF
14.	PARKING - EATING / DRINKING ESTABLISHMENT	TWO (2) SPACES PER FIVE (5) SEATS, 223 PEOPLE MAX OCCUPANCY = 45 SPACES	ACTUAL = 45 SPACES
15.	EXISTING UTILITIES AND SIZES		ACTUAL = SEE DWG C-104

WAVES
ARCHITECTURE & ENGINEERING
255 ROUNDS AVE, BUFFALO NY 14225

PROJECT INFORMATION

Project Name
4350 SENECA STREET
BUILDING ADDITION

Project Address
4350 SENECA ST.
WEST SENECA, NY 14224

Client Name
HAVENS HOLDING GROUP

Waves Project Number
24001.00

PROJECT ISSUE & REVISION SCHEDULE

#	Date	Description
1	07/27/26	PERMIT DRAWING

PROFESSIONAL STAMPS



STAMPED: 07/28/2026
EXPIRES: 12/31/2026

SHEET INFORMATION

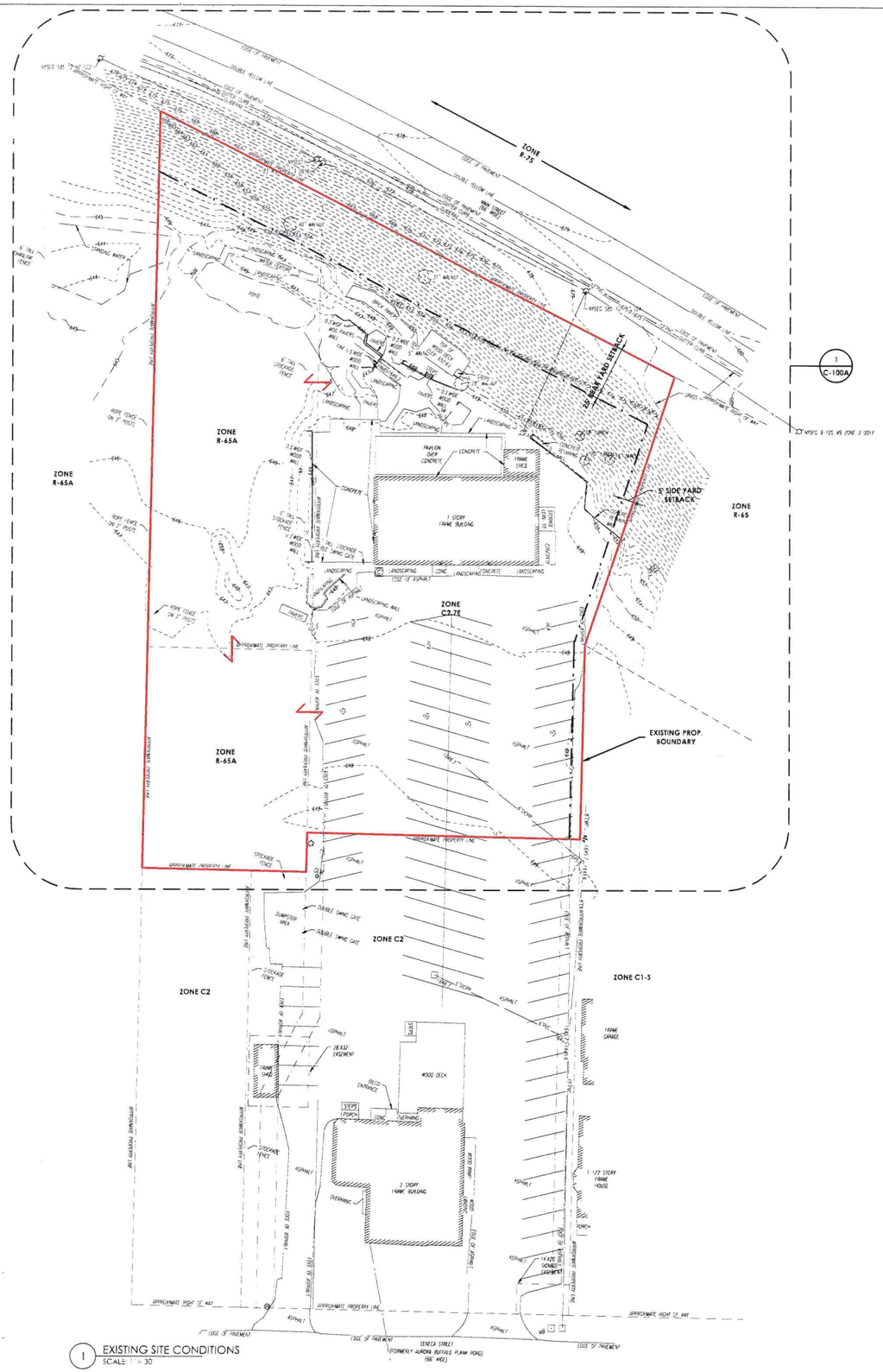
Issued	Scale for 22x34 Sheets
07/28/2026	N.T.S.

Project Status
PERMIT - SITE PLAN

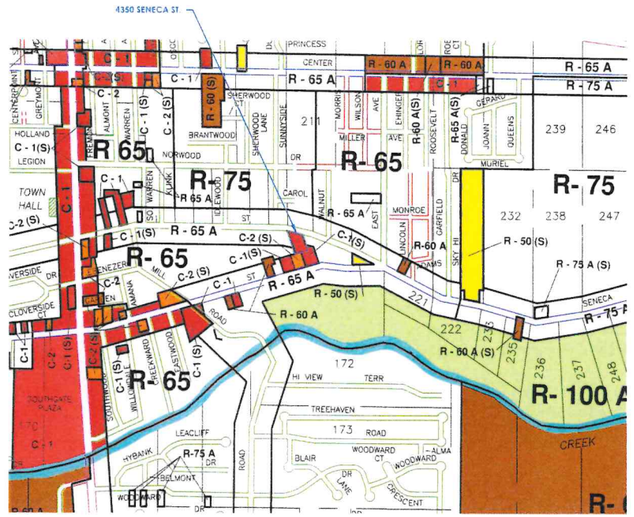
Drawing Title
COVER

Drawn By	Checked By
KSR	JLH

Drawing Number
G-100



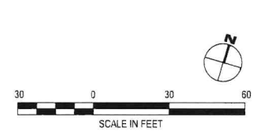
1 EXISTING SITE CONDITIONS
SCALE: 1" = 30'



2 2018 ZONING MAP
SCALE: NTS

EXISTING CONDITIONS NOTES:

1. EXISTING TOPOGRAPHIC INFORMATION SHOWN IS BASED ON THE SURVEY PROVIDED BY THE OWNER UNLESS OTHERWISE NOTED.
2. EXISTING UTILITY INFORMATION SHOWN IS BASED ON AVAILABLE SURVEY DATA AND RECORD INFORMATION. UTILITY LOCATIONS, SIZES, AND ELEVATIONS SHALL BE VERIFIED IN THE FIELD PRIOR TO CONSTRUCTION.
3. THE CONTRACTOR SHALL NOTIFY THE ENGINEER IMMEDIATELY OF ANY DISCREPANCIES BETWEEN EXISTING FIELD CONDITIONS AND THE INFORMATION SHOWN ON THESE PLANS BEFORE PROCEEDING WITH WORK.
4. UNDERGROUND UTILITIES NOT SHOWN ON THESE PLANS MAY EXIST. THE CONTRACTOR SHALL CONTACT THE APPROPRIATE UTILITY NOTIFICATION SERVICE PRIOR TO ANY EXCAVATION.
5. EXISTING CONTOURS AND SPOT ELEVATIONS REPRESENT CONDITIONS AT THE TIME OF SURVEY. NO GUARANTEE IS MADE REGARDING CHANGES OCCURRING AFTER THE SURVEY DATE.
6. CONTRACTOR SHALL PROTECT ALL EXISTING UTILITIES AND SITE IMPROVEMENTS TO REMAIN THROUGHOUT CONSTRUCTION.
7. VERIFY THE LOCATION AND ELEVATION OF ALL EXISTING UTILITY STRUCTURES, INCLUDING SANITARY SEWER, STORM SEWER, WATER, GAS, ELECTRIC, TELECOMMUNICATIONS, AND DRAINAGE FACILITIES, PRIOR TO BEGINNING CONSTRUCTION.
8. ANY DAMAGE TO EXISTING FACILITIES CAUSED BY CONSTRUCTION OPERATIONS SHALL BE REPAIRED OR REPLACED BY THE CONTRACTOR AT NO ADDITIONAL COST TO THE OWNER.



LEGEND:

- EXISTING MAJOR CONTOURS
- EXISTING MINOR CONTOURS
- EXISTING PROPERTY BOUNDARY
- MERGED PARCELS

WAVES
ARCHITECTURE & ENGINEERING
255 ROUNDS AVE, BUFFALO NY 14225

PROJECT INFORMATION

Project Name
4350 SENECA STREET
BUILDING ADDITION

Project Address
4350 SENECA ST.
WEST SENECA, NY 14224

Client Name
HAVENS HOLDING GROUP

Waves Project Number
2400 .00

PROJECT SSUE & REVISION SCHEDULE

#	Description	Date
1	PERMIT DRAWING	07/27/26

PROFESSIONAL STAMPS

STATE OF NEW YORK
JASON LEE HAVENS
090335
LICENSED PROFESSIONAL ENGINEER

STAMPED: 07/28/2026
EXPIRES: 12/31/2026

NOT FOR CONSTRUCTION

SHEET INFORMATION

Issued	Scale for 22x34 Sheets
07/28/2026	1" = 30'

Project Status
PERMIT - SITE PLAN

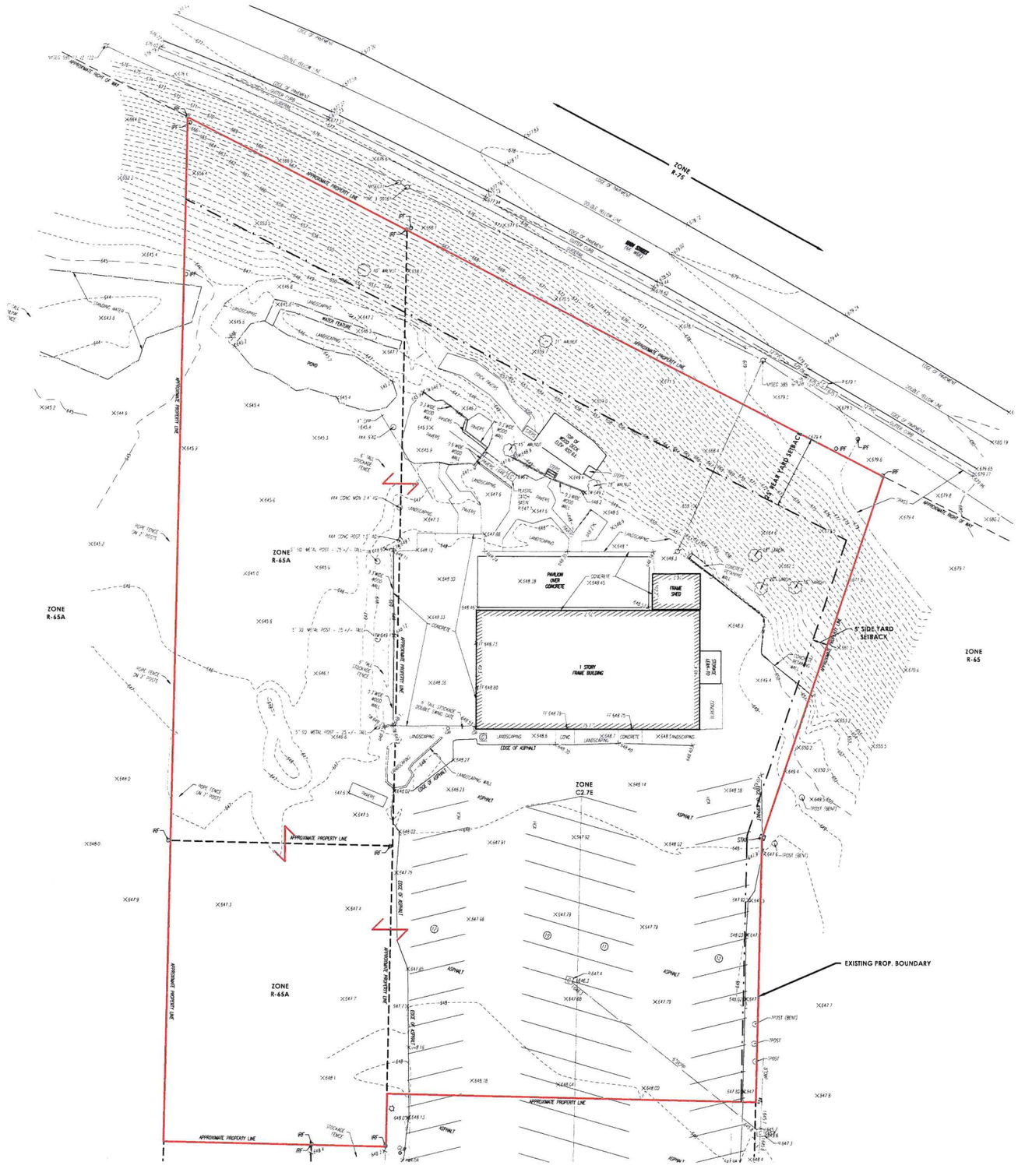
Drawing Title
EXISITNG CONDITIONS - OVERALL

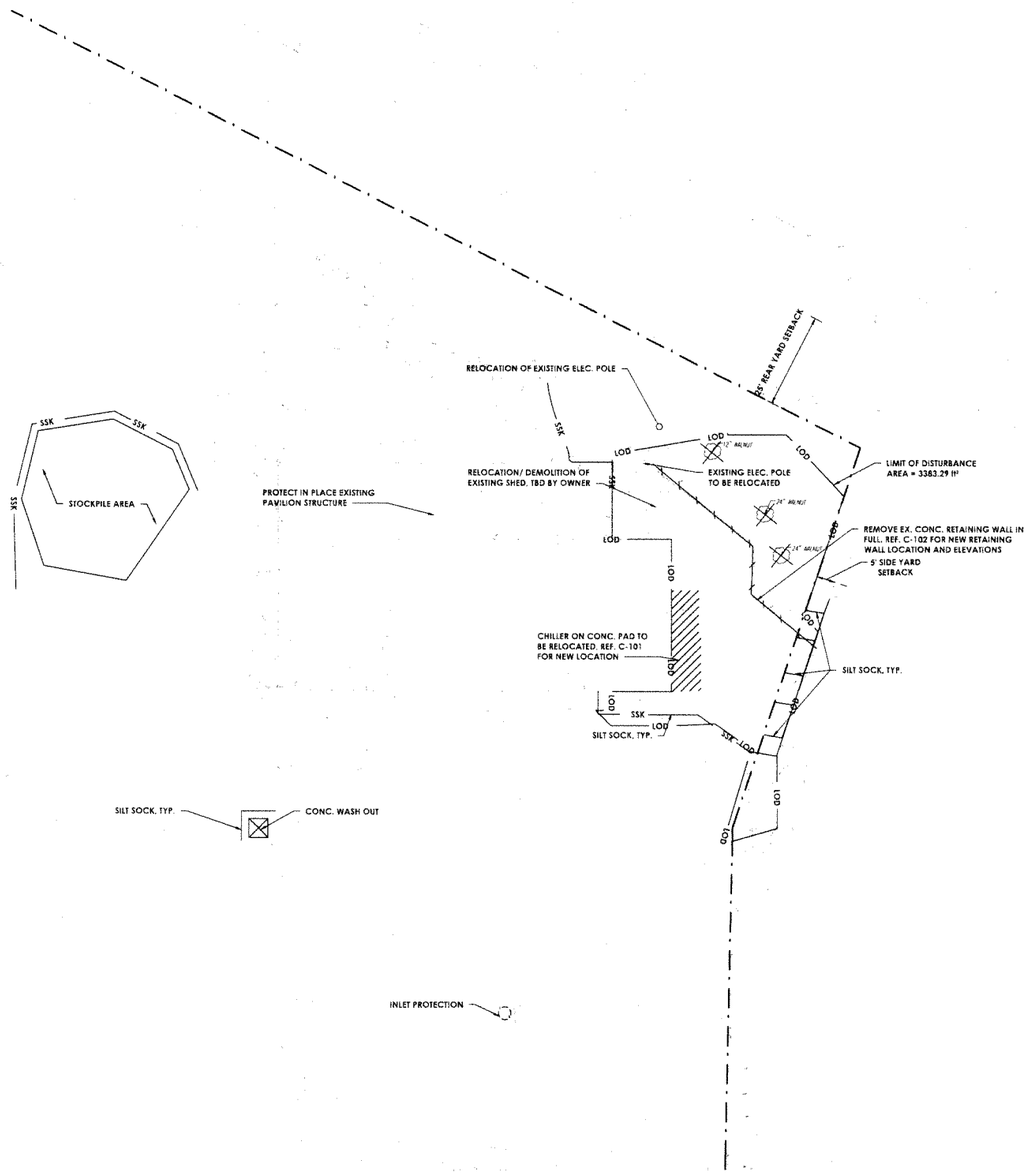
Drawn By	Checked By
ANW	JLH

Drawing Number

PLAN NOTES:

1. REF SHEET C-001 FOR EXISTING CONDITIONS NOTES AND THE OVERALL EXISTING CONDITIONS PLAN.


ZONE R-75
ZONE R-65A
ZONE R-65A
ZONE C2-7E
ZONE R-65
ZONE R-65A
APPROXIMATE PROPERTY LINE
EDGE OF PAVEMENT
DOUBLE YELLOW LINE
GUIDE RAIL
SIDEWALK
MAIN STREET (NYS RTE 5)
POND
WATER FEATURE
LANDSCAPING
CONCRETE
ASPHALT
PAVILION OVER CONCRETE
FRAME SHED
1 STORY FRAME BUILDING
5' SIDE YARD SETBACK
EXISTING PROP. BOUNDARY
EDGE OF ASPHALT
STOCKADE FENCE
ROPE FENCE ON 3' POSTS
5' TALL STOCKADE DOUBLE SWING GATE
5' WIDE WOOD WALL
5' TALL STORAGE FENCE
5' SQ METAL POST - 25 +/- TALL
TYPOST (BENT)
TYPOST
IRF
IPF
SMH
CATCH BASIN
DRAINAGE
LANDSCAPING WALL
PAVERS
CONCRETE RETAINING WALL
SIGN
STEPS
PLANTER
GAZEBO
SHED
SHED FOR ELEC. METER
SHED FOR WATER METER
PICNIC TABLE
BENCH
BOLLARD
LIGHT POLE
UTILITY POLE
GUY WIRE
GAS VALVE
WATER VALVE
SEWER MANHOLE
SEWER LINE
WATER LINE
GAS LINE
OVERHEAD WIRES
TREE
SHRUB
BUSH
HEDGE
FENCE
GRASS
DRIVE PAVERS
CONCRETE PAVING
ASPHALT PAVING
CONCRETE WALK
CONCRETE CURB
CONCRETE STEPS
CONCRETE RAMP
CONCRETE PAD
CONCRETE FOOTING
CONCRETE WALL
CONCRETE PIER
CONCRETE SLAB
CONCRETE FOUNDATION
CONCRETE BASE



DEMOLITION NOTES:

CONTRACTOR SHALL VERIFY ALL EXISTING FIELD CONDITIONS PRIOR TO COMMENCING DEMOLITION ACTIVITIES. NOTIFY THE ENGINEER IMMEDIATELY OF ANY DISCREPANCIES BETWEEN FIELD CONDITIONS AND THE PLANS.

2. DEMOLITION SHALL BE LIMITED TO ONLY THOSE ITEMS SPECIFICALLY IDENTIFIED ON THE PLANS. EXISTING IMPROVEMENTS NOT DESIGNATED FOR REMOVAL SHALL REMAIN AND BE PROTECTED THROUGHOUT CONSTRUCTION.
3. CONTRACTOR SHALL CONTACT THE APPROPRIATE UTILITY NOTIFICATION SERVICE AT LEAST 72 HOURS PRIOR TO EXCAVATION OR DEMOLITION. FIELD VERIFY THE LOCATION OF ALL UNDERGROUND UTILITIES BEFORE BEGINNING WORK.
4. CONTRACTOR SHALL PROTECT ALL EXISTING UTILITIES AND FACILITIES TO REMAIN. ANY DAMAGE RESULTING FROM CONSTRUCTION OPERATIONS SHALL BE REPAIRED OR REPLACED BY THE CONTRACTOR AT NO ADDITIONAL COST TO THE OWNER.
5. REMOVE AND LEGALLY DISPOSE OF ALL DEMOLISHED MATERIALS OFF-SITE UNLESS OTHERWISE DIRECTED BY THE OWNER.
6. SAWCUT EXISTING PAVEMENT, CONCRETE SLABS, SIDEWALKS, AND CURBS AT THE LIMITS OF DEMOLITION TO PROVIDE NEAT, STRAIGHT EDGES FOR PROPOSED CONSTRUCTION.
7. BACKFILL EXCAVATIONS RESULTING FROM DEMOLITION WITH APPROVED STRUCTURAL FILL AND COMPACT IN ACCORDANCE WITH THE PROJECT SPECIFICATIONS. EXISTING GRADING DISTURBED DURING DEMOLITION SHALL BE RESTORED OR REGRADED AS SHOWN ON THE PROPOSED GRADING PLAN, C-102.
8. CONTRACTOR SHALL MAINTAIN SAFE ACCESS TO OCCUPIED PORTIONS OF THE SITE THROUGHOUT DEMOLITION OPERATIONS UNLESS OTHERWISE APPROVED BY THE OWNER.
9. STOCKPILE MATERIALS DESIGNATED BY THE OWNER FOR SALVAGE IN A LOCATION APPROVED BY THE OWNER. ALL REMAINING DEMOLISHED MATERIALS SHALL BECOME THE RESPONSIBILITY OF THE CONTRACTOR.
10. PROTECT ALL TREES, LANDSCAPING, STRUCTURES, AND SITE FEATURES DESIGNATED TO REMAIN FROM DAMAGE DURING DEMOLITION OPERATIONS.
11. EXISTING UTILITIES ENCOUNTERED THAT ARE TO REMAIN IN SERVICE SHALL BE ADEQUATELY SUPPORTED AND PROTECTED THROUGHOUT CONSTRUCTION.
12. ANY UTILITIES DISCOVERED DURING DEMOLITION THAT CONFLICT WITH PROPOSED IMPROVEMENTS AND ARE NOT SHOWN ON THE PLANS SHALL BE BROUGHT TO THE ATTENTION OF THE ENGINEER PRIOR TO PROCEEDING.
13. CONTRACTOR SHALL COORDINATE DEMOLITION ACTIVITIES WITH THE OWNER TO MINIMIZE DISRUPTION TO ONGOING SITE OPERATIONS.

EROSION CONTROL PLAN:

NOTE: THE FOLLOWING EROSION CONTROL PROCEDURES SHALL BE ADHERED TO BY THE CONTRACTOR. THIS PROJECT DISTURBS LESS THAN ONE (1) ACRE AND IS NOT SUBJECT TO NYSDEC SPDES GENERAL PERMIT COVERAGE OR SWPPP REQUIREMENTS.

1. ALL STUMPS AND BRUSH MAY NOT BE BURIED IN THE TOWN AND TOPSOIL MAY NOT BE REMOVED FROM THE WORK WITHOUT A PERMIT.
2. INSTALL SILT SOCK ALONG THE LIMITS OF DISTURBANCE AS SHOWN ON THIS PLAN. REPLACE OR REPAIR WHEREVER CLOGGED, DAMAGED, OR INOPERABLE.
3. THE CONTRACTOR SHALL MAINTAIN ALL TEMPORARY SEDIMENT CONTROLS UNTIL DISTURBED AREAS ARE FULLY STABILIZED.
4. DIRT OR DEBRIS TRACKED ONTO PUBLIC ROADS SHALL BE REMOVED AND ROAD SURFACES CLEANED DAILY.
5. THE CONTRACTOR SHALL CONTROL DUST THROUGHOUT CONSTRUCTION. USE OF PETROLEUM-BASED PRODUCTS FOR DUST SUPPRESSION IS PROHIBITED.
6. ALL DISTURBED AREAS SHALL BE STABILIZED (SEEDED, MULCHED, OR OTHERWISE PROTECTED) WITHIN 14 DAYS OF CEASED DISTURBANCE.
7. THE CONTRACTOR IS RESPONSIBLE FOR MAINTENANCE OF DOWNSTREAM STORM SEWERS, DITCHES, AND CULVERTS SILT BUILDUP RESULTING FROM THIS PROJECT SHALL BE REMOVED AT NO ADDITIONAL EXPENSE TO THE OWNER OR MUNICIPALITY.
8. ALL EROSION AND SEDIMENT CONTROL DEVICES SHALL BE MAINTAINED UNTIL DISTURBED AREAS ARE STABILIZED AS DIRECTED BY THE ENGINEER.
9. STOCKPILE AND CONCRETE WASH-OUT LOCATIONS SHALL BE ESTABLISHED AS SHOWN ON THIS PLAN, INCLUDING SILT SOCK AROUND STOCKPILE BASES. STOCKPILES SHALL BE TEMPORARILY STABILIZED AS SOON AS PRACTICABLE.
10. TOPSOIL SHALL BE STRIPPED AND STOCKPILED ON SITE FOR REUSE AS DIRECTED BY THE OWNER. TOPSOIL MAY NOT BE REMOVED FROM SITE WITHOUT A PERMIT.
11. INLET PROTECTION SHALL BE INSTALLED AT ALL STORM DRAINAGE STRUCTURES PRIOR TO THE STRUCTURE BECOMING OPERATIONAL, REGARDLESS OF WHETHER SHOWN ON THIS PLAN. THE CONTRACTOR SHALL FIELD VERIFY THE LOCATION OF ALL STORM STRUCTURES WITHIN THE LIMITS OF DISTURBANCE PRIOR TO COMMENCING WORK AND NOTIFY THE ENGINEER OF ANY DISCREPANCIES.

SEQUENCE OF MAJOR ACTIVITIES:

NOTE: A STABILIZED CONSTRUCTION ENTRANCE IS NOT REQUIRED, AS THE EXISTING PARKING LOT WILL SERVE THIS FUNCTION.

1. INSTALL EROSION CONTROL MEASURES
2. ESTABLISH STOCKPILE AND CONCRETE WASHOUT LOCATIONS AS SHOWN ON THIS PLAN.
3. COMMENCE SITE EXCAVATION.
4. COMMENCE CONSTRUCTION.
5. ESTABLISHMENT (FINAL GRADING, SEEDING, PLANTING, AND STABILIZATION).

RESTORATION NOTES:

1. ADJACENT AREAS DISTURBED OR DAMAGED DURING CONSTRUCTION SHALL BE RESTORED IN KIND TO THE SATISFACTION OF THE OWNER.
2. WHEN RESTORING LAWN AREAS ADJACENT TO NEW CONSTRUCTION, ON-SITE MATERIAL MAY BE USED TO BACKFILL WITHIN 6 INCHES OF FINISHED SURFACE. THOROUGHLY COMPACTED AND FREE OF GRASS CLUMPS, TREE ROOTS, ASPHALT PIECES, OTHER EXTRANEOUS MATERIAL, AND STONES LARGER THAN 1 INCH.
3. ALL DISTURBED UNSURFACED AREAS SHALL RECEIVE FOUR INCHES OF TOPSOIL, SEED, AND MULCH, AND SHALL BE WATERED UNTIL A HEALTHY STAND OF GRASS IS ESTABLISHED. DISTURBED ASPHALT, CONCRETE, OR PAVING STONE AREAS SHALL BE REPLACED IN KIND, SAW CUT FULL DEPTH ALONG STRAIGHT, TRUE LINES; PAVING STONES REPLACED IN WHOLE UNITS MATCHING EXISTING SIZE, SHAPE, AND COLOR; ASPHALT COMPACTED TO A SMOOTH FINISH FLUSH WITH ADJACENT SURFACES TO REMAIN.

INSPECTION AND MAINTENANCE PROCEDURES:

NOTE: THE CONTRACTOR SHALL ASSIGN AN INDIVIDUAL RESPONSIBLE FOR INSPECTION AND MAINTENANCE OF TEMPORARY EROSION AND SEDIMENTATION CONTROL MEASURES, INCLUDING BUT NOT LIMITED TO:

1. INSPECT ALL EROSION CONTROL MEASURES AT LEAST ONCE EVERY SEVEN CALENDAR DAYS, AND FOLLOWING SNOWMELT/FREEZE-THAW EVENTS.
2. MAINTAIN ALL MEASURES IN GOOD WORKING ORDER AS DEEMED NECESSARY BY THE TOWN AND ENGINEER; COMPLETE REPAIRS WITHIN 24 HOURS OF BEING REPORTED.
3. CHECK AND REPAIR SILT SOCK AND EROSION CONTROL DEVICES AS NECESSARY.
4. INSPECT TEMPORARY AND PERMANENT SEEDING/PLANTING FOR BARE SPOTS, WASHOUTS, AND HEALTHY GROWTH; REPAIR AS NECESSARY.
5. MONITOR NEIGHBORING ROADWAYS AND SWEEP TRACKED MUD, DIRT, OR ROCK AS NECESSARY.
6. VERIFY THAT INLET PROTECTION IS IN PLACE AT ALL STORM STRUCTURES ENCOUNTERED IN THE FIELD, INCLUDING ANY NOT SHOWN ON THIS PLAN, AND REPORT ANY UNPROTECTED OR PREVIOUSLY UNIDENTIFIED STRUCTURES TO THE ENGINEER IMMEDIATELY.

PLAN NOTES:

1. SHOULD CONSTRUCTION TAKE PLACE PRIOR TO ISSUANCE OF 100% IFC DRAWINGS, WAVES ASSUMES NO RESPONSIBILITY, LIABILITY, QUANTITY OR RELATED.
2. SURVEY PROVIDED BY LABELLA, WAVES ASSUMES NO RESPONSIBILITY FOR ACCURACY AND CONTENT.
3. UPDATED PLAN TO BE MAINTAINED BY FIELD CONSTRUCTION TEAM, AND SHARED WITH WAVES AE ON A WEEKLY BASIS.

LEGEND:

- EXISTING MAJOR CONTOURS
- EXISTING MINOR CONTOURS
- PROPERTY SETBACK MIN
- PROPERTY LINE
- LOD — LIMIT OF DISTURBANCE
- SSK — SILT SOCK
- INLET PROTECTION
- DEMOLITION LINE
- DEMOLITION
- DEMOLITION OF EXISTING TREES

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SCALE IN FEET

WAVES
ARCHITECTURE & ENGINEERING
255 ROUNDS AVE. BUFFALO NY 14225

PROJECT INFORMATION

Project: Name
4350 SENECA STREET
BUILDING ADDITION

Project: Address
4350 SENECA ST.
WEST SENECA, NY 14224

Client Name
HAVENS HOLDING GROUP

Waves Project Number
24001.00

PROJECT ISSUE & REVISION SCHEDULE

#	Description	Date
1	PERMIT DRAWING	07/27/26

PROFESSIONAL STAMPS

STATE OF NEW YORK
JASON LEE HAVENS
090335
LICENSED PROFESSIONAL ENGINEER

STAMPED: 07/28/2026
EXPIRES: 12/31/2026

NOT FOR CONSTRUCTION

SHEET INFORMATION

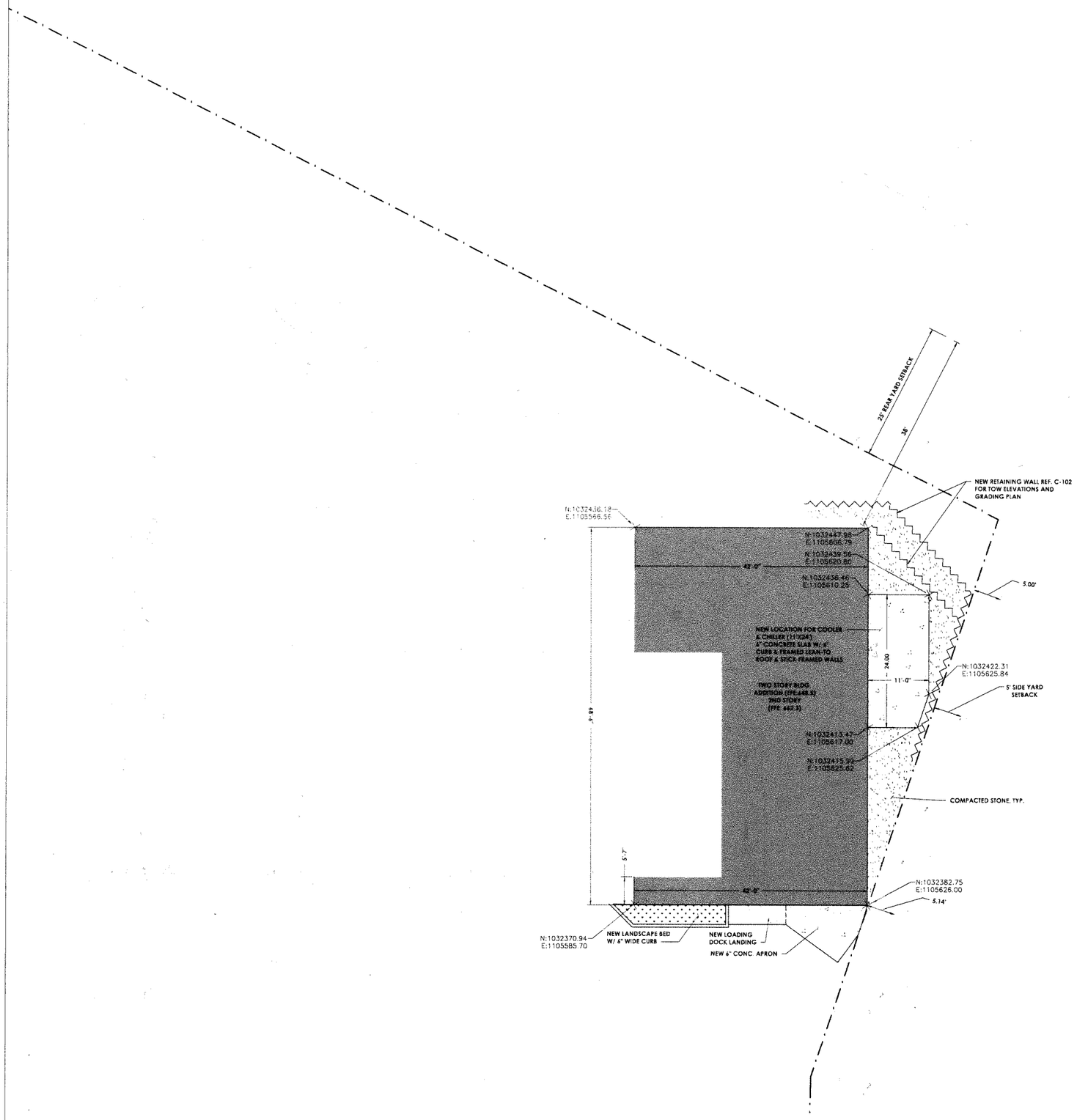
Issued	Scale for 22x34 Sheets
07/28/2026	1" = 20'

Project Status
PERMIT - SITE PLAN

Drawing Title
DEMO AND ESC PLAN

Drawn By	Checked By
ANW	JLH

Drawing Number
C-002



SITE PLAN NOTES:

1. ALL WORK SHALL CONFORM TO THE REQUIREMENTS OF THE TOWN OF WEST SENECA AND ALL APPLICABLE NYS CODES AND REGULATIONS.
2. CONTRACTOR SHALL FIELD VERIFY ALL EXISTING SITE CONDITIONS, DIMENSIONS, AND UTILITY LOCATIONS PRIOR TO COMMENCING CONSTRUCTION AND NOTIFY THE ENGINEER OF ANY DISCREPANCIES.
3. BOUNDARY AND TOPOGRAPHIC INFORMATION SHOWN IS BASED ON A SURVEY PROVIDED TO WAVES ARCHITECTURE & ENGINEERING. CONTRACTOR SHALL NOT SCALE DRAWINGS AND SHALL USE DIMENSIONS AS NOTED.
4. PROPOSED ADDITION AND SITE IMPROVEMENTS SHALL BE CONSTRUCTED IN ACCORDANCE WITH DIMENSIONS, SETBACKS, AND LOCATIONS SHOWN ON THIS PLAN.
5. CONTRACTOR SHALL PROTECT ALL EXISTING TREES, LANDSCAPING, STRUCTURES, AND SITE FEATURES NOT DESIGNATED FOR REMOVAL OR RELOCATION.
6. RETAINING WALL DESIGN, TOP OF WALL ELEVATIONS, AND GRADING SHALL BE PER THE GRADING PLAN (SHEET C-102).
7. ANY DISCREPANCY BETWEEN FIELD CONDITIONS AND PLAN INFORMATION SHALL BE REPORTED TO THE ENGINEER PRIOR TO PROCEEDING WITH WORK.
8. ALL DISTURBED AREAS OUTSIDE THE LIMITS OF CONSTRUCTION SHALL BE RESTORED TO MATCH EXISTING CONDITIONS.
9. CONTRACTOR IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS PRIOR TO COMMENCING SITE WORK.

LEGEND:

- PROPERTY SETBACK LINE
- PROPOSED RETAINING WALL
- CONCRETE PAD
- COMPACTED STONE
- PROPOSED ADDITION
- LANDSCAPE BED
- COORDINATE

N

10 0 10 20
SCALE IN FEET

WAVES
ARCHITECTURE & ENGINEERING
255 ROUNDS AVE, BUFFALO NY 14225

PROJECT INFORMATION

Project Name
4350 SENECA STREET
BUILDING ADDITION

Project Adaress
4350 SENECA ST.
WEST SENECA, NY 14224

Client Name
HAVENS HOLDING GROUP

Waves Project Number
2400T.00

PROJECT SSUE & REVISION SCHEDULE

#	Date	Description
1	07/27/26	PERMIT DRAWING

PROFESSIONAL STAMPS

STATE OF NEW YORK
JASON LEE HAVENS
090335
LICENSED PROFESSIONAL ENGINEER

STAMPED: 07/28/2026
EXPIRES: 12/31/2026

NOT FOR CONSTRUCTION

SHEET INFORMATION

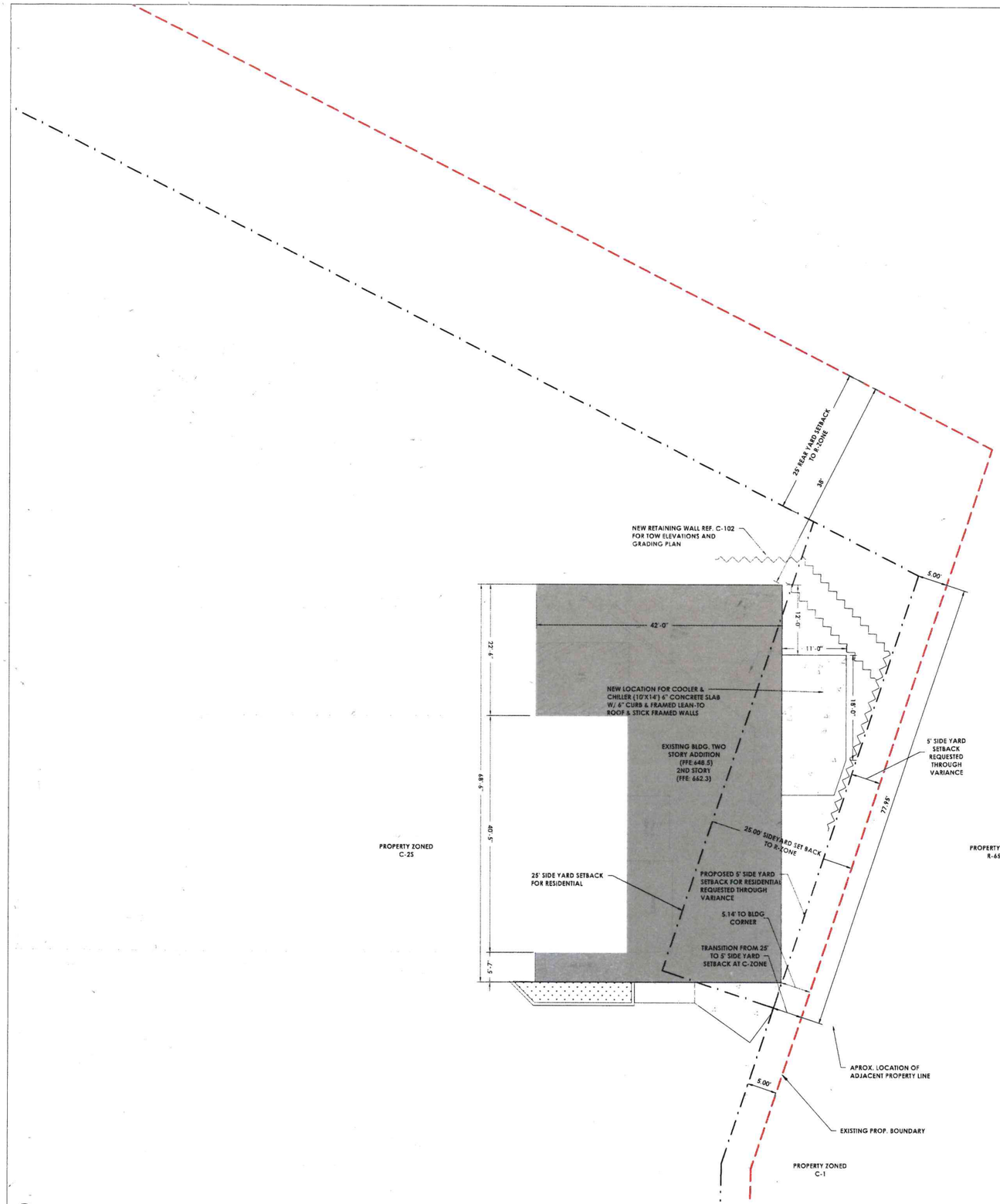
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07/28/2026	1" = 10

Project Status
PERMIT - SITE PLAN

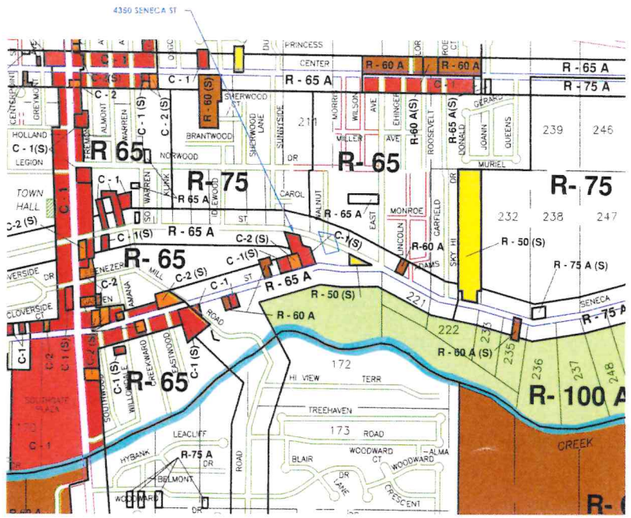
Drawing Title
SITE PLAN

Drawn By	Checked By
ANW	JLH

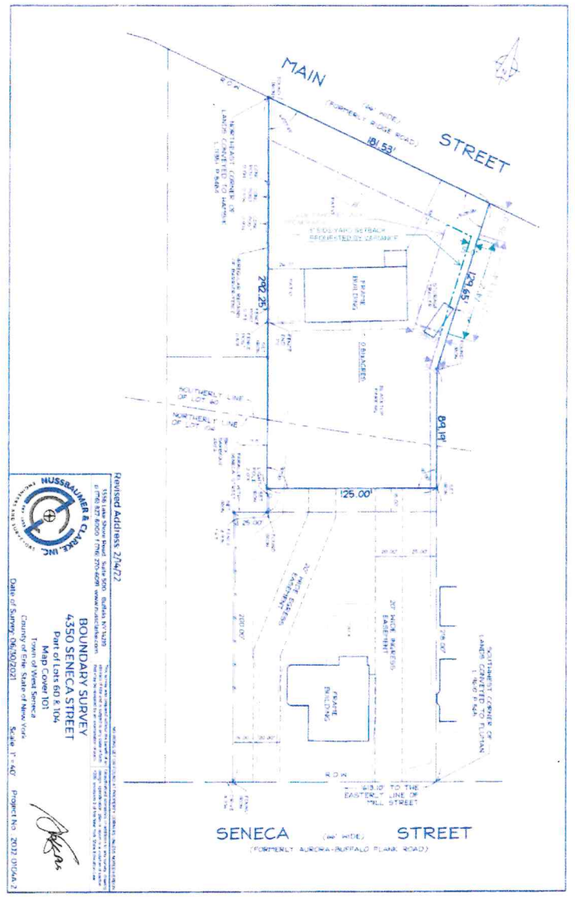
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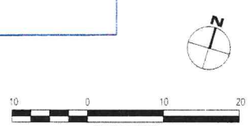
1 RUSTY NICKEL ADDITION VARIANCE SETBACKS
SCALE: 1" = 10'

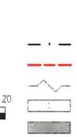


2 2018 ZONING MAP
SCALE: NTS



3 PROPOSED VARIANCE ON SURVEY
SCALE: NTS





VARIANCE NOTES:

1. PROPERTY IS ZONED C-2 ADJACENT PROPERTY TO THE EAST IS ZONED R-65A PER THE TOWN OF WEST SENECA 2018 ZONING MAP.
2. REQUIRED SIDE YARD SETBACK FOR A C-2 PARCEL ADJOINING A RESIDENTIAL DISTRICT IS 25'-0".
3. A 5'-0" SIDE YARD SETBACK IS REQUESTED, A VARIANCE OF 20'-0" ALONG THE EAST SIDE LOT LINE.
4. ALL SETBACK DIMENSIONS ARE MEASURED TO THE PROPERTY LINE. BOUNDARY AND TOPOGRAPHIC INFORMATION IS BASED ON A FIELD SURVEY BY LABELLA ASSOCIATES D.P.C., COMPLETED MAY 26, 2026.
5. THE VARIANCE IS REQUESTED FOR A TWO-STORY ADDITION TO THE EXISTING BUILDING, RELOCATION OF EXISTING EQUIPMENT, AND STEPPED SEGMENTAL BLOCK RETAINING WALLS.
6. THE NEAREST RESIDENCE IS APPROXIMATELY 100' FROM THE EXISTING BUILDING.
7. RETAINING WALL DESIGN AND GRADING SHALL BE PER THE GRADING PLAN (SHEET C-102).
8. TREES OF SIGNIFICANCE REMOVED DURING CONSTRUCTION SHALL BE REPLACED PER THE LANDSCAPE PLAN (SHEET L-101).
9. EROSION AND SEDIMENT CONTROLS, INCLUDING SILT SOCK AS SHOWN, SHALL BE MAINTAINED THROUGHOUT CONSTRUCTION.
10. NO CONSTRUCTION SHALL BEGIN UNTIL THE AREA VARIANCE IS APPROVED BY THE TOWN OF WEST SENECA ZONING BOARD OF APPEALS AND A BUILDING PERMIT IS ISSUED.

SETBACK DISTANCES

BACK YARD SETBACK	= 25'-0"
SIDE YARD SETBACK C-2	= 5'-0"
SIDE YARD SETBACK C-1	= 5'-0"
SIDE YARD SETBACK R-65A	= 25'-0"

VARIANCE REQUEST: ALLOW A 5'-0" SIDE YARD SETBACK FOR THE C-2 ZONED PARCEL WHERE IT ADJOINS THE R-65A DISTRICT (25'-0" REQUIRED)

LEGEND:

- EXISTING MAJOR CONTOURS
- EXISTING MINOR CONTOURS
- SETBACKS
- PROPERTY BOUNDARY
- PROPOSED RETAINING WALL
- CONCRETE PAD
- PROPOSED ADDITION

WAVES
ARCHITECTURE & ENGINEERING
255 ROUNDS AVE, BUFFALO NY 14225

PROJECT INFORMATION

Project Name
4350 SENECA STREET BUILDING

Project Adaress
4350 SENECA ST.
WEST SENECA, NY 14224

Client Name
HAVENS HOLDING GROUP
PHONE #: 585-305-5199

Waves Project Numoer
2400T.00

PROJECT SSUE & REVISION SCHEDULE

#	Date	Description

PROFESSIONAL STAMPS

STATE OF NEW YORK
JASON LEE HAVENS
090335
REGISTERED PROFESSIONAL ENGINEER

STAMPED: 09/29/2026
EXPIRES: 12/31/2026

NOT FOR CONSTRUCTION

SHEET INFORMATION

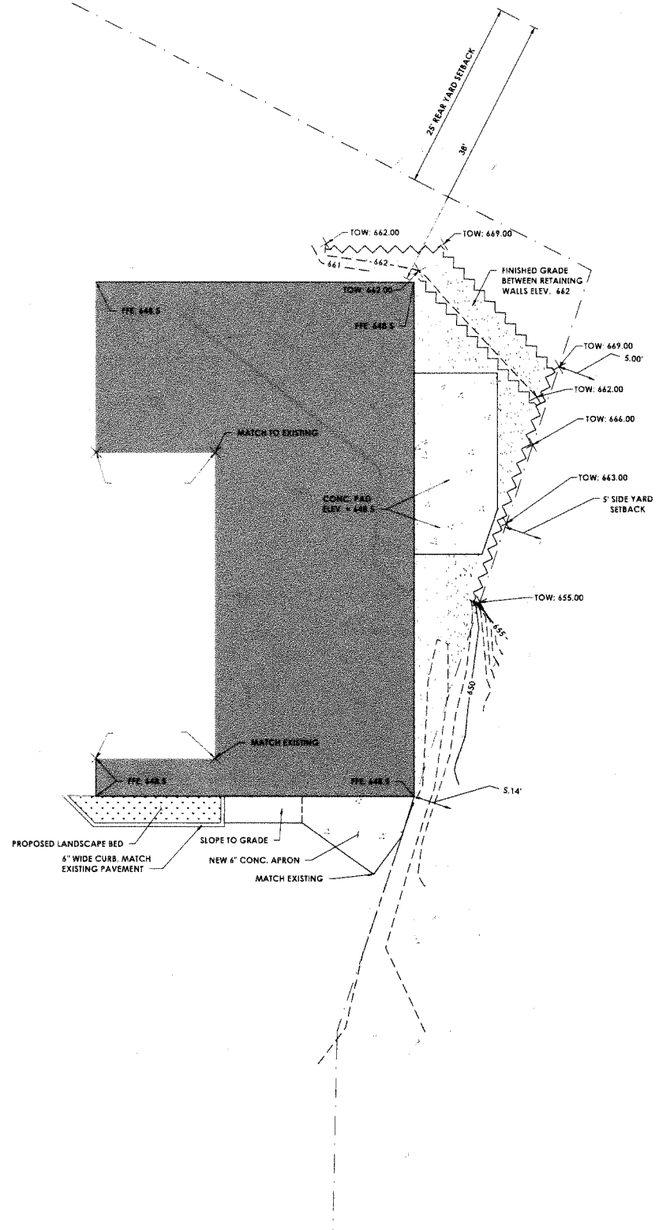
Issued	Scale for 22x34 Sheets
09/29/2026	1" = 10'

Project Status
ZONING VARIANCE REQUEST

Drawing Title
SITE PLAN - SETBACKS

Drawn By	Checked By
ANW	JLH

Drawing Numoer
A-101



GENERAL NOTES

1. CONTRACTOR SHALL FIELD VERIFY ALL EXISTING ELEVATIONS AND CONDITIONS PRIOR TO COMMENCING WORK AND NOTIFY THE ENGINEER OF ANY DISCREPANCIES.
2. ALL GRADING SHALL CONFORM TO THE ELEVATIONS, SLOPES, AND DETAILS SHOWN ON THIS PLAN.
3. EXISTING MAJOR AND MINOR CONTOURS ARE SHOWN FOR REFERENCE ONLY. PROPOSED CONTOURS INDICATE FINAL GRADING CONDITION.
4. CONTRACTOR SHALL PROTECT EXISTING UTILITIES, LANDSCAPING, AND SITE FEATURES NOT DESIGNATED FOR REMOVAL OR DISTURBANCE.
5. RETAINING WALL(S) SHOWN SHALL BE CONSTRUCTED PER STRUCTURAL ENGINEER'S DESIGN AND DETAILS. THIS SHEET IS FOR LOCATION AND GRADING REFERENCE ONLY.
6. ALL DISTURBED AREAS SHALL BE RESTORED TO MATCH EXISTING OR PROPOSED FINISH GRADE AND STABILIZED TO PREVENT EROSION.
7. SITE GRADING SHALL PROVIDE POSITIVE DRAINAGE AWAY FROM ALL BUILDING FOUNDATIONS.
8. CONTRACTOR IS RESPONSIBLE FOR COMPLIANCE WITH ALL APPLICABLE LOCAL, COUNTY, AND NYS CODES AND PERMITS RELATED TO GRADING, DRAINAGE, AND RETAINING WALL CONSTRUCTION.
9. ANY DISCREPANCY BETWEEN FIELD CONDITIONS AND PLAN INFORMATION SHALL BE REPORTED TO THE ENGINEER PRIOR TO PROCEEDING WITH WORK.

LEGEND

EXISTING MAJOR CONTOURS
EXISTING MINOR CONTOURS
100 — PROPOSED MAJOR CONTOURS
100 - - PROPOSED MINOR CONTOURS
PROPOSED RETAINING WALL
CONCRETE PAD
PROPOSED ADDITION
LANDSCAPE BED
COMPACTED STONE

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SCALE IN FEET

WAVES
ARCHITECTURE & ENGINEERING
255 ROUNDS AVE, BUFFALO NY 14225

PROJECT INFORMATION

Project Name
4350 SENECA STREET
BUILDING ADDITION

Project Address
4350 SENECA ST.
WEST SENECA, NY 14224

Client Name
HAVENS HOLDING GROUP

Waves Project Number
24001.00

PROJECT ISSUE & REVISION SCHEDULE

Description	Date	
PERMIT DRAWING	07/27/26	1

PROFESSIONAL STAMPS

STATE OF NEW YORK
JASON LEE HAVENS
090335
LICENSED PROFESSIONAL ENGINEER

STAMPED: 07/28/2026
EXPIRES: 12/31/2026

NOT FOR CONSTRUCTION

SHEET INFORMATION

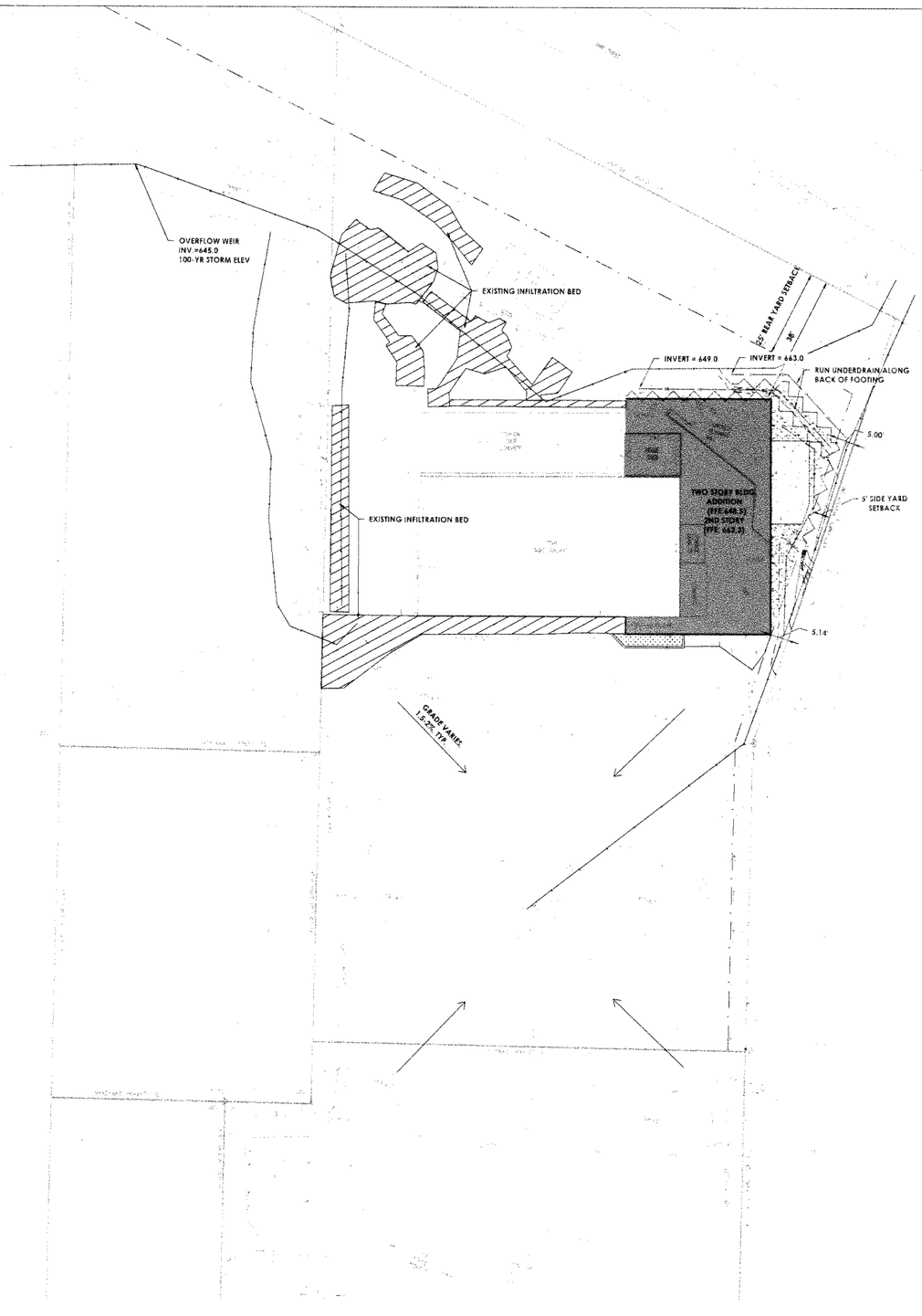
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07/28/2026	1" = 10'

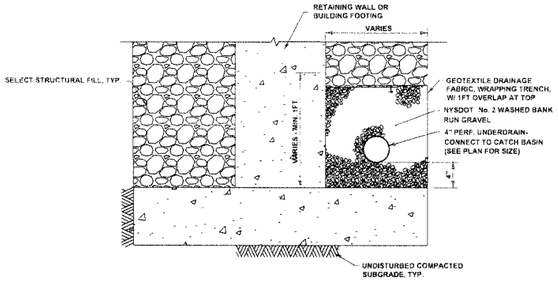
Project Status
PERMIT - SITE PLAN

Drawing Title
GRADING PLAN

Drawn By	Checked By
ANW	JLH

Drawing Number
C-102





NOTES:

A. PIPE INSTALLATION SHALL BE IN ACCORDANCE WITH MANUFACTURERS RECOMMENDATIONS

B. TRENCHING OPERATIONS SHALL INCLUDE ALL NECESSARY DEWATERING.

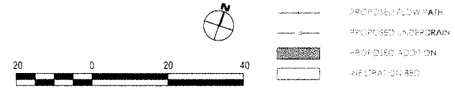
C. TRENCH DETAILS ARE ONLY SHOWN FOR PURPOSES OF MATERIAL PLACEMENT AND MAXIMUM PAY LIMITS.

D. AN OSHA APPROVED MOVABLE PROTECTIVE TRENCH SHIELD SHALL BE USED IN ALL UNSHEETED TRENCH AREAS.

UNDERDRAIN DETAIL

DRAINAGE PLAN NOTES:

1. NO NYSDEC OR FEDERAL WETLANDS OR 100 YEAR FLOODPLAIN BOUNDARIES ARE LOCATED ON OR WITHIN THE VICINITY OF THIS SITE
2. SELECT BACKFILL IS REQUIRED FOR ALL UTILITIES (GAS, WATER, STORM, SANITARY) THAT CROSS THROUGH ANY PAVEMENT AREA. LIMITS OF SELECT BACKFILL ARE SHOWN HEREON.
3. A MIN. VALUE OF 6 INCHES OF COVER IS REQUIRED FOR ALL STORM SEWER PIPES LOCATED IN GRASS AREAS. A MINIMUM OF 12 INCHES OF COVER IS REQUIRED FOR ALL STORM SEWER PIPES LOCATED IN PAVEMENT AREAS. STORM SEWER PIPE LOCATED WITHIN THE SUB-BASE OF THE PAVEMENT IS NOT PERMITTED
4. NO STORMWATER SHALL DRAIN ONTO ADJOINING PROPERTIES.
5. STORMWATER SYSTEMS HAVE BEEN DESIGNED FOR THE 25-YEAR STORM EVENT
6. PROVIDE STONE RIP RAP AT ALL PIPE OUTLETS FROM THE DETENTION POND/INFILTRATION PRACTICES
7. PROVIDE EMERGENCY OVERFLOW FOR THE DETENTION POND/INFILTRATION PRACTICES AT THE 100 YEAR STORM ELEVATION
8. INVERT ELEVATIONS ARE SHOWN FOR ALL CULVERTS UNDER DRIVEWAYS. ALL CULVERTS UNDER DRIVEWAYS SHALL HAVE GALVANIZED END SECTIONS



LEGEND

PROPOSED FLOW PATH

PROPOSED UNDERDRAIN

PROPOSED ADDITION

INFILTRATION BED

WAVES
ARCHITECTURE & ENGINEERING
255 ROUNDS AVE. BUFFALO NY 14225

PROJECT INFORMATION

Project Name
4350 SENECA STREET
BUILDING ADDITION

Project Address
4350 SENECA ST.
WEST SENECA, NY 14224

Client Name
HAVENS HOLDING GROUP

Waves Project Number
24001.00

PROJECT ISSUE & REVISION SCHEDULE

#	Date	Description
1	07/27/26	PERMIT DRAWING

PROFESSIONAL STAMPS

STATE OF NEW YORK
JASON LEE HAVENS
090335
LICENSED PROFESSIONAL ENGINEER

STAMPED: 07/28/2026
EXPIRES: 12/31/2026

SHEET INFORMATION

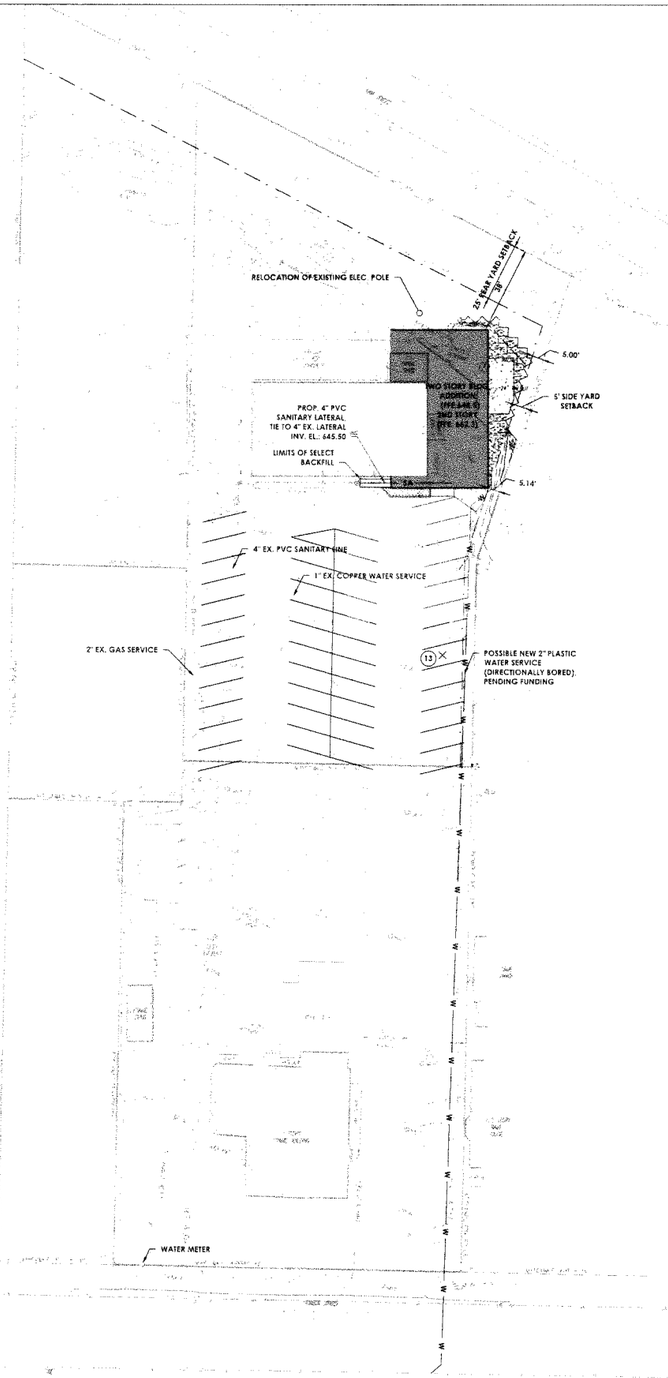
Issued	Scale for 22x34 Sheets
07/28/2026	1" = 20'

Project Status
PERMIT - SITE PLAN

Drawing Title
DRAINAGE PLAN

Drawn By	Checked By
ERS	JLH

Drawing Number
C-103



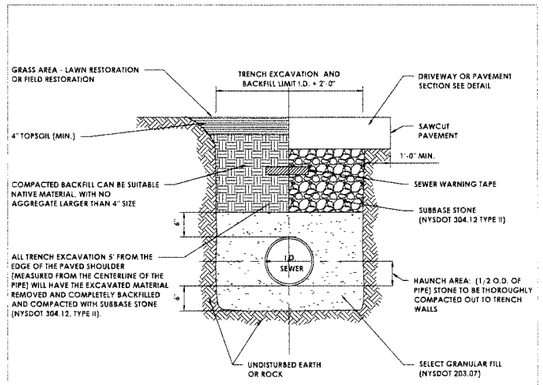
TOWN OF WEST SENECA PARKING CODE REVIEW:

16 PROPOSED SPACES @ 2 SPACES PER 5 SEATS = 7.5 SEATS

PROPOSED CONDITIONS NOT TO EXCEED 7 SEATS

UTILITY PLAN NOTES:

1. EXISTING CONDITIONS SHOWN FOR INFORMATION ONLY.
2. A MINIMUM OF 18" OF HORIZONTAL AND 12" VERTICAL SEPARATION MUST BE MAINTAINED BETWEEN ALL SANITARY SEWER AND WATER SERVICES.
3. THE ERIE COUNTY WATER AUTHORITY IS TO BE NOTIFIED A MINIMUM OF 48 HOURS PRIOR TO STARTING TO CONNECT ON TO THE NEW WATER SERVICE.
4. CONNECTION TO THE EXISTING WATER LINE SHALL BE MADE VIA A TAPPING SLEEVE AND VALVE.
5. SELECT BACKFILL IS REQUIRED FOR ALL UTILITIES (GAS, WATER, STORM, SANITARY) THAT CROSS THROUGH ANY PAVEMENT AREA. LIMITS OF SELECT BACKFILL ARE SHOWN HEREON.
6. ALL WATER, SANITARY, GAS, AND ELECTRIC SERVICES SHALL BE INSTALLED IN ACCORDANCE WITH THE APPLICABLE UTILITY PROVIDER'S STANDARDS AND SPECIFICATIONS.



NOTES:

1. CONTRACTOR TO PROVIDE SAFE EXCAVATION: SLOPE TRENCH WALLS, USE TRENCH BOX, OR SHEETING & BRACING PER OSHA SPECIFICATIONS. TRENCH BOX OR SHEETING AND BRACING TO BE LIFTED ABOVE THE SPRING LINE OF PIPE BEFORE BACKFILLING ABOVE SPRING LINE
2. PAVEMENT BACKFILL AND RESTORATION REQUIREMENTS SHALL APPLY TO WORK PERFORMED UNDER PROPOSED ROADWAYS
3. BACKFILL OF SUITABLE MATERIAL SHALL BE COMPACTED IN 6" LIFTS.
4. ALL DISTURBED AREAS SHALL BE MULCHED OR HAVE TURF ESTABLISHMENT WITHIN 10 DAYS IF IN A GRASS AREA.

SANITARY GRAVITY SEWER AND LATERAL TRENCH DETAIL

LEGEND:

- EXISTING WATER LINE
- EXISTING SANITARY LINE
- EXISTING GAS SERVICE
- EXISTING OVERHEAD ELECTRIC
- PROPOSED SANITARY LINE
- PROPOSED WATER LINE
- PROPOSED ADDITION

N

30 0 30 60
SCALE IN FEET

WAVES
ARCHITECTURE & ENGINEERING
333 ROUNDS AVE, BUFFALO, NY 14225

PROJECT INFORMATION

Project Name
4350 SENECA STREET
BUILDING ADDITION

Project Address
4350 SENECA ST.
WEST SENECA, NY 14224

Client Name
HAVENS HOLDING GROUP

Waves Project Number
24001.00

PROJECT ISSUE & REVISION SCHEDULE

#	Date	Description
1	07/27/26	PERMIT DRAWING

PROFESSIONAL STAMPS

STATE OF NEW YORK · JASON LEE HAVENS · 090335 · LICENSED PROFESSIONAL ENGINEER

STAMPED: 07/28/2026
EXPIRES: 12/31/2026

NOT FOR CONSTRUCTION

SHEET INFORMATION

Issued	Scale for 22x34 Sheets
07/28/2026	1" = 30'

Project Status
PERMIT - SITE PLAN

Drawing Title
UTILITY PLAN

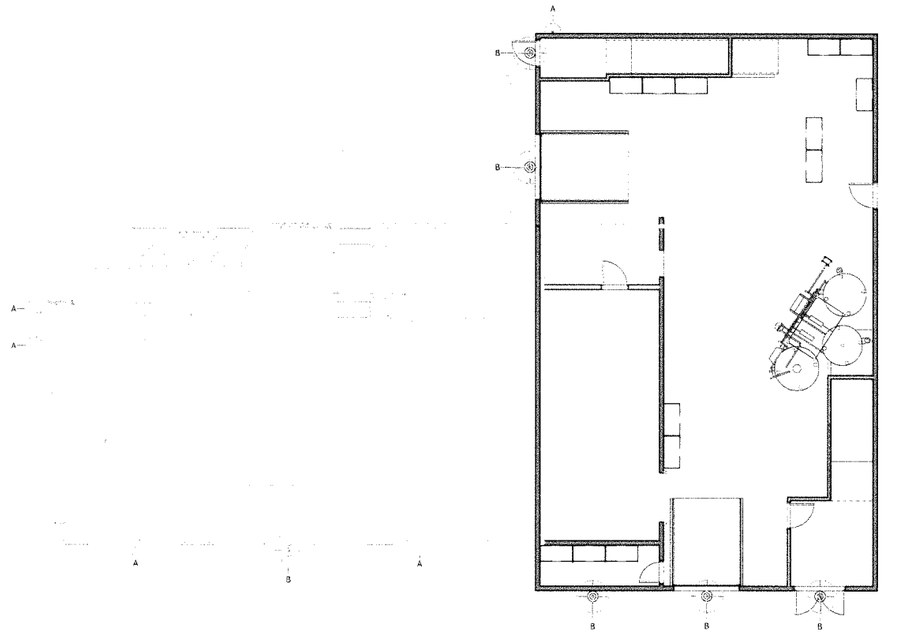
Drawn By	Checked By
ERS	JLH

Drawing Number
C-104

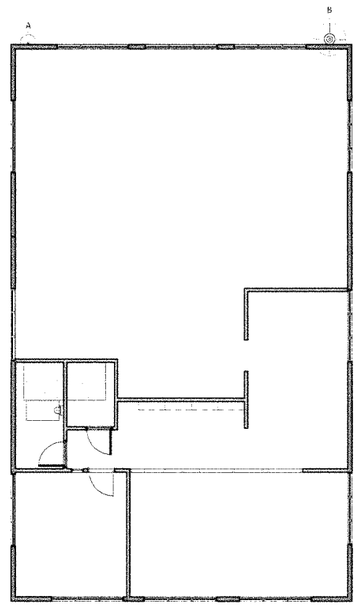
Fixture Schedule

Type Mark	Manufacturer	Model	Description	Count	Lumens	Wattage	Voltage	Fixture Color
A	RAB Lighting	CD43-4WW	LED Cylinder Lighting	6	1600 lm	16 W	120 V	Black
B	Barn Light Electric	BLE-W-WHU16-10 0-NA-NA-LED16-3 000K-DL-NA	Union LED Wall Sconce	7	2000 lm	27 W	120 V	Black

Grand total: 13

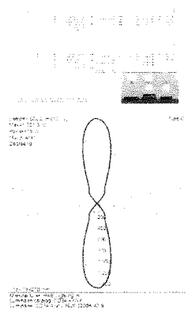


1 L1 Exterior Lighting Plan
1/8" = 1'-0"

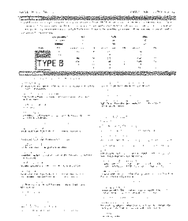


2 Second Floor Architectural Ceiling Plan
1/8" = 1'-0"











WAVES

ARCHITECTURE & ENGINEERING

358 ROUNDS AVE, BUFFALO NY 14225

PROJECT INFORMATION

Project Number
2400135

Client Name
HAVENHOUSING GROUP

Project Name
1450 HERKIMER STREET
BUILDING ADDITION

Project Address
1450 HERKIMER ST
WEST SENECA, NY 14224

PROJECT ISSUE & REVISION SCHEDULE

No.	Description	Date

PROFESSIONAL STAMPS

STATE OF NEW YORK
JASON LEE PANITCH
090335
PROFESSIONAL ENGINEER

STAMPED: 07/28/2026
EXPIRES: 12/31/2026

Not For Construction

SHEET INFORMATION

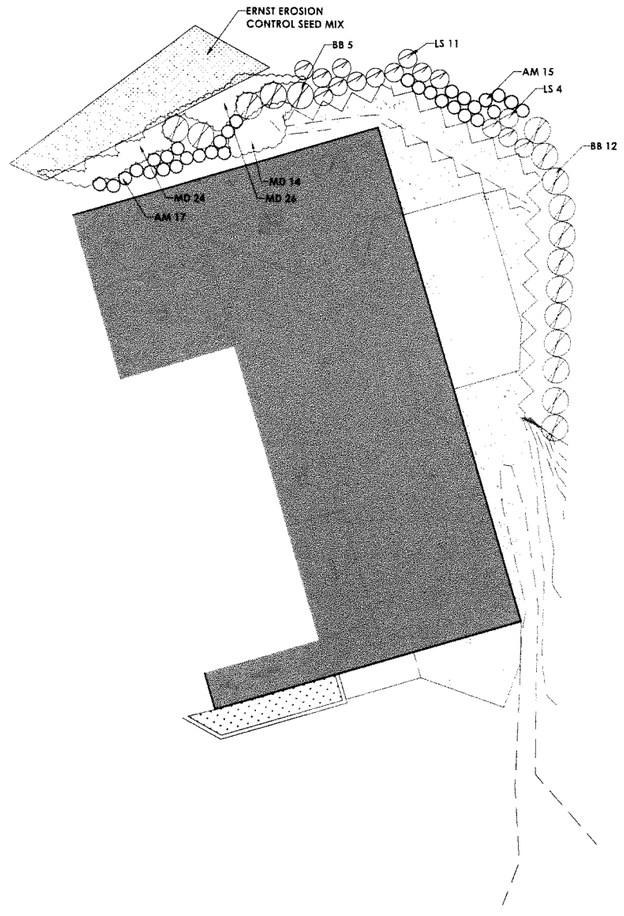
Issued	Scale
03/31/22	1/8" = 1'-0"

Project Status
CONCEPT DESIGN

Drawn By	Checked By
AV	BK

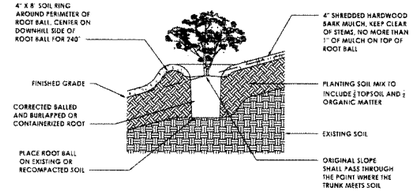
Drawing Title
Photometric Plan

Drawing Number
C105



QTY	COMMON NAME	BOTANICAL NAME	ABRV.	SIZE	SPACING
17	Black Night Butterfly Bush	Buddleia 'black knight'	BB	Cont. #3	4' O.C.
15	Sunshine Ligustrum	Ligustrum sinense	LS	Cont. #3	3' O.C.
32	Low Scape Mound	Aronia melanocarpa	AM	Cont. #2	18" O.C.
64	Pardon My Cense' Bee Balm	Monarda didyma	MD	Cont. #1/flat	12" O.C.

Cal - Trunk diameter - BB: Bare Ball - Cont.: Size of Perennial pot - O.C.: On Center



NOTES:

1. DO NOT HEAVILY PRUNE SHRUBS AT PLANTING. PRUNE ONLY CROSSOVER LIMBS, CO-DOMINANT LEADERS, AND BROKEN OR DEAD BRANCHES. SOME INTERIOR TWIGS AND LATERAL BRANCHES MAY BE PRUNED, HOWEVER, DO NOT REMOVE THE TERMINAL BUDS OF BRANCHES THAT EXTEND TO THE EDGE OF THE CROWN.
2. PRIOR TO MULCHING, LIGHTLY TAMP SOIL AROUND THE ROOT BALL IN 6" LIFTS TO BRACE SHRUB. DO NOT OVER COMPACT. WHEN PLANTING HOLE HAS BEEN BACKFILLED POUR WATER AROUND THE ROOT BALL TO SETTLE THE SOIL.
3. ROOT BALLS OF BOTH CONTAINERIZED AND BALLED AND BURLAPPED PLANTS SHALL BE CORRECTED PRIOR TO PLANTING PER THE ROOT BALL CORRECTION DETAILS.

SHRUB ON SLOPE

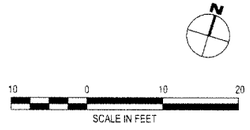
N.T.S.

LANDSCAPE NOTES:

1. CONTACT UDIG NY (8-1-1 OR (800) 962-7962) TO LOCATE EXISTING UTILITIES PRIOR TO ANY CONSTRUCTION.
2. CONTRACTOR SHALL SUPPLY ALL MATERIALS FOR THE COMPLETION OF ALL WORK ITEMS ASSOCIATED WITH THE INSTALLATION PER PLANS AND SPECIFICATIONS.
3. PRIOR TO THE START OF ANY SITE CONSTRUCTION, THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS WITH A FIELD CHECK AND NOTIFY OWNER REPRESENTATIVE OF ANY DISCREPANCIES.
4. CONTRACTOR SHALL COORDINATE WITH THE LANDSCAPE ARCHITECT THE FIELD ADJUSTMENTS OF PLANT LOCATIONS THAT ARE IN CONFLICT WITH UNDERGROUND OBSTRUCTIONS OR UTILITIES.
5. PLANT SUBSTITUTIONS ARE NOT PERMITTED UNLESS APPROVED IN ADVANCE BY THE LANDSCAPE ARCHITECT.
6. PROVIDE QUANTITY SIZE, GENUS, SPECIES AND VARIETY OF PLANTS INDICATED COMPLYING WITH APPLICABLE REQUIREMENTS OF ANSI Z60.1, LATEST EDITION.
7. COMPLETELY REMOVE ALL GRASS, WEEDS AND VEGETATION FROM AREAS TO RECEIVE SOD/SEED AND FROM PLANT BEDS BEFORE PLACING ADDITIONAL SOIL, COMPOST, SOD/SEED OR PLANTS. PROPERLY DISPOSE OF GRASS, WEEDS, VEGETATION OR OTHER DEBRIS OFF SITE.
8. CONTRACTOR SHALL PREPARE SUBGRADE AND INSTALL TOPSOIL TO LEVEL SUBGRADE AS NECESSARY, IN AREAS DESIGNATED AS SOD/SEED ON THE PLANS. FINISHED LEVEL OF SODDED/SEEDED AREAS SHALL BE FLUSH WITH ADJACENT CURB, SIDEWALK OR PLANT BED. THE CONTRACTOR SHALL IMPORT TOPSOIL AS NECESSARY.
9. LANDSCAPE CONTRACTOR SHALL PREPARE PLANT BEDS WITH PLANTING SOIL, INCLUDING 2" OF COMPOST, AND ROTOTILL AS DIRECTED IN PROJECT SPECIFICATIONS. THE LANDSCAPE CONTRACTOR SHALL IMPORT TOPSOIL AND COMPOST AS NECESSARY.
10. AMEND SOIL FOR BACKFILL WITH PLANTING SOIL FOR OPTIMUM PLANT GROWTH. REMOVE ALL ROCKS AND DEBRIS THAT ARE NOT CONDUCIVE TO PLANT GROWTH BEFORE BACKFILLING PLANTING HOLE.
11. SUPPLY AND APPLY FERTILIZER TABLETS (20-10-5) TO ALL SHRUBS AND TREES PER MANUFACTURER'S SPECIFICATIONS SEE DETAILS.
12. SUPPLY AND INSTALL SHREDDED HARDWOOD MULCH (WITH NO ADDED COLOR) IN ALL PLANT BEDS. THE DEPTH OF MULCH SHALL BE 2 INCHES UNDER PERENNIALS AND 3" IN PLANT BED AREAS CONTAINING IVY, SHRUBS AND TREES. DO NOT ALLOW MULCH TO CONTACT STEMS OF PLANTS, SHRUBS OR TREES.
13. THE CONTRACTOR SHALL WARRANT ALL PLANTS FOR A PERIOD OF EIGHTEEN MONTHS FROM THE DATE OF COMPLETED INSTALLATION. LANDSCAPE CONTRACTOR SHALL INSPECT SITE AT THE END OF WARRANTY PERIOD AND MAKE ANY NECESSARY PLANT REPLACEMENTS. REMOVE ANY STAKES AND BELTING FROM TREES, ADJUST PLANTS THAT ARE NOT STRAIGHT, ETC.
14. CONTRACTOR SHALL REPAIR ANY AREAS WITHIN OR OUTSIDE OF THE PROPERTY LINES THAT ARE DAMAGED BY CONSTRUCTION ACTIVITIES. DISTURBED LAWN AREAS SHOULD RECEIVE TOPSOIL, PLACED TO FINISH GRADE, GRASS SEED AND STRAW MULCH.
15. PLAN NOTES ARE NOT INTENDED TO BE A SUBSTITUTE FOR SITE SPECIFICATIONS OR FOR APPROVAL OF INSTALLATION PRACTICES OF THE CONTRACTOR.

LEGEND:

	EXISTING MAJOR CONTOURS
	EXISTING MINOR CONTOURS
— 100 —	PROPOSED MAJOR CONTOURS
--- 100 ---	PROPOSED MINOR CONTOURS
	PROPOSED RETAINING WALL
	CONCRETE PAD
	PROPOSED ADDITION
	LANDSCAPED
	COMPACTED STONE
	SPRAY EROSION CONTROL



WAVES
ARCHITECTURE & ENGINEERING
255 ROUNDS AVE. BUFFALO NY 14225

PROJECT INFORMATION

Project Name
4350 SENECA STREET
BUILDING ADDITION

Project Address
4350 SENECA ST.
WEST SENECA, NY 14224

Client Name
HAVENS HOLDING GROUP

Waves Project Number
24001.00

PROJECT ISSUE & REVISION SCHEDULE

#	Date	Description
1	07/27/26	PERMIT DRAWING

PROFESSIONAL STAMPS



STAMPED: 07/28/2026
EXPIRES: 12/31/2026

NOT FOR CONSTRUCTION

SHEET INFORMATION

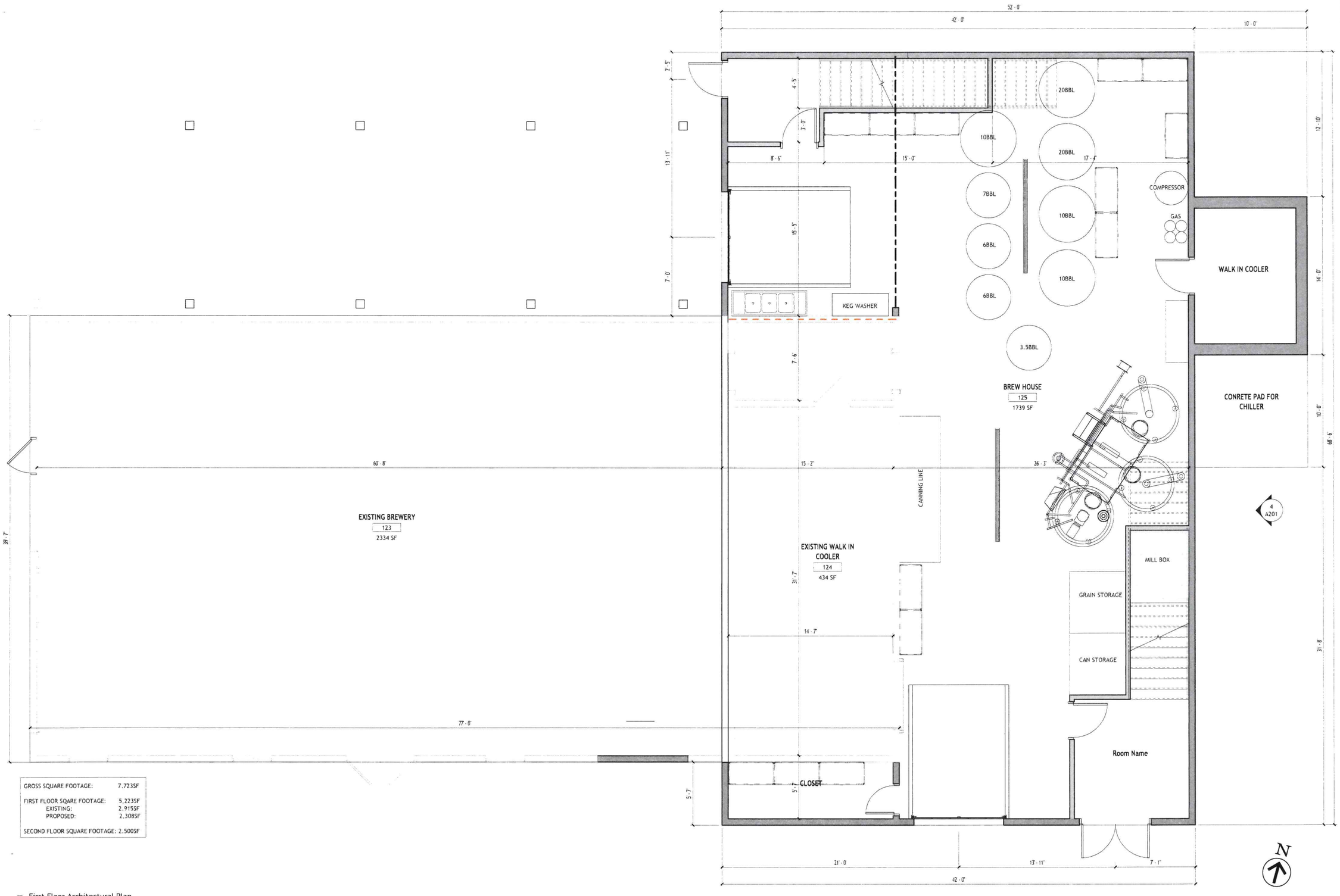
Issued	Scale for 22x34 Sheets
07/28/2026	1" = 10'

Project Status
PERMIT - SITE PLAN

Drawing Title
LANDSCAPE PLAN

Drawn By	Checked By
ANW	JLH

Drawing Number
L-100



GROSS SQUARE FOOTAGE:	7,723SF
FIRST FLOOR SQARE FOOTAGE:	5,223SF
EXISTING:	2,915SF
PROPOSED:	2,308SF
SECOND FLOOR SQUARE FOOTAGE:	2,500SF

2 First Floor Architectural Plan
1/4" = 1'-0"

WAVES
ARCHITECTURE & ENGINEERING
255 ROUNDS AVE.
BUFFALO NY, 14215

PROJECT INFORMATION

Project Number
24001.00

Client Name
HAVENS HOLDING GROUP

Project Name
4350 SENECA STREET BUILDING ADDITION

Project Address
4350 SENECA ST.
WEST SENECA, NY
14224

PROJECT ISSUE & REVISION SCHEDULE

No.	Description	Date

PROFESSIONAL STAMPS

STATE OF NEW YORK
JASON LEE HAVENS
LICENSED PROFESSIONAL ENGINEER
090335

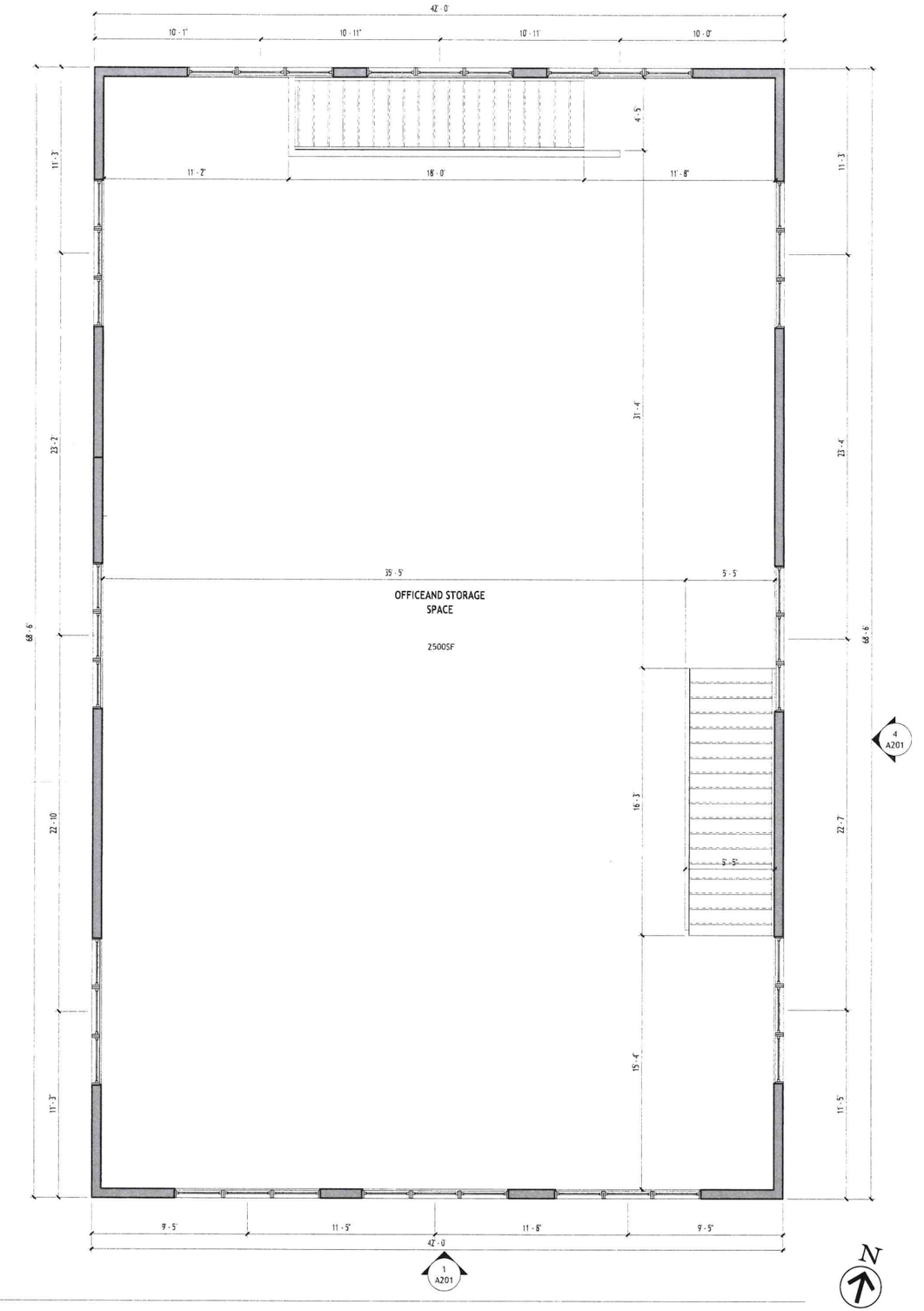
STAMPED: 07/28/2026
EXPIRES: 12/31/2026

Not For Construction

SHEET INFORMATION

Issued: 07-28-2026
Scale: 1/4" = 1'-0"
Project Status: PERMIT SITE PLAN REVIEW
Drawn By: CLP
Checked By: BJK
Drawing Title: Architectural First Floor Plan
Drawing Number: A101





GROSS SQUARE FOOTAGE:	7,723SF
FIRST FLOOR SQARE FOOTAGE:	5,223SF
EXISTING:	2,915SF
PROPOSED:	2,308SF
SECOND FLOOR SQUARE FOOTAGE:	2,500SF

1 Second Floor Architectural Plan
1/4" = 1'-0"

WAVES
ARCHITECTURE & ENGINEERING
255 ROUNDS AVE.
BUFFALO NY, 14215

PROJECT INFORMATION

Project Number
24001.00

Client Name
HAVENS HOLDING GROUP

Project Name
4350 SENECA STREET BUILDING ADDITION

Project Address
4350 SENECA ST.
WEST SENECA, NY
14224

PROJECT ISSUE & REVISION SCHEDULE

No.	Description	Date

PROFESSIONAL STAMPS

STATE OF NEW YORK
JASON LEE HAVENS
090335
LICENSED PROFESSIONAL ENGINEER

STAMPED: 07/28/2026
EXPIRES: 12/31/2026

Not For Construction

SHEET INFORMATION

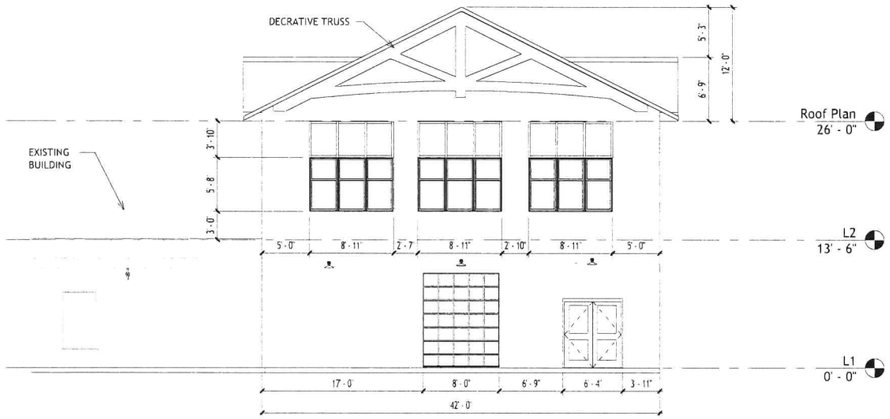
Issued	Scale
07-28-2026	1/4" = 1'-0"

Project Status
PERMIT SITE PLAN REVIEW

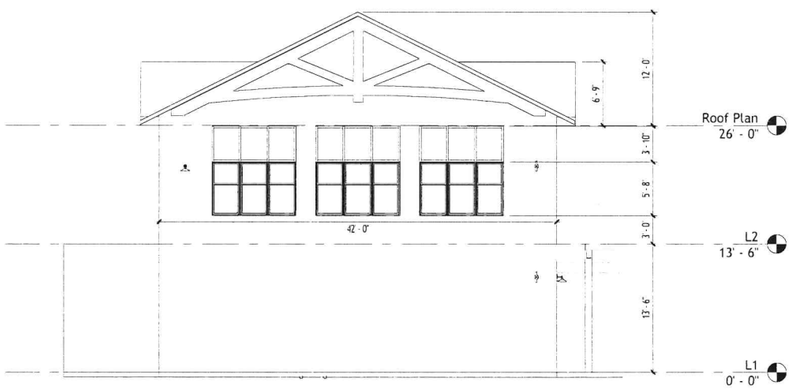
Drawn By	Checked By
CLP	JLH

Drawing Title
Architectural Second Floor Plan

Drawing Number
A102



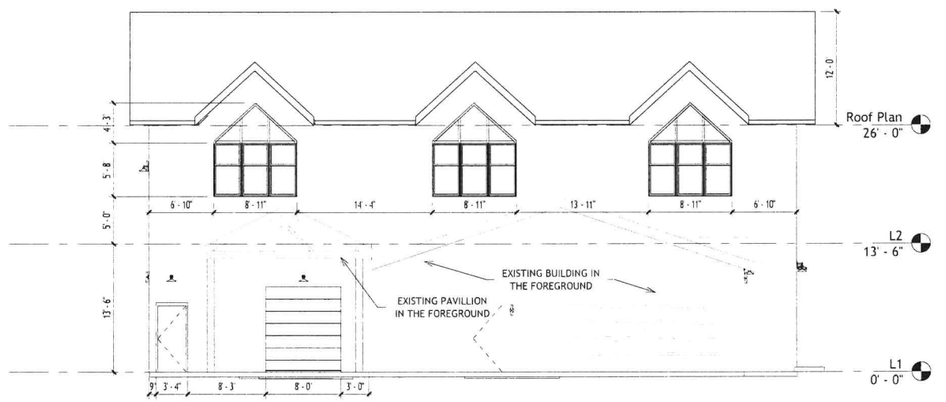
1 South Architectural Building Elevation
1/8" = 1'-0"



2 North Architectural Building Elevation
1/8" = 1'-0"



4 East Architectural Building Elevation
1/8" = 1'-0"



3 West Architectural Building Elevation
1/8" = 1'-0"

WAVES
ARCHITECTURE & ENGINEERING
255 ROUNDS AVE.
BUFFALO NY, 14215

PROJECT INFORMATION

Project Number
24001.00

Client Name
HAVENS HOLDING GROUP

Project Name
4350 SENECA STREET BUILDING ADDITION

Project Address
4350 SENECA ST.
WEST SENECA, NY
14224

PROJECT ISSUE & REVISION SCHEDULE

No.	Description	Date
1	SITE PLAN PERMIT	7-28-2026

PROFESSIONAL STAMPS

STATE OF NEW YORK
JASON LEE HAVENS
090335
LICENSED PROFESSIONAL ENGINEER

STAMPED: 07/28/2026
EXPIRES: 12/31/2026

Not For Construction

SHEET INFORMATION

Issued: 07-28-2026
Scale: 1/8" = 1'-0"
Project Status: PERMIT SITE PLAN REVIEW
Drawn By: CLP
Checked By: JLH
Drawing Title: Architectural Building Elevations
Drawing Number: A201

APPLICATION TO BOARD OF APPEALS

2026-047

X Tel. No. 716 677-5623

Appeal No. ~~208~~

Date 10/7/26

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

X I (we) Debbie Wolcott of 182 Tampa DR. West Seneca NY 14220, 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 182 Tampa Dr.
3. State in general the exact nature of the permission required, _____

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)

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: _____

X Deb Wolcott
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
   120-39 (A)(2) Accessory Structures shall be 10' from principle Structure. Requesting 6.5' w/ patio roof from detached garage
2. Zoning Classification of the property concerned in this appeal R-6.5
3. Type of Appeal:
   - ☒ Variance to the Zoning Ordinance.
   - ☐ Interpretation of the Zoning Ordinance or Zoning Map.
   - ☐ Special or Temporary Permit or an xtension thereof under the Zoning Ordinance.
4. A statement of any other facts or data which should be considered in this appeal. _____

Building Inspector _____

RECD WS TOWN CLERK
26 OCT 7 AM 9:13

OWC WSCA

* * * RECEIPT * * *

Date: 10/07/26 **Receipt#:** 103642

Quantity	Transactions	Reference	Subtotal
1	Zoning Board of Appeals	20162068	$160.00
		Total Paid:	$160.00

Notes: 182 Tampa Dr 2026-047

Payment Type	Amount	Paid By
Credit Card-Ref #VISA	$160.00	Wolcott, Debbie

Thank you for allowing the West Seneca Town Clerk's office to serve you. Have a wonderful day!
1250 Union Road, Room 212 West Seneca, NY 14224

Name: Wolcott, Debbie
182 Tampa Dr
West Seneca, NY 14224

Clerk ID: AK

Internal ID: 20162068

October 6, 2026

Town of West Seneca
Building Department
1250 Union Road
West Seneca, New York 14224

RE: Variance for 182 Tampa Drive

To whom it may concern,

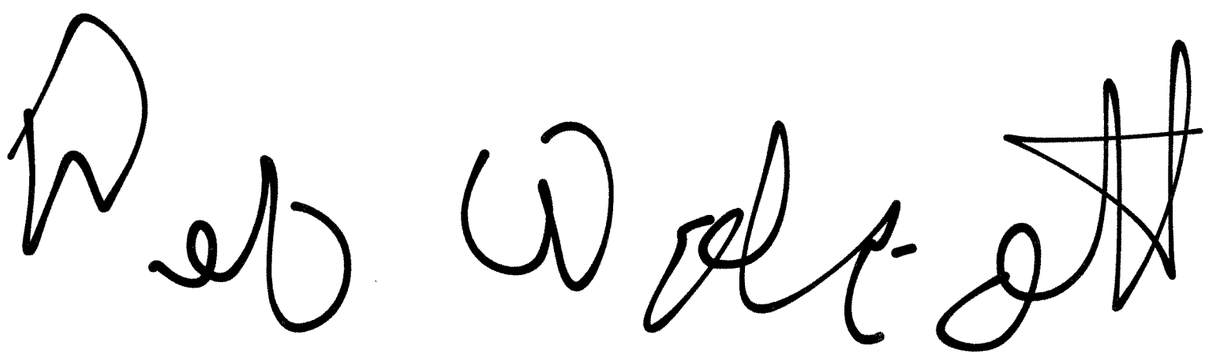
I am requesting a variance to waive the 10' set back between structures to allow for a new project at my home. The new scope of work is to build a 13' x 12' structure awning roof connected to the house over an existing deck. There also is an existing garage. With the new structure including the overhangs the distance between this and the garage would be 6 1/2' rather than the 10' set back. Because both the deck and the garage are existing, I am hoping this variance will be granted to allow for the new structure to be added over the deck, which would greatly increase my comfort and enjoyment using my deck and the value of my home.

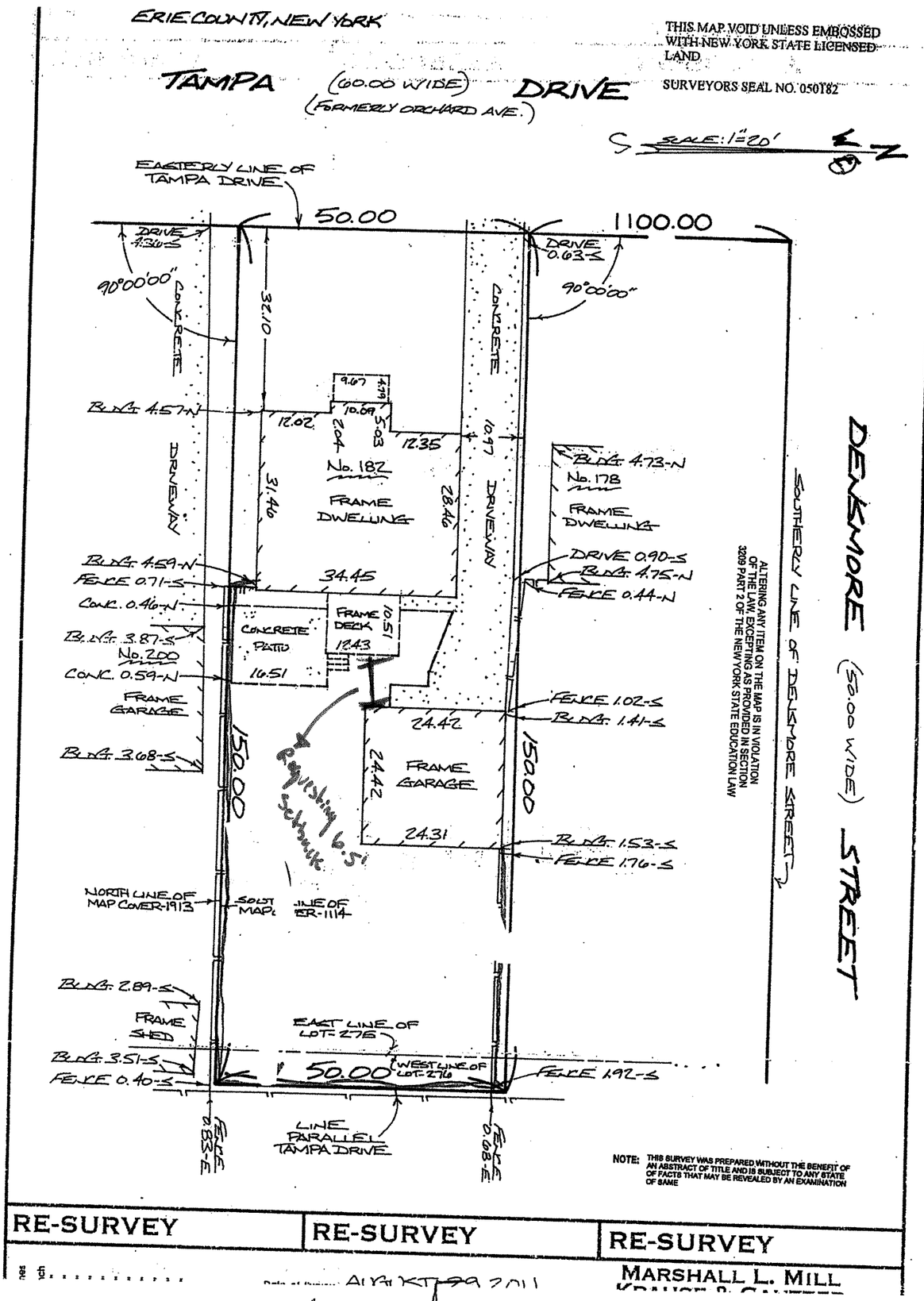
I am granting permission to Mike Woolley of Woolley Mammoth LLC, my contractor for the project, to file this variance on my behalf. However I will personally attend the variance meeting myself.

Thank you kindly for your consideration.

Sincerely yours,

Debbie Wolcott





LETTER from Vabbit
Scan Saving, car
file for Art and
why she needs Variance

APPLICATION TO BOARD OF APPEALS

X Tel. No. 716-675-4855

Appeal No. 2006-048

X Date 10-7-26

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

X I (we) LAWRENCE MONACO of X 94 Villa Maria RD

_____, 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 94 Villa Maria
3. State in general the exact nature of the permission required, _____

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: _____

X See LETTER.

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: _____

X Lawrence Monaco
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
   120-13 (9) Generators shall be 5' off lot line
   Requesting 2' off lot line
2. Zoning Classification of the property concerned in this appeal R-15
3. Type of Appeal:
   - ☒ Variance to the Zoning Ordinance.
   - ☐ Interpretation of the Zoning Ordinance or Zoning Map.
   - ☐ Special or Temporary Permit or an xtension thereof under the Zoning Ordinance.
4. A statement of any other facts or data which should be considered in this appeal. _____

Building Inspector DJ

OK Cash

RCVD WS TOWN CLERK
'26 OCT 7 AM8:24

* * * RECEIPT * * *

Date: 10/07/26 **Receipt#:** 103644

Quantity	Transactions	Reference	Subtotal
1	Zoning Board of Appeals	20162069	$160.00
		Total Paid:	$160.00

Notes: 2026-048

Payment Type	Amount	Paid By
CASH	$160.00	Monaco, Lawrence

Thank you for allowing the West Seneca Town Clerk's office to serve you. Have a wonderful day!
1250 Union Road, Room 212 West Seneca, NY 14224

Name: Monaco, Lawrence
94 Villa Maria Rd
West Seneca, NY 14224

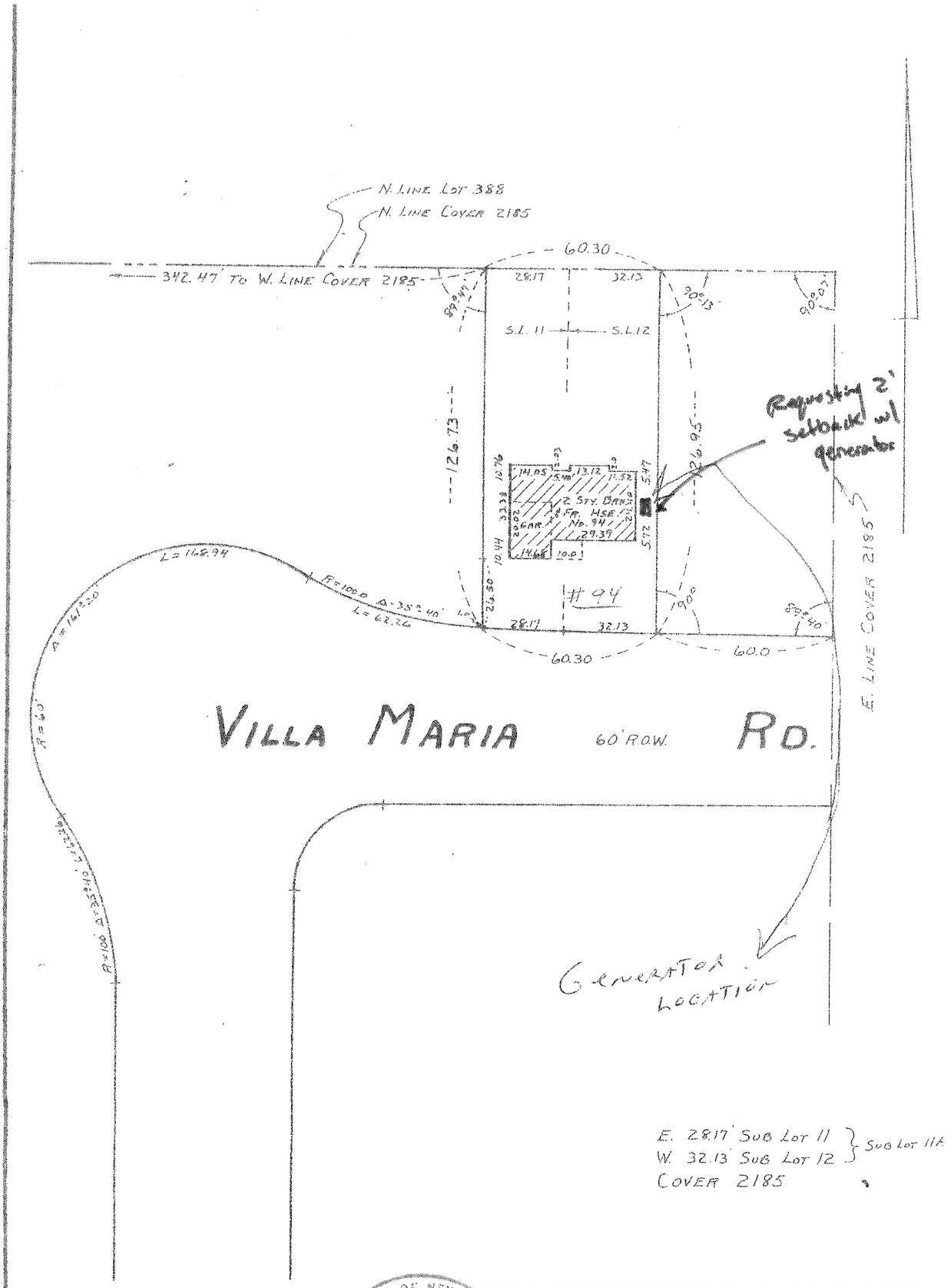
Clerk ID: AK

Internal ID: 20162069

West Seneca Town Board…..I am requesting a variance to install a gas generator with the dimensions 46.4 inches long 26.3 inches wide with a height of 30.7 inches.The address is 94 Villa Maria Rd. The only access I have is on the east side of my property. This is why I am requesting a variance. Thank You for your time and consideration with this request.

Lawrence Monaco
94 Villa Maria Rd
West Seneca. NY

Lawrence Monaco
10-7-26



E. 28.17' SUB LOT 11 } SUB LOT 11A
W. 32.13' SUB LOT 12 }
COVER 2185

PART OF LOT 388, T.10, R.7
TOWN OF WEST SENECA
ERIE CO, NEW YORK

STATE OF NEW YORK — ROBERT A. NIEDERPRUEM — Licensed Professional Engineer — No. 28000

ROBERT A. NIEDERPRUEM
Engineer - Surveyor
49 CIRCLE END DRIVE 674-5618 WEST SENECA 24, N. Y.

RE-SURVEYED	DATE FEB. 12, 1972
	SCALE 1"= 40'
	FB 20 - 37
	JOB NO. 1660

APPLICATION TO BOARD OF APPEALS

Tel. No. 480-1182

Appeal No. 2026-049

Date 10/7/26

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

I (we) Stan Sajecki of 1340 SENECA CREEK RD WEST SENECA N.Y. 14224

_____, 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 238 Schultz Rd.
3. State in general the exact nature of the permission required, _____

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: _____

Requesting +/- 1.25' relief for 40' front setback requirement
House foundation already installed Foundation location survey showed house at 38.79' front setback

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: _____

X Stanislaw Sajecki
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
   120.30 Front yard setback requirement 40' in R90A zoning
   Requesting 38.79
2. Zoning Classification of the property concerned in this appeal R 90 A
3. Type of Appeal:
   - ☒ Variance to the Zoning Ordinance.
   - ☐ Interpretation of the Zoning Ordinance or Zoning Map.
   - ☐ Special or Temporary Permit or an xtension thereof under the Zoning Ordinance.
4. A statement of any other facts or data which should be considered in this appeal. _____

Building Inspector DJD

* * * RECEIPT * * *

Date: 10/07/26 **Receipt#:** 103645

Quantity	Transactions	Reference	Subtotal
1	Zoning Board of Appeals	20162070	$160.00
		Total Paid:	$160.00

Notes: 2026-049 / 238 Schultz Rd

Payment Type	Amount	Paid By
CK #109	$160.00	Sajecki, Stan

Thank you for allowing the West Seneca Town Clerk's office to serve you. Have a wonderful day!
1250 Union Road, Room 212 West Seneca, NY 14224

Name: Sajecki, Stan
1340 Seneca Creek Rd
West Seneca, NY 14224

Clerk ID: PAM

Internal ID: 20162070

PINE COURT (66.00 WIDE) NORTH

SCHULTZ (60.00 WIDE) ROAD

480-1182

Stan

EAST LINE PINE COURT NORTH

FENCE ON LINE

CONCRETE SIDEWALK

199.67

FENCE CORNER 0-82-E, 3.13-N

LINE PARALLEL SCHULTZ ROAD

84°22'00"

STORM SEWER MANHOLE

UTILITY POLE

104.08

CONCRETE DRIVEWAY

44.96

22.00

24.13

10.36

49.61

12.00

4.33

6.50

4.33

13.36

CONCRETE FOUNDATION No. 238

PORCH

4.00

16.86

4.00

13.67

EGRESS WELL

34.65

104.08

SANITARY SEWER MANHOLE

WATER VALVE

10.03

10.13

199.67

GATE

ENCLOSED DECK

BLDG 6.63-E

FRAME DWELLING No. 240

FENCE 1.22-E

BLDG 6.51-E

LINE PARALLEL PINE COURT NORTH

FENCE 1.27-E 4.60-S

FENCE 0.06-E 6.83-N

NORTH LINE SCHULTZ ROAD

Part of Lot (Lots) 351, Section ____, Township 10, Range 7, Of The EBENEZER LANDS,

City (or) Village of ____, Town of WEST SENECA, County of ERIE, State of New York

Notes:

Drawing Scale : 1" = 20 '

1) This Survey is VOID unless embossed with New York State Licensed Land Surveyors Seal #050182.
2) Altering any item on this Survey is in violation of law, excepting as provided in Section 7209 Part 2 of the New York State Education Law.
3) This Survey VOID if used with an Affidavit Of No Change.
4) This Survey was prepared without the benefit of an Abstract of Title and is subject to any state of facts that may be revealed by an examination of the same.

Date of Survey SEPTEMBER 16, 2026

Signature

Marshall L. Mill PLS
Krause & Gantzer
Land Surveyors
13 Olean Street
East Aurora, New York 14052

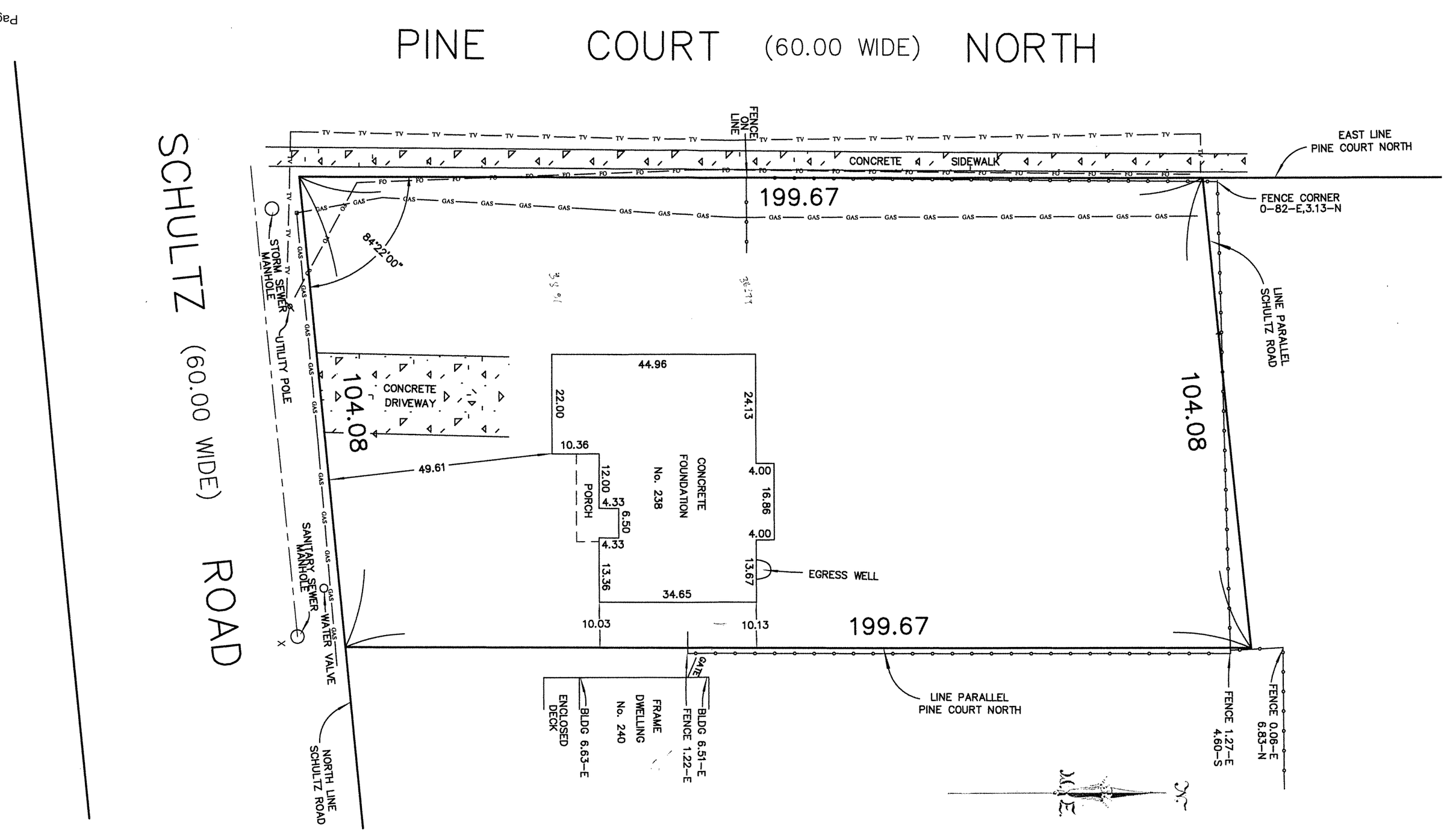


ESTABLISHED 1870

Feet	Inches	Feet	Inches
0.08	1 Inch	0.58	7 Inches
0.17	2 Inches	0.67	8 Inches
0.25	3 Inches	0.75	9 Inches
0.33	4 Inches	0.83	10 Inches
0.42	5 Inches	0.92	11 Inches
0.50	6 Inches	1.00	12 Inches

Job No. 174,599

LL 5642



Part of Lot (Lots) 351, Section ____, Township 10, Range 7, Of The EBENEZER LANDS,

City (or) Village of _____, Town of WEST SENECA, County of ERIE, State of New York

Notes:

1) This Survey is VOID unless embossed with New York State Licensed Land Surveyors Seal #050182.
2) Altering any item on this Survey is in violation of law, excepting as provided in Section 7209 Part 2 of the New York State Education Law.
3) This Survey VOID if used with an Affidavit Of No Change.
4) This Survey was prepared without the benefit of an Abstract of Title and is subject to any state of facts that may be revealed by an examination of the same.

Drawing Scale : 1" = 20 '

Date of Survey SEPTEMBER 16, 2026

Signature _____

Marshall L. Mill PLS
Krause & Gantzer
Land Surveyors
13 Olean Street
East Aurora, New York 14052



ESTABLISHED 1870

Feet	Inches	Feet	Inches
0.08	1 Inch	0.58	7 Inche
0.17	2 Inches	0.67	8 Inche
0.25	3 Inches	0.75	9 Inche
0.33	4 Inches	0.83	10 Inch
0.42	5 Inches	0.92	11 Inch
0.50	6 Inches	1.00	12 Inch

Job No. 174.599

LL 564

APPLICATION TO BOARD OF APPEALS

X Tel. No. 716 390 6864

Appeal No. 2026-050

T Date 10/8/26

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

X I (we) Jason Zurak of 162 Tampa Dr W. Seneca NY 14224

_____, 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) Son in law of Owner

2. LOCATION OF THE PROPERTY SAME

3. State in general the exact nature of the permission required, _____

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)

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: _____

T _____
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
   120-30 R6S Required front yard 30'
   Requesting 25' setback with covered front porch
2. Zoning Classification of the property concerned in this appeal R6S
3. Type of Appeal:
   - ☒ Variance to the Zoning Ordinance.
   - ☐ Interpretation of the Zoning Ordinance or Zoning Map.
   - ☐ Special or Temporary Permit or an xtension thereof under the Zoning Ordinance.
4. A statement of any other facts or data which should be considered in this appeal. _____

Building Inspector _____

Bonnie Sullivan
162 Tampa Drive
West Seneca NY 14220

October 8, 2026

Town of West Seneca
1250 Union Road
West Seneca NY 14224

To Whom it May Concern:

In regard to the construction project at 162 Tampa Drive, we are looking to obtain a variance for the construction of a roof over our replacement deck which would extend five feet into the exclusion area. The new roof will add value and coincide with the existing architecture of the surrounding neighborhood. Thank you for your assistance in this manner.

Thank you,
Bonnie Sullivan

* * * RECEIPT * * *

Date: 10/08/26 **Receipt#:** 103678

Quantity	Transactions	Reference	Subtotal
1	Zoning Board of Appeals	20162082	$160.00
		Total Paid:	$160.00

Notes: 2026-050 - 162 Tampa

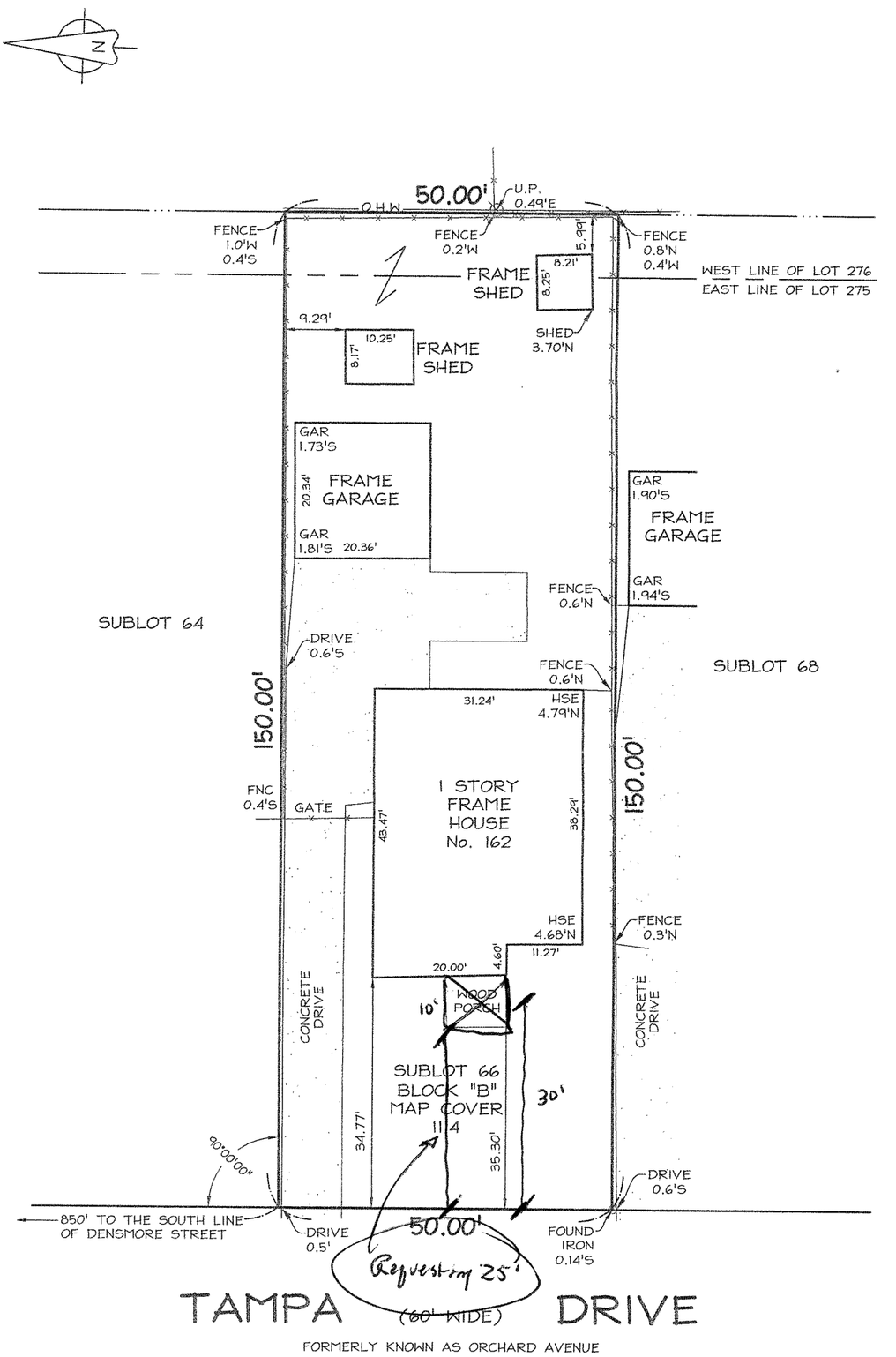
Payment Type	Amount	Paid By
CASH	$160.00	Zurek, Jason

Thank you for allowing the West Seneca Town Clerk's office to serve you. Have a wonderful day!
1250 Union Road, Room 212 West Seneca, NY 14224

Name: Zurek, Jason
162 Tampa Dr
West Seneca, NY 14224

Clerk ID: PAM

Internal ID: 20162082



NO IRONS SET OR FOUND AT PROPERTY CORNERS UNLESS NOTED HEREON.

3556 Lake Shore Road, Suite 500, Buffalo, NY 14219
p (716) 827-8000 f (716) 270-6091 www.nussclarke.com

This survey was prepared without the benefit of an abstract of title and is subject to any state of facts that may be revealed by an examination of such.

Unauthorized alterations or additions to any survey, drawing, design, specification, plan or report is a violation of section 7209, provision 2 of the New York State Education Law.

NUSSBAUMER & CLARKE, INC.
ENGINEERS AND SURVEYORS
EST. 1933

BOUNDARY SURVEY
162 TAMPA DRIVE

Part of Lot 275-276, Township 10, Range 7
Buffalo Creek Reservation
Town of West Seneca
County of Erie, State of New York

Date of Survey: 06/30/20 Scale : 1" = 20'

Project No. : 20J2-0802

Successors to the records of Graf Land Surveyors Successors to the records of James L. Shisler, Land Surveyor

$160.00

APPLICATION TO BOARD OF APPEALS

Tel. No. ~~716-858-3801~~ 716-858-3878

Appeal No. 2026-051

Date October 9, 2026

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

I (we) Ari Goldberg agent/attorney of Barclay Damon LLP 200 Delaware Ave, Suite 1200, Buffalo 14221, 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: OPERATE CANNABIS DISPENSARY

- [x] 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
   - [x] OTHER (Describe)

RECD WS TOWN CLERK '25 OCT 9 PM3:04

2. LOCATION OF THE PROPERTY 1100 SOUTHWESTERN BLVD W. SENECA NY 14224
3. State in general the exact nature of the permission required, INTERPRETATION OF CHAPTER 59

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. NA, 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 ENCLOSED DOCUMENTS.

B. Interpretation of the Zoning Ordinance is requested because: Interpreting proposed use at current zoning of property

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: _____

X Ari M. Goldberg
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 CHAPTER 59 OF TOWN CODE DOES NOT PERMIT THIS LOCATION FOR CANNABIS DISPENSARY
2. Zoning Classification of the property concerned in this appeal C-1
3. Type of Appeal:
   - [ ] Variance to the Zoning Ordinance.
   - [x] Interpretation of the Zoning Ordinance or Zoning Map.
   - [ ] Special or Temporary Permit or an xtension thereof under the Zoning Ordinance.
4. A statement of any other facts or data which should be considered in this appeal. _____

Building Inspector

* * * RECEIPT * * *

Date: 10/09/26 **Receipt#:** 103722

Quantity	Transactions	Reference	Subtotal
1	Zoning Board of Appeals	20162095	$160.00
		Total Paid:	$160.00

Notes: 1100 Southwestern Blvd.

Payment Type	Amount	Paid By
Credit Card-Ref #VISA	$160.00	Goldberg, Ari

Thank you for allowing the West Seneca Town Clerk's office to serve you. Have a wonderful day!
1250 Union Road, Room 212 West Seneca, NY 14224

Name: Goldberg, Ari
Barclay Damon Llp
200 Delaware Avenue
Suite 1200

Clerk ID: KN

Internal ID: 20162095

BARCLAY DAMON LLP

Corey A. Auerbach
Partner

October 9, 2026

Via Hand Delivery
Jeffrey Schieber, Code Enforcement Officer
and Town of West Seneca Zoning Board of Appeals
West Seneca Town Hall
1250 Union Road
West Seneca, New York 14224

Re: Notice of Appeal of Code Enforcement Determination
Proposed Adult-Use Cannabis Retail Dispensary
1100 Southwestern Boulevard
SBL No. 144.19-7-75

Dear Mr. Schieber and Members of the Zoning Board of Appeals:

Barclay Damon LLP represents Raymond N. Battista III, Brendan Karam, and Cannaspace Inc. (collectively, "Appellant"). Pursuant to Town Law § 267-a(5)(b) and Town Code §§ 120-56(A) and 120-58(B), please accept this correspondence and the accompanying memorandum as Appellant's Notice of Appeal from the Code Enforcement Officer's interpretation and application of Chapter 59 to the proposed adult-use cannabis retail dispensary at 1100 Southwestern Boulevard, including the purported rejection of the proposal and any associated determination that a use variance is required.

This appeal concerns the rejection attributed to the Code Enforcement Officer in the Town Attorney's August 26, 2026 letter, received August 28, including the Chapter 59 restrictions identified in Mr. Schieber's May 19 email. Appellant has not been provided with the underlying determination or evidence of its statutory filing. This protective appeal does not concede that a final determination was previously rendered and filed or that the appeal period has commenced or expired.

The accompanying memorandum and exhibits are incorporated into this Notice of Appeal and set forth the grounds for the appeal and relief requested. Principally, Appellant seeks reversal of the rejection on preemption grounds or, alternatively, a determination that any necessary relief may be pursued through an area variance rather than a use variance.

Please acknowledge receipt and schedule this matter for the next available ZBA hearing. We also request that the Town provide a copy of the underlying determination and associated filing record, as previously requested.

Very truly yours,

Corey A. Auerbach

Enclosures: Memorandum in Support of Notice of Appeal and Exhibits A–J

The Avant Building - 200 Delaware Avenue Suite 1200 - Buffalo, New York 14202 barclaydamon.com
CAuerbach@barclaydamon.com Direct: (716) 858-3801 Fax: (716) 768-2801

BARCLAY DAMON LLP

MEMORANDUM

TO: Jeffrey Schieber, Code Enforcement Officer, and Town of West Seneca Zoning Board of Appeals

FROM: Corey A. Auerbach

DATE: October 9, 2026

RE: 1100 Southwestern Boulevard, SBL No. 144.19-7-75
Notice of Appeal

Raymond N. Battista III, Brendan Karam, and Cannaspace Inc. (collectively, "Appellant") appeal the Town's asserted rejection of the proposed adult-use cannabis retail dispensary at 1100 Southwestern Boulevard ("Property"). The Town has identified residential adjacency and the cannabis-specific proximity restrictions in Chapter 59 as impediments, and the Town Attorney has advised that the proposal was rejected by the Code Enforcement Officer and should be appealed to the Town of West Seneca Zoning Board of Appeals ("ZBA"). Appellant challenges the legal basis for that rejection and any determination that a use variance is required.

Cannabis Law § 131(2) expressly preempts local regulation of licensed cannabis operations, subject to a limited exception for permissible time, place, and manner controls. The implementing regulations identify the authorized local controls. Chapter 59 of the Town Code goes beyond those controls by prohibiting a dispensary merely because it abuts a residential use and by imposing separation requirements from broadly defined "community facilities," including private convenience stores and retail food establishments. To the extent the Town also relies on a school across the street, it must apply the State's statutory school buffer and measurement rules rather than Chapter 59's property-line rule. Appellant seeks reversal of the rejection so that the proposal may proceed through the otherwise applicable approval processes. Alternatively, any necessary relief from dimensional or physical separation requirements should be considered under the area variance standard.

I. Property and Administrative Background

Appellant proposes an adult-use retail dispensary at the Property, which is located in the C-1 district. Cannaspace Inc. is the tenant of the proposed dispensary premises and is aggrieved by the rejection of that proposed use. Town Code § 59-13 permits retail dispensaries in the C-1, C-2, M-1, and M-2 districts, subject to otherwise applicable requirements, including special use permit review under § 59-11(E). The proposal is for retail sales, not an on-site consumption establishment.

In a May 19, 2026 email responding to counsel's inquiry, Code Enforcement Officer Jeffrey Schieber directed Appellant to Chapter 59, stated generally that dispensaries were not permitted adjacent to residential uses, and identified residential uses behind and next to the Property. He also referred to the Town's denial of a different dispensary proposal in a strip plaza containing a convenience store, subsequent amendments addressing convenience stores and retail food establishments, and the Orchard Park School District across the street. He did not identify a measured separation from a particular school entrance or determine whether the State's school restriction applied.

On June 8, 2026, counsel asked whether the identified restrictions could be addressed through area variance relief and requested guidance concerning preemption and the appeal process. Mr. Schieber referred the matter to the Town Attorney and stated that he was unsure of the process. On July 1, 2026, the Town Attorney maintained that the restrictions fell within the Town's zoning authority and expressed the position that any variance would be a use variance. Counsel thereafter repeatedly requested a formal administrative determination if the Town maintained those positions.

By letter dated August 26, 2026, received August 28, 2026, the Town Attorney advised that the Code Enforcement Officer had rejected the proposal and that Appellant should seek ZBA review. Counsel requested identification of the underlying determination and its filing date on August 28 and renewed the request on September 3 and September 9, 2026. The Supervisor directed counsel to the ZBA process but did not provide the determination. Appellant also submitted a Freedom of Information Law request seeking the purported determination and evidence of its filing. Despite these repeated efforts, neither the determination nor evidence of its filing has been furnished to Appellant as of this submission.

The threshold issue presented is the Town's position that Chapter 59 bars the proposed dispensary at this location and that relief requires a use variance. Appellant seeks review of that position so that the proposal may proceed under the legally applicable approval requirements.

II. Determination Appealed From and Preservation of Timeliness

This appeal challenges the Code Enforcement Officer's interpretation and application of Chapter 59 to the Property, as reflected in the May 19 correspondence and the rejection attributed to him in the Town Attorney's August 26 letter. It also challenges any associated administrative requirement that Appellant obtain a use variance. The Town Attorney's and Supervisor's correspondence documents the Town's assertion that the Code Enforcement Officer has rejected the proposal and its direction that Appellant seek review by the ZBA. Appellant seeks review of

that administrative action while requesting production of the underlying determination and filing record.

Town Law § 267-a(5)(a) requires the enforcement official's order, requirement, decision, interpretation, or determination to be filed in that official's office within five business days after it is rendered, unless the Town Board has directed filing in the Town Clerk's office by resolution. Under § 267-a(5)(b), the 60-day appeal period runs from that filing, and the notice must be filed with both the administrative official and the ZBA. Town Code § 120-58(B) likewise requires filing with both and transmission of the underlying administrative record.

Appellant files protectively in response to the Town's express assertion that a rejection has occurred. The record furnished to Appellant does not establish when, where, or whether that rejection was filed as required by Town Law § 267-a(5)(a). Accordingly, Appellant does not concede that the May 19 email constituted a final determination or that the statutory appeal period began to run from that email or any later correspondence. Appellant requests identification of the precise determination, its date and grounds, its filing location and date, and any resolution directing an alternate filing location. Appellant reserves the right to supplement this Notice upon production of that record.

If the ZBA concludes that no appealable administrative determination has yet been made, Appellant requests a written disposition specifying the basis for that conclusion and the application or administrative determination necessary to obtain review of the disputed Chapter 59 restrictions and variance classification. Appellant further requests that the Code Enforcement Officer render and file a determination expressly identifying the restrictions applied to the Property and whether a use variance is required.

III. Grounds for Appeal

a. State Law Limits Cannabis-Specific Local Siting Restrictions

Cannabis Law § 131(2) expressly preempts local laws concerning the operation or licensure of adult-use cannabis businesses, while allowing limited time, place, and manner regulation that does not render operation unreasonably impracticable as determined by the Cannabis Control Board ("CCB"). The exception must be read together with the State's detailed statutory and regulatory siting scheme, not as an unrestricted delegation to impose additional cannabis-specific exclusions.

Under 9 NYCRR § 119.2(a), authorized local controls address operating hours, visual or architectural integrity within historic districts, parking, traffic, odor, noise, and a distance requirement of no more than 500 feet from a public youth facility. A residential adjacency

prohibition, a buffer from private stores or medical offices, and a categorical exclusion from commercial plazas are not among the enumerated controls. The Office of Cannabis Management ("OCM"), in its published Local Law Preemption and "Unreasonably Impracticable" overview, confirms that cannabis-specific restrictions outside § 119.2 are preempted, while generally applicable restrictions remain enforceable.

The challenged provisions are additional restrictions directed specifically at cannabis businesses, rather than generally applicable zoning requirements. Their placement in the Town Code does not exempt them from the State's preemption framework. Appellant does not claim that a State license displaces every local zoning requirement. Rather, Appellant challenges the particular restrictions used to reject this proposal. The existence of dispensaries elsewhere in Town does not answer whether the restrictions applied to this Property exceed the Town's authority.

Matter of 1086 OCR, LLC v Town of Riverhead Zoning Bd. of Appeals, 251 AD3d 1054, 1057 (2d Dept 2026), confirms the governing preemption principle. The Appellate Division affirmed the invalidation of a local school buffer that increased the State distance and measured from property lines. It concluded **that the Legislature had expressly occupied the field of licensed adult-use dispensary operations and that** the additional local restriction conflicted with the State scheme. Specifically, the court held that the local buffer "imposes additional restrictions on rights granted by state law," is "inconsistent with the State's overriding interest," and is therefore preempted. *Id.* at 1057. Significantly, although the particular restriction invalidated in *1086 OCR* concerned school separation, the court expressly recognized the Legislature's broader intent to occupy the field of the operation of licensed adult-use cannabis retail dispensaries, subject to the limited local authority preserved by Cannabis Law § 131(2). The court consequently upheld the determination that no variance from that preempted restriction was needed. The same preemption principle governs this appeal. The Town's retained authority to regulate time, place, and manner does not authorize additional cannabis-specific siting restrictions that conflict with the State scheme. Nor does the absence of an identical State restriction authorize the Town to impose additional cannabis-specific prohibitions outside the scope of permissible local regulation. Chapter 59's challenged exclusions exceed the local authority reserved by Cannabis Law § 131(2) and Part 119. Under the reasoning of *1086 OCR*, the Town cannot enforce those exclusions by requiring Appellant to obtain a variance from restrictions that State law preempts.

b. Residential Adjacency Does Not Supply a Lawful Basis for Rejection

Town Code § 59-8(D) prohibits a cannabis use facility from abutting any property used for residential purposes, including a mixed-use property containing a residence. Appellant challenges that adjacency prohibition as applied to a dispensary proposed in a district permitting the use. Neither Cannabis Law § 72 nor the authorized local controls enumerated in 9 NYCRR § 119.2(a)

provides for a cannabis-specific residential separation requirement. Section 59-8(D) nevertheless makes an adjoining residential use an absolute bar, without regard to the proposed dispensary's design, operations, or actual impacts.

The Town may address actual land use impacts through lawful parking, traffic, noise, odor, and other applicable controls, but that authority does not permit it to convert residential adjacency into a categorical exclusion from a district in which dispensaries are permitted. The prohibition imposes an additional cannabis-specific siting restriction beyond the controls authorized by the State framework and therefore cannot supply a lawful basis for rejecting the proposal or requiring a variance.

Independently, any application of § 59-8(D) must rest on actual abutting parcels, rather than the general presence of residences "behind" or "next to" the Property. If the Town relies on § 59-8(D), the record should identify the relevant parcel boundaries and residential uses. The May 19 email's description of nearby residences does not, by itself, establish that the Property abuts a parcel used for residential purposes within the meaning of that provision.

c. The Community Facilities Buffer Exceeds the Authorized Public Youth Facility Restriction

Town Code § 59-8(B), read together with the definition of "community facilities" in § 59-12, imposes a 500-foot property-line buffer from a broad range of locations, including convenience stores, retail food establishments children regularly frequent, childcare centers, medical practitioners' offices, drug rehabilitation centers, and other places where children or cannabis users gather. That prohibition substantially expands the limited public youth facility restriction authorized by State regulations.

A public youth facility under 9 NYCRR § 118.1(a)(89) is a government-owned location or structure accessible to the public whose primary purpose is to provide recreational opportunities or services to children or adolescents, with a primary population reasonably expected to be age 17 or younger. Private commercial establishments do not qualify merely because children patronize them. The Town cannot enlarge the State's defined category by labeling convenience stores, restaurants, or other private establishments "community facilities."

OCM's November 12, 2024 response to the City of Niagara Falls concerning AJ's Native Wholesale, Inc., submitted here as administrative guidance, expressly addressed the replacement of "community facility" with "public youth facility," the narrower definition, and the need for a local law establishing the authorized restriction. That guidance confirms that the distinction is substantive: the authorized restriction concerns a defined class of public youth facilities, not every

location where children may gather. West Seneca's broader prohibition exceeds that authorization and cannot supply a lawful basis for rejecting the proposal or requiring a variance.

If a qualifying public youth facility is asserted, the Town must identify that facility, the local law establishing the applicable restriction, and whether the same-road requirement and applicable measurement rules are satisfied under 9 NYCRR §§ 119.1(a)(3), 119.2(a)(10), and 119.4. A blanket property-line measurement cannot substitute for the applicable State measurement rules, which distinguish facilities with building entrances from those without buildings or structures. The Town's prior rejection of another applicant's proposal does not establish a lawful basis to reject this Property. The materials furnished to Appellant identify no particular qualifying public youth facility or measurement establishing that the Property is disqualified under those rules.

d. Any School or House of Worship Restriction Must Follow State Law

Cannabis Law § 72(6)(a) prohibits a licensed retail dispensary from locating on the same street and within 500 feet of a building containing a school. Section 72(6)(b) establishes a same-street 200-foot restriction for a building exclusively occupied as a house of worship. Section 72(6)(c) requires straight-line measurement between the centers of the nearest entrances, with further entrance definitions in § 72(6)(d).

Town Code § 59-8(C), by contrast, measures from property lines, applies its school restriction to a school building or property, increases the house-of-worship distance to 500 feet, and contains no same-street limitation. These are substantive expansions of the State's siting restrictions. As *1086 OCR* establishes, the Town cannot substitute a broader local buffer or property-line measurement for the distance and measurement rules prescribed by the Legislature. The same statutory preemption reasoning applies to the expanded house-of-worship restriction. To the extent the rejection rests on § 59-8(C)'s expanded buffer, it should be reversed.

The May 19 email's reference to the "Orchard Park School District" across the street does not, without more, establish a statutory disqualification. The Town must identify the particular building containing a school, determine whether the same-street requirement is met, and establish the distance under the statutory entrance rules. Appellant challenges the Town's expanded local standard, not the applicability of the State's school buffer. Compliance with the State standard must be determined from the relevant building, entrances, and site-specific measurements, rather than a general reference to school district property across the street.

e. Any Reliance on the Stand-Alone Structure Rule Is Also Challenged

Section 59-8(G) requires dispensaries approved after May 1, 2025 to occupy separate, stand-alone structures and bars locations in a building or plaza with other retail establishments. If the purported rejection relies on this provision, Appellant challenges it as an additional cannabis-specific siting restriction outside § 119.2(a). The provision categorically excludes an otherwise permitted retail use based on its placement within a shared commercial building or plaza, rather than regulating an enumerated operational impact. Appellant requests identification of any factual finding that the Property falls within the prohibition.

Tad's Franchises, Inc. v Incorporated Village of Pelham Manor, 42 AD2d 616, 616-617 (2d Dept 1973), provides a useful analogy. Once the municipality permitted restaurants in its retail district, it could not prohibit the licensed sale of alcoholic beverages within them, a matter entrusted to the State Liquor Authority. Although arising under a different statutory scheme, the decision illustrates that local land use authority does not permit a municipality to impose additional restrictions on an activity reserved to State regulation. Here, Cannabis Law § 131(2) and Part 119 establish the limits of that authority, and the stand-alone structure requirement exceeds them.

f. Alternatively, Relief from Dimensional or Physical Separation Requirements Should Be Considered Under the Area Variance Standard

Appellant's primary position is that no variance from a preempted restriction is necessary. If the ZBA determines that the challenged locational restrictions remain enforceable, however, Appellant alternatively challenges the Town's position that relief necessarily requires a use variance.

Town Law § 274-b(3) authorizes the ZBA to grant area variances from dimensional requirements applicable to a proposed special use permit. Such requirements are not converted into use restrictions merely because they govern a special permit use rather than uses permitted as of right. *See Matter of Real Holding Corp. v Lehigh*, 2 NY3d 297, 299-303 (2004).

In *Real Holding*, the proposed gasoline filling station required a special use permit but could not satisfy requirements establishing 1,000 feet of separation from certain residentially zoned lands and 2,500 feet of separation from other gasoline stations. The Court of Appeals held that the ZBA possessed authority to grant area variances from those requirements without a further delegation from the Town Board. It expressly rejected the contention that the separation requirements were use restrictions, identifying them as "dimensional or physical requirements" subject to area variance relief. *Id.* at 300.

Here, Chapter 59 permits retail dispensaries in the C-1 district, subject to special use permit review. Accordingly, Appellant seeks authorization for a permitted use. The numerical separation requirements regulate the physical relationship between that use and neighboring properties or facilities. As in *Real Holding*, the fact that those requirements apply to a particular special permit use does not transform them into use restrictions requiring proof of unnecessary hardship.

Appellant further submits that the residential adjacency prohibition regulates the physical relationship between an otherwise permitted dispensary and neighboring property. Although expressed as an adjacency prohibition rather than a numerical setback, Appellant submits that it is a physical requirement to which the area variance reasoning of *Real Holding* should apply.

Appellant therefore requests a determination that relief from the applicable dimensional or physical locational requirements may be pursued under the area variance standard of Town Law § 267-b(3), with an opportunity to submit the site-specific materials necessary for that review. This alternative request preserves Appellant's preemption challenge and seeks a determination of the applicable variance standard, with any necessary variance application to follow.

IV. Scope of Review and Relief Requested

Appellant requests that the ZBA reverse the administrative rejection to the extent based on the challenged Chapter 59 restrictions; determine that those restrictions cannot lawfully bar the proposed dispensary or require a variance from a preempted provision; and permit Appellant to pursue any otherwise applicable special use permit, site plan, building, and State licensing approvals. Alternatively, Appellant requests reversal of any categorical requirement for a use variance and a determination that relief from the applicable dimensional or physical separation requirements may be pursued as an area variance.

Appellant submits the preemption grounds for consideration in reviewing the legal basis of the administrative rejection and to preserve those grounds in the administrative record. If the ZBA concludes that it cannot grant relief on a particular ground, Appellant requests that its written decision identify that conclusion and separately decide the interpretations within its jurisdiction. In particular, any conclusion concerning the ZBA's authority to address preemption should not foreclose consideration of the alternative variance classification issue. Appellant reserves the right to seek judicial relief and a CCB determination under 9 NYCRR § 119.5, including concerning the cumulative effect of the challenged restrictions.

If the ZBA concludes that any issue cannot be decided without a further application, Appellant requests that its decision identify the required application and explain why it is necessary to resolve that issue.

Appellant further requests transmission of the complete underlying administrative record, an opportunity to supplement upon receipt, a duly noticed hearing, and a written decision addressing each ground and the relief sought. The decision should be filed and furnished in accordance with Town Law § 267-a(9).

EXHIBIT INDEX

Exhibit A – Email correspondence among Appellant's counsel, the Code Enforcement Officer, the Town Attorney, and the Town Supervisor concerning the proposed dispensary, Chapter 59 restrictions, variance classification, and requests for the administrative determination and filing information, including the May 19, 2026 email.

Exhibit B – Town Attorney's letter dated August 26, 2026, received August 28, 2026, communicating the purported rejection and directing Appellant to seek ZBA review.

Exhibit C – September 15, 2026 Freedom of Information Law request seeking the underlying administrative determination and appeal forms, the Town's September 17, 2026 response, and Appellant's September 17, 2026 administrative FOIL appeal.

Exhibit D – Aerial map identifying the Property and surrounding area.

Exhibit E – Town of West Seneca Code, Chapter 59 (Cannabis).

Exhibit F – OCM's Local Law Preemption and "Unreasonably Impracticable" overview.

Exhibit G – OCM's November 12, 2024 letter to the City of Niagara Falls concerning AJ's Native Wholesale, Inc., and the public youth facility restriction.

Exhibit H – Matter of 1086 OCR, LLC v Town of Riverhead Zoning Bd. of Appeals, 251 AD3d 1054 (2d Dept 2026).

Exhibit I – Matter of Real Holding Corp. v Lehigh, 2 NY3d 297 (2004).

Exhibit J – Tad's Franchises, Inc. v Incorporated Village of Pelham Manor, 42 AD2d 616 (2d Dept 1973).

Exhibit A

Auerbach, Corey A.

From: Auerbach, Corey A.
Sent: Wednesday, September 9, 2026 1:33 PM
To: 'Gary Dickson'; cgtrapp; Jeffrey Schieber
Cc: Joseph Trapp; Amelia Greenan; Goldberg, Ari M.; Zakarin, Benjamin R.
Subject: RE: 2030-1 RE: Retail Dispensary - 1100 Southwestern [IMAN-ACTIVE.FID8036735]

Supervisor Dickson,

Respectfully, my request has not been addressed. I am not asking how to file an appeal. I am asking for the formal written determination from which I am supposed to appeal.

The Town Attorney has advised that "the Code Enforcement Officer rejected the proposal" and that my remedy is an appeal to the ZBA. Yet, despite my repeated requests, I have not been provided with a written determination reflecting that purported rejection. As I explained in my prior email, the Town's own Code provides for an appeal to the ZBA from an "order, requirement, decision or determination" of the administrative official charged with enforcement.

Town Law § 267-a is even more specific. It requires each such order, requirement, decision, interpretation or determination to be filed in the office of the administrative official within five business days after it is rendered, and provides that the 60-day period to appeal runs from that filing. I therefore need the determination the Town contends was made before I can properly pursue the appeal the Town Attorney has directed me to take.

I have to say, I do not understand why the Town is making this so procedurally difficult. My client is attempting to pursue a legitimate business opportunity, and I am simply asking the Town to provide the determination necessary to follow the administrative appeal process it has directed us to pursue.

Jeff, please provide me with a file-stamped copy of the written determination purportedly denying the proposed use at 1100 Southwestern Boulevard so that I can file the appeal.

Best,

C.

From: Gary Dickson <gdickson@westseneca.gov>
Sent: Wednesday, September 9, 2026 1:14 PM
To: Auerbach, Corey A. <CAuerbach@barclaydamon.com>; cgtrapp <cgtrapp@grecolawyers.com>; Jeffrey Schieber <jschieber@westseneca.gov>
Cc: Joseph Trapp <JTrapp@westseneca.gov>; Amelia Greenan <agreenan@westseneca.gov>; Goldberg, Ari M. <AGoldberg@barclaydamon.com>; Zakarin, Benjamin R. <BZakarin@barclaydamon.com>
Subject: RE: 2030-1 RE: Retail Dispensary - 1100 Southwestern [IMAN-ACTIVE.FID8036735]

Mr. Auerbach,

Your request has been addressed.

If you intend to move forward with an appeal to the ZBA, I suggest you bring your relevant documents to Code Enforcement and they will walk you through the process and get you on the agenda once you pay the fee.

Gary Dickson
Town Supervisor
1250 Union Road
West Seneca, NY 14224
Office: 716-558-3203
Cell: 716-777-2504
gdickson@westseneca.gov

This email may be subject to public disclosure per the NY Freedom of Information Law.

From: Auerbach, Corey A. <CAuerbach@barclaydamon.com>
Sent: Wednesday, September 9, 2026 10:32 AM
To: Gary Dickson <gdickson@westseneca.gov>; cgtrapp <cgtrapp@grecolawyers.com>; Jeffrey Schieber <jschieber@westseneca.gov>
Cc: Joseph Trapp <JTrapp@westseneca.gov>; Amelia Greenan <agreenan@westseneca.gov>; Goldberg, Ari M. <AGoldberg@barclaydamon.com>; Zakarin, Benjamin R. <BZakarin@barclaydamon.com>
Subject: RE: 2030-1 RE: Retail Dispensary - 1100 Southwestern [IMAN-ACTIVE.FID8036735]

Jeff,

Following up on the below. At this point, I need the formal written determination so that I can file the ZBA appeal.

Thanks,

C.

From: Auerbach, Corey A.
Sent: Thursday, September 3, 2026 4:03 PM
To: 'Gary Dickson' <gdickson@westseneca.gov>; cgtrapp <cgtrapp@grecolawyers.com>; Jeffrey Schieber <jschieber@westseneca.gov>
Cc: Joseph Trapp <JTrapp@westseneca.gov>; Amelia Greenan <agreenan@westseneca.gov>; Goldberg, Ari M. <AGoldberg@barclaydamon.com>; Zakarin, Benjamin R. <BZakarin@barclaydamon.com>
Subject: RE: 2030-1 RE: Retail Dispensary - 1100 Southwestern [IMAN-ACTIVE.FID8036735]

Supervisor Dickson,

Thank you for the response. Respectfully, whether the Town believes the restrictions in Chapter 59 are clear is not the procedural issue I am trying to resolve.

The Town's own Code provides that the ZBA hears appeals from an "order, requirement, decision or determination" made by the administrative official charged with enforcement of the Zoning Code. See Town Code § 120-56(A). That is also consistent with Town Law § 267-a, which provides that the ZBA's jurisdiction is appellate and is invoked by an appeal from an order, requirement, decision, interpretation or determination of the administrative official charged with zoning enforcement.

That is precisely why I have repeatedly requested a formal determination from the appropriate administrative official. Chris has now advised me that the "Code Enforcement Officer rejected the proposal" and that my client should appeal that decision to the ZBA. I am simply asking for the decision he says was made. I do not intend to

put my client before the ZBA and invite a jurisdictional issue by appealing from a decision that has neither been provided to me nor, to my knowledge, formally issued and filed.

I also reviewed the ZBA procedure sheet you provided. It appears to be directed principally toward conventional variance applications and requires, among other things, a survey depicting the proposed variance, drawings of items requiring dimensional relief, photographs and a neighbor signature sheet. Several of those items are plainly inapplicable to an appeal concerning the applicability of Chapter 59 to the proposed use. That is precisely why I asked Jeff for guidance as to what is required for a complete application in this particular circumstance, rather than simply submitting materials that do not fit the nature of the relief being sought.

I also note that the procedure sheet directs applicants to obtain the application from the Code Enforcement Office. If the application truly is not available electronically, I will certainly arrange to have someone obtain it. I would respectfully suggest, however, that in 2026 requiring an applicant or its counsel to physically travel to Town Hall simply to obtain a municipal application form is unnecessarily burdensome and not particularly business-friendly. Frankly, it strikes me as every bit as antiquated as the Town Attorney responding by regular mail to an email inquiry.

Jeff, I would appreciate your assistance in issuing the written determination necessary to pursue the ZBA review the Town Attorney has now directed us toward and in confirming what is required for a complete application so that we can get this matter properly before the ZBA.

Best,

C.

From: Gary Dickson <gdickson@westseneca.gov>
Sent: Thursday, September 3, 2026 3:40 PM
To: Auerbach, Corey A. <CAuerbach@barclaydamon.com>; cgtrapp <cgtrapp@grecolawyers.com>; Jeffrey Schieber <jschieber@westseneca.gov>
Cc: Joseph Trapp <JTrapp@westseneca.gov>; Amelia Greenan <agreenan@westseneca.gov>; Goldberg, Ari M. <AGoldberg@barclaydamon.com>; Zakarin, Benjamin R. <BZakarin@barclaydamon.com>
Subject: RE: 2030-1 RE: Retail Dispensary - 1100 Southwestern [IMAN-ACTIVE.FID8036735]

Mr. Auerbach,

The town code is clear on the restrictions on cannabis dispensary locations. No interpretation is required.

The ZBA process is described here: https://www.westseneca.gov/DocumentCenter/View/343/Zoning-Board-of-Appeals-Procedure-PDF.

The applications are in the Code Enforcement office.

Gary Dickson
Town Supervisor
1250 Union Road
West Seneca, NY 14224
Office: 716-558-3203
Cell: 716-777-2504

gdickson@westseneca.gov

This email may be subject to public disclosure per the NY Freedom of Information Law.

From: Auerbach, Corey A. <CAuerbach@barclaydamon.com>
Sent: Thursday, September 3, 2026 2:49 PM
To: cgtrapp <cgtrapp@grecolawyers.com>; Jeffrey Schieber <jschieber@twsny.org>
Cc: Joseph Trapp <JTrapp@westseneca.gov>; Gary Dickson <gdickson@westseneca.gov>; Amelia Greenan <agreenan@westseneca.gov>; Goldberg, Ari M. <AGoldberg@barclaydamon.com>; Zakarin, Benjamin R. <BZakarin@barclaydamon.com>
Subject: RE: 2030-1 RE: Retail Dispensary - 1100 Southwestern [IMAN-ACTIVE.FID8036735]

Jeff,

When I raised these legal and procedural issues with you in June, you referred the matter to the Town Attorney for guidance on the appropriate process. Unfortunately, I have now spent nearly three months trying to get a clear answer from Chris as to how the Town intends to proceed, without success.

Chris's recent snail mail letter now advises that, "since the Code Enforcement Officer rejected the proposal," the appropriate procedure is to seek review of that decision by the ZBA. The problem is that I do not believe you ever issued a formal written determination denying or rejecting the proposed use from which an appeal could be taken.

If the Town's position is that Chapter 59 precludes an adult-use retail dispensary at 1100 Southwestern Boulevard and/or that the proposed use requires a use variance, can you please provide me with a formal written determination reflecting that position so that my client can pursue an appeal to the ZBA?

Can you also please provide me with the applicable filing requirements, including the appropriate application or notice of appeal form, filing fee, number of copies and any required supporting materials, as well as the filing deadline and meeting date for the next available ZBA hearing?

I appreciate your help getting us on the appropriate procedural track. At this point, I simply need to get the matter moving one way or another for my client and would appreciate anything you can do to help us proceed without further delay.

Best,

C.

From: Auerbach, Corey A.
Sent: Friday, August 28, 2026 1:49 PM
To: Chris G. Trapp <cgtrapp@grecolawyers.com>; Jeffrey Schieber <jschieber@twsny.org>
Cc: Joseph Trapp <JTrapp@westseneca.gov>; Gary Dickson <gdickson@westseneca.gov>; Amelia Greenan <agreenan@westseneca.gov>; Goldberg, Ari M. <AGoldberg@barclaydamon.com>; Zakarin, Benjamin R. <BZakarin@barclaydamon.com>
Subject: RE: 2030-1 RE: Retail Dispensary - 1100 Southwestern [IMAN-ACTIVE.FID8036735]

Chris,

I received today, by first-class mail, your letter dated August 26. Given that all of our prior correspondence regarding this matter has been by email, I am not sure why your response to my repeated email inquiries was sent only by regular mail, particularly where your letter suggests that my client pursue an administrative appeal that may be subject to filing deadlines.

More importantly, I do not believe your letter actually answers the question I have been asking. You state that "since the Code Enforcement Officer rejected the proposal," the proper procedure is to seek an interpretation of that decision from the ZBA. I have not, however, received anything identified as a formal written determination from the Code Enforcement Officer denying or otherwise rejecting the proposed use. While Jeff previously identified various provisions of Chapter 59 that he believed presented issues with the proposed location, that correspondence was general in nature and was followed by his referral of the matter to you regarding the appropriate process. Nor does your letter identify the determination you contend is appealable, its date or substance, or the date on which it was filed in the Code Enforcement Officer's office.

I have now been attempting for nearly three months to obtain clarity from the Town on these issues. As I have repeatedly indicated, if the Town's position is that Chapter 59 precludes the proposed dispensary at 1100 Southwestern Boulevard and/or that a use variance is required, I am simply asking that the appropriate Town official issue a formal written determination reflecting that position so that my client can pursue the administrative review you are now suggesting.

If you contend that the Code Enforcement Officer has already issued an appealable determination, please identify that determination and provide me with a file-stamped copy by email, including the date on which it was filed in his office. If no such determination has been issued and filed, please arrange for that to occur promptly so that we can proceed accordingly.

Best,

C.

From: Auerbach, Corey A.
Sent: Tuesday, August 25, 2026 9:26 AM
To: Chris G. Trapp <cgtrapp@grecolawyers.com>; Jeffrey Schieber <jschieber@twsny.org>
Cc: Joseph Trapp <JTrapp@westseneca.gov>; Gary Dickson <gdickson@westseneca.gov>; Amelia Greenan <agreenan@westseneca.gov>; Goldberg, Ari M. <AGoldberg@barclaydamon.com>; Zakarin, Benjamin R. <BZakarin@barclaydamon.com>
Subject: RE: 2030-1 RE: Retail Dispensary - 1100 Southwestern [IMAN-ACTIVE.FID8036735]

Chris,

I am following up again on my emails of July 5, July 21, July 28, and August 18, to which I have not received the courtesy of a response.

As I have repeatedly indicated, if the Town maintains that Chapter 59 precludes the proposed dispensary at 1100 Southwestern Boulevard and/or that a use variance is required, please arrange for the issuance of a formal written determination so that my client may timely pursue an appeal to the ZBA. Otherwise, please let me know the Town's position so that we can determine how best to proceed.

Thank you.

Best,

C.

From: Auerbach, Corey A.
Sent: Tuesday, August 18, 2026 4:03 PM
To: 'Chris G. Trapp' <cgtrapp@grecolawyers.com>; 'Jeffrey Schieber' <jschieber@twsny.org>
Cc: 'Joseph Trapp' <JTrapp@westseneca.gov>; 'Gary Dickson' <gdickson@westseneca.gov>; 'Amelia Greenan' <agreenan@westseneca.gov>; Goldberg, Ari M. <AGoldberg@barclaydamon.com>; Zakarin, Benjamin R. <BZakarin@barclaydamon.com>
Subject: RE: 2030-1 RE: Retail Dispensary - 1100 Southwestern [IMAN-ACTIVE.FID8036735]

Chris,

It has now been another three weeks without a response. I have been trying to obtain the Town's position on these issues for more than two months and have repeatedly asked for either a substantive response or a formal written determination so that my client may preserve and pursue its administrative remedies.

At this point, I would appreciate the professional courtesy of a response. If the Town maintains its position that Chapter 59 precludes the proposed dispensary at 1100 Southwestern Boulevard and/or that a use variance is required, please arrange for a formal written determination reflecting those positions so that my client may proceed accordingly.

Thank you.

Best,

C.

From: Auerbach, Corey A.
Sent: Tuesday, July 28, 2026 4:49 PM
To: 'Chris G. Trapp' <cgtrapp@grecolawyers.com>; 'Jeffrey Schieber' <jschieber@twsny.org>
Cc: 'Joseph Trapp' <JTrapp@westseneca.gov>; 'Gary Dickson' <gdickson@westseneca.gov>; 'Amelia Greenan' <agreenan@westseneca.gov>; Goldberg, Ari M. <AGoldberg@barclaydamon.com>; Zakarin, Benjamin R. <BZakarin@barclaydamon.com>
Subject: RE: 2030-1 RE: Retail Dispensary - 1100 Southwestern [IMAN-ACTIVE.FID8036735]

Chris,

It's been another week, so I wanted to follow up. If the Town has reached a determination on these issues, I would appreciate your letting me know. Otherwise, if the Town continues to maintain that Chapter 59 precludes the proposed use or that a use variance is required, I would appreciate the issuance of a formal written determination so that my client may timely pursue any available administrative remedies. Thank you, and I look forward to hearing from you.

Best,

C.

From: Auerbach, Corey A.
Sent: Tuesday, July 21, 2026 8:52 AM
To: 'Chris G. Trapp' <cgtrapp@grecolawyers.com>; 'Jeffrey Schieber' <jschieber@twsny.org>
Cc: 'Joseph Trapp' <JTrapp@westseneca.gov>; 'Gary Dickson' <gdickson@westseneca.gov>; 'Amelia Greenan'

<agreenan@westseneca.gov>; Goldberg, Ari M. <AGoldberg@barclaydamon.com>; Zakarin, Benjamin R. <BZakarin@barclaydamon.com>
Subject: RE: 2030-1 RE: Retail Dispensary - 1100 Southwestern [IMAN-ACTIVE.FID8036735]

Chris,

Just following up on the below. If the Town has reached a conclusion on either of the issues discussed, I would appreciate an update. If the Town maintains its prior position, I would also appreciate the issuance of a formal written determination so that my client may timely pursue any available administrative remedies.

Thank you, and I look forward to hearing from you.

Best,

C.

From: Auerbach, Corey A.
Sent: Sunday, July 5, 2026 8:55 PM
To: Chris G. Trapp <cgtrapp@grecolawyers.com>; Jeffrey Schieber <jschieber@twsny.org>
Cc: Joseph Trapp <JTrapp@westseneca.gov>; Gary Dickson <gdickson@westseneca.gov>; Amelia Greenan <agreenan@westseneca.gov>; Goldberg, Ari M. <AGoldberg@barclaydamon.com>; Zakarin, Benjamin R. <BZakarin@barclaydamon.com>
Subject: RE: 2030-1 RE: Retail Dispensary - 1100 Southwestern [IMAN-ACTIVE.FID8036735]

Chris,

Thank you for your response. I appreciate your reference to discussions within the municipal bar. Having served as Associate Counsel to the Association of Towns of the State of New York in another life, I certainly appreciate the importance of preserving municipal zoning authority. I simply do not believe that is the issue presented here.

My firm represents the prevailing petitioner in the attached case, *1086 OCR LLC v. Town of Riverhead Zoning Board of Appeals*, which squarely addressed the issues we have been discussing. Because you asked whether there was authority to the contrary, I thought you would find the decision, together with OCM's June 2025 guidance regarding local law preemption, helpful. Both are attached.

I agree that municipalities retain broad zoning authority. The question, however, is not whether the Town possesses general zoning authority. Rather, it is whether the Town may impose cannabis-specific location restrictions that are not imposed on other retail uses permitted within the same zoning district.

In *Riverhead*, the court concluded that municipalities are limited to the authority granted under the Cannabis Law and its implementing regulations. It held that cannabis-specific separation requirements beyond those authorized by State law are preempted and further held that such restrictions violate the uniformity requirement of Town Law § 262 because they single out cannabis retailers for different treatment within the same zoning district. Accordingly, the court vacated the ZBA's determination, concluding that no variance was required because the local restrictions themselves were invalid.

OCM's published guidance reaches the same conclusion. It explains that municipalities may regulate only the time, place, and manner restrictions identified in 9 NYCRR § 119.2 and expressly provides that "[i]f the municipal restrictions do not fall within the scope of § 119.2, they are preempted by the Cannabis Law and the

Cannabis Control Board regulations." It further explains that generally applicable zoning regulations remain enforceable, whereas restrictions directed specifically at cannabis businesses are preempted.

That is the dispositive distinction here. My client does not challenge the Town's authority to regulate retail uses generally. Chapter 59, however, imposes cannabis-specific adjacency and proximity requirements that do not apply to other retail uses and do not fall within the categories authorized by § 119.2.

I also respectfully disagree that any requested relief would constitute a use variance. Even assuming, solely for purposes of discussion, that the local restrictions were enforceable, the proposed use is otherwise permitted within the zoning district. The only impediment would be compliance with a cannabis-specific locational separation requirement applicable to the parcel. Under those circumstances, I believe any requested relief would be in the nature of an area variance, not a use variance.

While I remain open to further discussion, I also want to preserve my client's right to seek review before the ZBA. Accordingly, if the Town maintains that Chapter 59 renders the proposed dispensary impermissible at 1100 Southwestern Boulevard, or that the proposed use requires a use variance rather than an area variance, please arrange for the issuance of a formal written determination reflecting those positions so that my client may timely appeal to the ZBA.

Best,

C.

From: Chris G. Trapp <cgtrapp@grecolawyers.com>
Sent: Wednesday, July 1, 2026 5:17 PM
To: Auerbach, Corey A. <CAuerbach@barclaydamon.com>; Jeffrey Schieber <jschieber@twsny.org>
Cc: Joseph Trapp <JTrapp@westseneca.gov>; Goldberg, Ari M. <AGoldberg@barclaydamon.com>; Gary Dickson <gdickson@westseneca.gov>; Amelia Greenan <agreenan@westseneca.gov>
Subject: RE: 2030-1 RE: Retail Dispensary - 1100 Southwestern

While many things dealing with cannabis are under the exclusive jurisdiction of OCM, zoning is not. It has been a common topic of discussion at the Local & State Government Law Section meetings of NYSBA over the years and something that I have discussed at length with Wade Beltramo at NYCOM and other municipal attorneys around the state. Of course, I never tell people that they cannot either seek a change in the law or challenge it in court, but without more, zoning is within the province of the Town. In the Town, there are other areas available for cannabis shops as is evident by the number in town, just not where your client wants to put one.

Of course, if you have some case law to the contrary, we would be happy to review it and we can talk further. I have no need for either side to just spend money on litigation. On your question of an area variance, while I appreciate that you will try to argue that it is an area variance because of where it is located, I will respectfully disagree because it is how your client wishes to use the property which would make it a use variance. cgt

GRECO TRAPP

Chris G. Trapp, Esq.
Greco Trapp, PLLC
1700 Rand Building
14 Lafayette Square
Buffalo, New York 14203
Tel: (716) 856-5800
Fax: (716) 856-5801
Email: cgtrapp@grecolawyers.com

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In accordance with Internal Revenue Service Circular 230, we advise you that unless otherwise expressly stated, any discussion of a federal tax issue in this communication or in any attachment is not intended to be used, and it cannot be used, for the purpose of federal tax penalties.

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From: Auerbach, Corey A. <CAuerbach@barclaydamon.com>
Sent: Tuesday, June 30, 2026 3:43 PM
To: Chris G. Trapp <cgtrapp@grecolawyers.com>; Jeffrey Schieber <jschieber@twsny.org>
Cc: Joseph Trapp <JTrapp@westseneca.gov>; Goldberg, Ari M. <AGoldberg@barclaydamon.com>; Gary Dickson <gdickson@westseneca.gov>; Amelia Greenan <agreenan@westseneca.gov>
Subject: RE: 2030-1 RE: Retail Dispensary - 1100 Southwestern

Chris,

I wanted to follow up to see if you've had a chance to consider the issues raised in my prior email. I would appreciate any update regarding the Town's position or the appropriate process for obtaining a determination. Thank you, and I look forward to hearing from you.

Best,

C.

From: Auerbach, Corey A.
Sent: Sunday, June 14, 2026 2:55 PM
To: Chris G. Trapp <cgtrapp@grecolawyers.com>; Jeffrey Schieber <jschieber@twsny.org>
Cc: Joseph Trapp <JTrapp@westseneca.gov>; Goldberg, Ari M. <AGoldberg@barclaydamon.com>; Gary Dickson <gdickson@westseneca.gov>; Amelia Greenan <agreenan@westseneca.gov>
Subject: RE: 2030-1 RE: Retail Dispensary - 1100 Southwestern [IMAN-ACTIVE.FID8036735]

Chris,

Thank you for your response. The issue is whether the Town may rely on Chapter 59's cannabis-specific proximity restrictions to prohibit an adult-use retail dispensary at 1100 Southwestern Boulevard based on adjacency to residential uses and other locally created separation requirements that are not contained in the Cannabis Law or the State's implementing regulations.

By way of brief background, my client is evaluating 1100 Southwestern Boulevard for an adult-use retail dispensary. In response to my inquiry, Jeff identified several provisions of Chapter 59 as potential impediments,

including the restriction on locations adjacent to residential uses, proximity to other listed uses, and the Town's prior treatment of similar applications. My concern is that, to the extent Chapter 59 imposes cannabis-specific location restrictions beyond those authorized by State law, those provisions are likely preempted and cannot be used to prohibit the use outright. The Cannabis Law establishes a comprehensive State licensing and regulatory scheme for adult-use cannabis businesses. Under that framework, licensing authority rests with the Cannabis Control Board and the Office of Cannabis Management. Municipalities retain limited authority to regulate the time, place, and manner of adult-use retail dispensaries, but that authority is expressly constrained. Local regulation may not be unreasonably impracticable, may not operate as a de facto prohibition, and may not conflict with the State's licensing and siting framework.

The State framework identifies the specific proximity restrictions applicable to adult-use retail dispensaries. Those include the statutory separation requirements from schools and houses of worship, the regulatory restrictions applicable to certain cannabis licensees, and the limited authority granted to municipalities to impose distance requirements from public youth facilities as defined in the OCM regulations. What the State framework does not authorize, however, is a municipal prohibition on adult-use retail dispensaries merely because a parcel is adjacent to residential use. Nor does it authorize municipalities to create broader cannabis-specific protected categories that effectively eliminate otherwise eligible commercial sites. To be clear, I am not suggesting that municipalities lack authority to regulate licensed cannabis businesses through generally applicable zoning and land use controls. Rather, my concern is with cannabis-specific proximity restrictions that exceed those authorized by State law and regulation.

This is also consistent with the recent direction of the case law and administrative treatment of local cannabis zoning restrictions. Courts and the State have been scrutinizing local cannabis regulations that go beyond ordinary time, place, and manner regulation and instead function as barriers to State licensed cannabis businesses. Local governments are not prohibited from regulating land use impacts, but they cannot use local zoning to frustrate the State licensing scheme or impose additional cannabis-specific siting restrictions that the State did not adopt. For those reasons, I believe there is a substantial preemption issue with any determination that 1100 Southwestern Boulevard is unavailable based upon the cannabis-specific proximity requirements contained in Chapter 59. Separately, assuming for purposes of discussion that those requirements are valid and enforceable, are they subject to area variance relief, or does the Town view them as absolute prohibitions?

Please let me know the Town's position. If a formal zoning interpretation or appeal is required to obtain that determination, please advise and we will proceed accordingly.

Best,

C.

From: Chris G. Trapp <cgtrapp@grecolawyers.com>
Sent: Sunday, June 14, 2026 2:17 PM
To: Auerbach, Corey A. <CAuerbach@barclaydamon.com>; Jeffrey Schieber <jschieber@twsny.org>
Cc: Joseph Trapp <JTrapp@westseneca.gov>; Goldberg, Ari M. <AGoldberg@barclaydamon.com>; Gary Dickson <gdickson@westseneca.gov>; Amelia Greenan <agreenan@westseneca.gov>
Subject: 2030-1 RE: Retail Dispensary - 1100 Southwestern

Since this is the first I am hearing about any of this, what seems to be the issue and if there is an issue with the statute, precisely what is the issue? Without more information, I cannot opine on it. cgt

GRECO TRAPP

Chris G. Trapp, Esq.
Greco Trapp, PLLC
1700 Rand Building
14 Lafayette Square
Buffalo, New York 14203
Tel: (716) 856-5800
Fax: (716) 856-5801
Email: cgtrapp@grecolawyers.com

****

In accordance with Internal Revenue Service Circular 230, we advise you that unless otherwise expressly stated, any discussion of a federal tax issue in this communication or in any attachment is not intended to be used, and it cannot be used, for the purpose of federal tax penalties.

****

NOTICE OF CONFIDENTIALITY

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From: Auerbach, Corey A. <CAuerbach@barclaydamon.com>
Sent: Monday, June 8, 2026 12:46 PM
To: Jeffrey Schieber <jschieber@twsny.org>
Cc: Chris G. Trapp <cgtrapp@grecolawyers.com>; Joseph Trapp <JTrapp@westseneca.gov>; Goldberg, Ari M. <AGoldberg@barclaydamon.com>
Subject: RE: Retail Dispensary - 1100 Southwestern

Thanks, Jeff. I appreciate you connecting me with Chris and Joe. I look forward to hearing their thoughts regarding the appropriate process and next steps.

Best,

C.

From: Jeffrey Schieber <jschieber@twsny.org>
Sent: Monday, June 8, 2026 12:42 PM
To: Auerbach, Corey A. <CAuerbach@barclaydamon.com>
Cc: cgtrapp <cgtrapp@grecolawyers.com>; Joseph Trapp <JTrapp@westseneca.gov>
Subject: RE: Retail Dispensary - 1100 Southwestern

Chris/ Joe, I have included Mr. Corey Auerbach on this email as well has his questions below. It is in regards to a cannabis dispensary. I have outlines chapter 59 of the Town Code, which outlines numerous restrictions. I am not sure, which is why this is being sent to the both of you, on process.

Regards
Jeffrey Schieber
Town of West Seneca

From: Auerbach, Corey A. <CAuerbach@barclaydamon.com>
Sent: Monday, June 8, 2026 10:36 AM
To: Jeffrey Schieber <jschieber@twsny.org>
Subject: RE: Retail Dispensary - 1100 Southwestern

Jeff,

Thank you for the additional information. My client's preference remains the original location at 1100 Southwestern Boulevard. Based on your prior email, my understanding is that the Town's position is that a retail dispensary is not permitted at that location because of the residential uses located adjacent to and behind the parcel, as well as the other cannabis-specific location restrictions contained in Chapter 59. As a threshold matter, are any of those issues capable of being addressed through area variance relief, or is the Town's position that the use is prohibited outright?

Since our initial correspondence, I have spent some time reviewing the Cannabis Law, the implementing regulations, and the recent case law in this area. My preliminary view is that there is a substantial argument that certain of the Town's cannabis-specific proximity requirements are preempted by state law. As I read the statutory and regulatory framework, municipalities are afforded only limited authority to regulate the location of licensed cannabis businesses, and the State does not authorize cannabis-specific separation requirements from residential uses.

I certainly appreciate that you are applying the Town Code as written and do not expect you to resolve a legal challenge to the validity of the ordinance. With that in mind, would you recommend that I discuss this issue with the Town Attorney's office? Alternatively, if I need to pursue a formal appeal, can you advise regarding the appropriate process?

I appreciate your guidance regarding the most appropriate path forward.

Best,

C.

From: Jeffrey Schieber <jschieber@twsny.org>
Sent: Monday, June 8, 2026 8:00 AM
To: Auerbach, Corey A. <CAuerbach@barclaydamon.com>
Subject: RE: Retail Dispensary - 1100 Southwestern

Residential behind the property and residential to the east of the property.

From: Auerbach, Corey A. <CAuerbach@barclaydamon.com>
Sent: Sunday, June 7, 2026 7:21 PM
To: Jeffrey Schieber <jschieber@twsny.org>
Subject: RE: Retail Dispensary - 1100 Southwestern

How about this location: 1492 S Southwestern Blvd?

From: Jeffrey Schieber <jschieber@twsny.org>
Sent: Tuesday, May 19, 2026 7:59 AM
To: Auerbach, Corey A. <CAuerbach@barclaydamon.com>
Subject: RE: Retail Dispensary - 1100 Southwestern

Thank you for reaching out.
First, please review chapter 59 to the Town Code. There are many items to review:

- Prohibited locations
- Not permitted adjacent to any residential use
- There is residential behind the parcel and next to the parcel

- Some history....the Town Board entertained a different request for a dispensary in a small strip plaza with an existing convenient store in it. It was denied due to it being deemed that is a "place where children gather."
- Then, the Town Code was amended to include specifically convenient stores.
- Language was also added for "retail food establishments."
- Lastly, and I do not know if this applicable, Orchard Park School District is across the street.

These are the specific items to review.
Regards
Jeffrey

From: Auerbach, Corey A. <CAuerbach@barclaydamon.com>
Sent: Monday, May 18, 2026 4:44 PM
To: Jeffrey Schieber <jschieber@twsny.org>
Subject: Retail Dispensary - 1100 Southwestern

Jeff,

I hope all is well. I'm reaching out regarding the proposed retail dispensary location at 1100 Southwestern Boulevard. There has been a shifting landscape in the cannabis regulatory space over the last year, including a recent court decision further clarifying the extent of a municipality's ability to regulate cannabis uses through zoning and local land use controls.

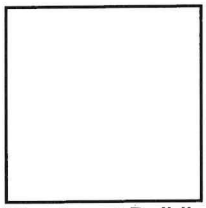
Given those developments, I would like to better understand the specific impediments to proceeding at this address and whether we can chart some sort of a path forward and what that looks like. Thanks for considering and please let me know a good time to connect.

Best,

C.

Corey A. Auerbach

Pronouns: he/him/his
Partner



The Avant Building • 200 Delaware Avenue • Suite 1200 • Buffalo, NY 14202
D: (716) 858-3801 • F: (716) 768-2801 • C: (716) 868-7263
E: CAuerbach@barclaydamon.com

www.barclaydamon.com • vCard • Profile

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Exhibit B

GRECO TRAPP PLLC

1700 Rand Building
14 Lafayette Square
Buffalo, NY 14203

FIRST-CLASS US POSTAGE PITNEY BOWES ZIP 14203 $ 000.78⁰

Barclay Damon, LLP
200 Delaware Avenue
Buffalo, New York 14202

Attn: Corey Auerbach, Esq.

14202$2150 C018

Josephine A. Greco
Chris G. Trapp

GRECO TRAPP PLLC

Joseph Greco Trapp
Jonathan D. Bogey
Richard C. Slisz, of Counsel

Service by electronic means not accepted

August 26, 2026

Barclay Damon, LLP
200 Delaware Avenue
Buffalo, New York 14202

Attn: Corey Auerbach, Esq.

Re: Town of West Seneca/Planning Board
Our File No.: 2030-1

Dear Mr. Auerbach:

Technically, since the Code Enforcement Officer rejected the proposal, the proper procedure, as you know, is to seek an interpretation of that decision from the ZBA. I plan on discussing this issue with them in advance and explaining to them about the Court decisions and the statutory limitations. Quite frankly, that is faster and less expensive than either an Article 78 proceeding or a revision to the local law, both of which would be well after the ZBA meeting at the end of September. You might make the August meeting, but I do not know their timing requirements.

If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me.

Very truly yours,

GRECO TRAPP, PLLC

Chris G. Trapp

CGT/rgg
cc: Hon. Gary A. Dickson, Town Supervisor
Amelia Greenan, Deputy Town Supervisor
Joseph Greco Trapp, Esq.
Diane Webber, Legal Clerk

1700 Rand Building • 14 Lafayette Square • Buffalo, NY 14203 • Tel: 716.856.5800 • Fax: 716.856.5801

Exhibit C

Auerbach, Corey A.

From: Auerbach, Corey A.
Sent: Thursday, September 17, 2026 4:22 PM
To: Joseph Trapp
Subject: RE: FOIL 2026-186
Attachments: doc20260917150000.pdf

VIA EMAIL

Town Attorney
Town of West Seneca
1250 Union Road
West Seneca, New York 14224

Re: FOIL Appeal – FOIL Reference No. 2026-00186 – 1100 Southwestern Boulevard

Dear Town Attorney:

My request sought the following two categories of records:

1. Any orders, requirements, decisions, interpretations, determinations, denials, rejections, or other records concerning 1100 Southwestern Boulevard issued or made by the administrative official charged with enforcement of the Town's zoning regulations, from May 1, 2026 through the present.

2. The current application form, notice of appeal form, or other form required to commence an appeal to the Town of West Seneca Zoning Board of Appeals from a determination of the administrative official charged with enforcement of the Town's zoning regulations.

On September 17, 2026, the Town advised that my FOIL request had been "filled" and that the attached documents were the documents requested. However, the Town's response did not include any record responsive to either of the two requests above. The only substantive record provided was correspondence from the Town Supervisor, who is not the administrative official charged with enforcement of the Town's zoning regulations.

Accordingly, I appeal the constructive denial of access to the requested records and request that the Town either provide the responsive records or certify that no responsive records can be located after a diligent search.

Thank you.

Best,

C.

From: Kate Newton <Knewton@westseneca.gov>
Sent: Thursday, September 17, 2026 3:14 PM
To: Auerbach, Corey A. <CAuerbach@barclaydamon.com>
Subject: FW: FOIL 2026-186

This message needs your attention

- This is their first email to your company.

Mark as Safe | Report Malicious or Mark

Powered by Mimecast

09/17/2026

200 Delaware Ave
Buffalo, NY 14202

RE: FOIL Reference # 2026-00186
1100 Southwestern Boulevard

FREEDOM OF INFORMATION REQUEST FILLED

Dear ,

The Freedom of Information records request you submitted to West Seneca as referenced above has been filled.

Attached you will find the documents you requested.

Kate Newton
Town Clerk | Receiver of Taxes
Town of West Seneca
1250 Union Road
West Seneca, NY 14224
716.558.3215
knewton@westseneca.gov

TOWN OF WEST SENECA
"PROUD PAST - UNLIMITED FUTURE"

From: Autumn Kopciowski <AKopciowski@westseneca.gov> **On Behalf Of** Kate Newton
Sent: Wednesday, September 16, 2026 11:00 AM
To: Kate Newton <Knewton@westseneca.gov>; cauerbach@barlcaydamon.com
Subject: FOIL 2026-186

09/16/2026

200 Delaware Ave
Buffalo NY 14202

RE: FOIL Reference # 2026-00186
1100 Southwestern Boulevard

FREEDOM OF INFORMATION REQUEST RECEIVED

Dear :

Your FOIL request dated 09/16/2026 was received by the Town of West Seneca on 09/16/2026. The information will be reviewed and I anticipate you will be contacted regarding your request by 10/14/2026.

Access to the records in whole or part will be determined in accordance with Article 89, Section 5 of the Freedom of Information Law. I will notify you when the research is complete, and if necessary, set a time and date for pick up of copies if available.

Pursuant to FOIL, a fee of $.25 per page for photocopies not exceeding 9"x14" will be charged. All other fees will be based on the material requested. You may make an appointment to view the records prior to copying to avoid cumbersome fees.

Sincerely,

Kate Newton
Town Clerk/Records Access Officer

From: noreply@civicplus.com <noreply@civicplus.com>
Sent: Tuesday, September 15, 2026 4:44 PM
To: Kate Newton <knewton@westseneca.gov>; Molly Martin <mmartin@westseneca.gov>; Autumn Kopciowski <akopciowski@westseneca.gov>
Subject: Online Form Submittal: Freedom of Information Request

Freedom of Information Request

The Town Clerk also acts as the Records Access Officer for the Town of West Seneca. All requests for access to or copies of Town records or information shall be directed to this office using the below application. The Town Clerk will respond to all requests pursuant to the Freedom of Information Law.

If you are referring to the West Seneca Police department records, please send the request to tenhagen@westsenecapolice.org Here is their website for more information: https://wspolice.com/records-department/
This office **DOES NOT** maintain records for the Court or the Police Department.

An initial response to the request shall be provided with five business days of receipt. Such acknowledgement may be that additional time is required in order to determine if such records exist and, if so, to review any responsive documents. In the event of a denial of the request for documents, an appeal, in writing must be submitted within thirty (30) calendar days of such denial.

To appeal denial of a FOIL request, please submit a written appeal via mail to Deputy Town Attorney Joseph Greco Trapp at 1250 Union Road, West Seneca, NY 14224.

Freedom of Information Law Page

Online submission of a **FOIL** may **not** be used for Police or Court Records.

For POLICE records, please contact the police records department at 716-674-3357.

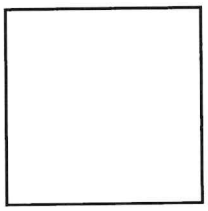
For COURT records, please contact the courts clerks at 716-558-3262.

Full Name	Barclay Damon LLP
Address	200 Delaware Ave
City	Buffalo
State	NY
Zip Code	14202
Phone Number	7168687263
Email Address	cauerbach@barlcaydamon.com
I Hereby Apply To	Obtain a copy of the following records
Records Requested	Pursuant to the New York Freedom of Information Law, Public Officers Law Article 6, I request electronic copies of the following records: Any orders, requirements, decisions, interpretations, determinations, denials, rejections, or other records concerning 1100 Southwestern Boulevard issued or made by the administrative official charged with enforcement of the Town's zoning regulations, from May 1, 2026 through the present. The current application form, notice of appeal form, or other form required to commence an appeal to the Town of West Seneca Zoning Board of Appeals from a determination of the administrative official charged with enforcement of the Town's

zoning regulations.

Please provide the requested records electronically by return email. If no records responsive to either request exist, please confirm that in writing.

Email not displaying correctly? View it in your browser.



Jeffrey Schieber

From: Gary Dickson
Sent: Wednesday, September 9, 2026 1:14 PM
To: 'Auerbach, Corey A.'; cgtrapp; Jeffrey Schieber
Cc: Joseph Trapp; Amelia Greenan; Goldberg, Ari M.; Zakarin, Benjamin R.
Subject: RE: 2030-1 RE: Retail Dispensary - 1100 Southwestern [IMAN-ACTIVE.FID8036735]

Mr. Auerbach,

Your request has been addressed.

If you intend to move forward with an appeal to the ZBA, I suggest you bring your relevant documents to Code Enforcement and they will walk you through the process and get you on the agenda once you pay the fee.

Gary Dickson
Town Supervisor
1250 Union Road
West Seneca, NY 14224
Office: 716-558-3203
Cell: 716-777-2504
gdickson@westseneca.gov

This email may be subject to public disclosure per the NY Freedom of Information Law.

From: Auerbach, Corey A. <CAuerbach@barclaydamon.com>
Sent: Wednesday, September 9, 2026 10:32 AM
To: Gary Dickson <gdickson@westseneca.gov>; cgtrapp <cgtrapp@grecolawyers.com>; Jeffrey Schieber <jschieber@westseneca.gov>
Cc: Joseph Trapp <JTrapp@westseneca.gov>; Amelia Greenan <agreenan@westseneca.gov>; Goldberg, Ari M. <AGoldberg@barclaydamon.com>; Zakarin, Benjamin R. <BZakarin@barclaydamon.com>
Subject: RE: 2030-1 RE: Retail Dispensary - 1100 Southwestern [IMAN-ACTIVE.FID8036735]

Jeff,

Following up on the below. At this point, I need the formal written determination so that I can file the ZBA appeal.

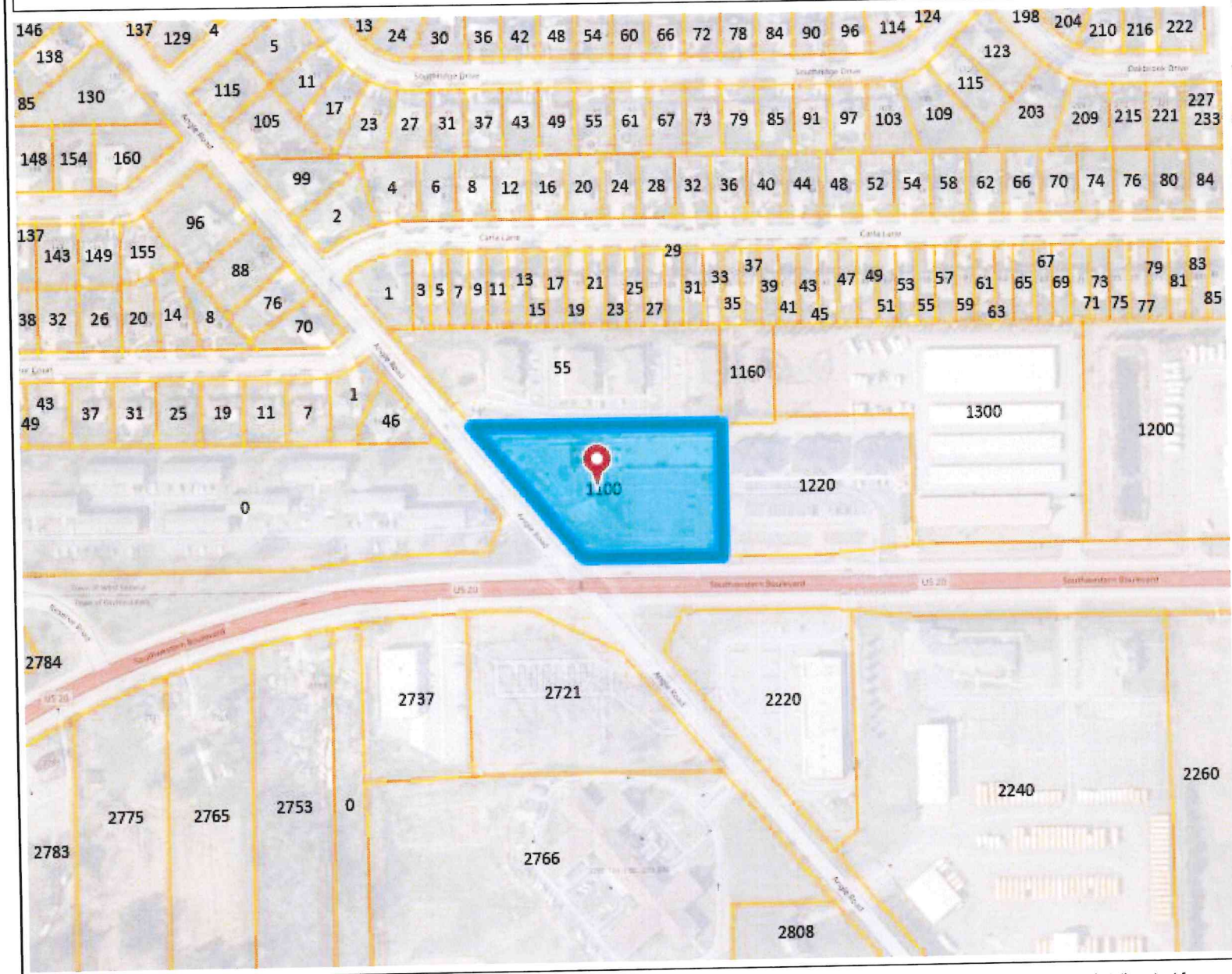
Thanks,

C.

From: Auerbach, Corey A.
Sent: Thursday, September 3, 2026 4:03 PM
To: 'Gary Dickson' <gdickson@westseneca.gov>; cgtrapp <cgtrapp@grecolawyers.com>; Jeffrey Schieber <jschieber@westseneca.gov>
Cc: Joseph Trapp <JTrapp@westseneca.gov>; Amelia Greenan <agreenan@westseneca.gov>; Goldberg, Ari M.

Exhibit D

Erie County On-Line Mapping Application





Legend

- Parcels

0 0.07 0.1 Miles

WGS_1984_Web_Mercator_Auxiliary_Sphere
THIS MAP IS NOT TO BE USED FOR NAVIGATION

ERIE COUNTY
DEPARTMENT OF ENVIRONMENT & PLANNING
OFFICE OF GIS

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

1: 4,514

Exhibit E

Chapter 59

CANNABIS

ARTICLE I
Cannabis On-Site Consumption Establishments Opt-Out

§ 59-1. Legislative intent.
§ 59-2. Statutory authority.
§ 59-3. Local opt-out.
§ 59-4. Severability.
§ 59-5. Permissive referendum/ referendum on petition.
§ 59-6. When effective.

ARTICLE II
Permitted Cannabis Uses

§ 59-7. Purpose; legislative intent.
§ 59-8. Restrictions.
§ 59-9. Security.
§ 59-10. Signage.
§ 59-11. General regulations.
§ 59-12. Definitions.
§ 59-13. Locations.

[HISTORY: Adopted by the Town Board of the Town of West Seneca as indicated in article histories. Amendments noted where applicable.]

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ARTICLE I
Cannabis On-Site Consumption Establishments Opt-Out
[Adopted 11-1-2021 by L.L. No. 9-2021]

§ 59-1. Legislative intent.

It is the intent of this article to opt out of allowing on-site cannabis consumption sites in the Town of West Seneca that would otherwise be allowed under New York State Cannabis Law Article 4.

§ 59-2. Statutory authority.

This article is adopted pursuant to New York State Cannabis Law § 131 that expressly authorizes the Town Board to adopt a local law requesting the Cannabis Control Board to prohibit the establishment of cannabis on-site consumption licenses within the jurisdiction of the Town.

§ 59-3. Local opt-out.

The Town Board of the Town of West Seneca hereby opts out of allowing on-site cannabis consumption sites from being established and operated within the Town's jurisdiction as authorized under New York State Cannabis Law Article 4.

§ 59-4. Severability.

If any clause, sentence, paragraph, subdivision, or part of this article or the application thereof to any person, firm or corporation, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this article or in its application to the person, individual, firm or corporation or circumstance directly involved in the controversy in which such judgment or order shall be rendered.

§ 59-5. Permissive referendum/referendum on petition.

This article is subject to a referendum on petition in accordance with New York State Cannabis Law § 131 and the procedure outlined in New York State Municipal Home Rule Law § 24.[1]

§ 59-6. When effective.

This article shall take effect immediately upon filing with the Secretary of State.

1. **Editor's Note: No valid petition for referendum was filed.**

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ARTICLE II
Permitted Cannabis Uses
[Adopted 5-12-2025 by L.L. No. 4-2025[2]]

§ 59-7. Purpose; legislative intent.

In order to promote the health, safety and general welfare of the residents of the Town of West Seneca, including property values, community character, quality of life, business climate and the prevention of crime, this article is intended to restrict cannabis uses to being located in certain zoning districts as more fully set forth herein. Further, that all cannabis uses proposed to operate within the Town shall be required to obtain a special use permit, regardless of the zoning classification, to ensure the strict compliance with these regulations.

§ 59-8. Restrictions.

Cannabis uses, including retail dispensaries, storage facilities, warehouses, cultivators, nurseries, processing facilities, distributors and distribution centers, adult-use cooperatives, adult-use microbusinesses, and delivery services and operations shall be permitted subject to the following restrictions.

A. No such cannabis uses shall be located within 1,000 feet of another existing cannabis facility set forth above, as measured from each property line.

B. No such cannabis use shall be located within 500 feet of the property line at locations of community facilities and/or where children and cannabis users are known to gather, including, but not limited to, public parks, convenience stores and other retail/food establishments which children regularly frequent, childcare centers, playgrounds, drug rehabilitation centers, medical practitioner's offices, community centers, and other dispensaries.

C. No such cannabis use facility shall be located within 500 feet of a school building or property and/or within 500 feet of a church or other similar place of worship as measured from each property line.

   (1) In the event that a school existing and authorized by the State Education Department is located on property where a place of worship also exists, no such cannabis use facility shall be located within 500 feet of the school building or property onto which the building is located.

D. No cannabis use facility shall be located in any area zoned residential in any form nor shall such facility be permitted to abut any property used for residential purposes, including, but not limited to single-family residences, duplexes, multifamily residences, or any mixed-use property that contains any residence.

E. No cannabis use facility may be located in any historic district.

F. No retail dispensaries and/or distribution centers may operate between the hours of 1:00 a.m. and 7:00 a.m.

G. Cannabis retail dispensaries approved after May 1, 2025, shall only be located in separate, stand-alone structures and shall not be located in the same building as any other retail establishment or within a plaza where other retail establishments exist.

---

2. **Editor's Note: This local law also superseded former Art. II, Permitted Cannabis Uses, adopted 3-13-2023 by L.L. No. 3-2023.**

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§ 59-9. Security.

Any cannabis use set forth above, regardless of its location, shall take all necessary security measures at any facility permitted by a special use permit. Unless otherwise required as a condition of the special use permit, the following requirements must be met.

A. All facilities where a cannabis use shall be established shall provide for fencing and/or other screening or security feature acceptable to the Town Board around the perimeter of the property at the height and type established by the Planning Board.

B. All facilities where a cannabis use shall be established shall install a fully operational 4K camera system, at a minimum, sufficient to be used at night and covering all areas on the property to be so used. The system used shall be capable for recording and all recordings must be kept for a minimum of 30 calendar days.

C. (Reserved)

D. In any facility where a cannabis use is established where the general public and/or customers are invited shall provide for secure locations where cash is to be kept on the premises.

E. In the event of deliveries from the cannabis use facility, provisions shall be made for adequate security consistent with these regulations which must be provided in advance to the West Seneca Police and any local, state, and/or federal police agency. The implementation of deliveries shall require an amended special use permit and a review by the Planning Board which may impose additional security measures, including, but not limited to, security guards and safe boxes in any transport vehicle.

F. Home cultivation cannabis shall be screened from view from neighboring properties and shall otherwise be secured with appropriate fencing to deter removal by third parties.

(1) No cannabis shall be cultivated, grown, planted, and/or maintained in any front or side yard.

(2) (Reserved)

(3) Sufficient setbacks shall be maintained at all times of no less than 15 feet from any property line.

§ 59-10. Signage.

A. Only one sign advertising the business shall be permitted on the building and same shall not exceed 10% of the size of the wall upon which the sign is located. No freestanding signs, including, but not limited to A-frame signs, shall be permitted without the express prior approval of the Planning Board and Town Board, or its designee.

(1) The ability to add any additional signage shall otherwise comply with Chapter 120 of the Town Code, with the exception that any additional signage must be approved by the Town Planning Board and the Town Board. One additional sign may be permitted upon approval of the Town Board after a review by the Planning Board.

B. Any illuminated sign shall not be flashing, rotating, or otherwise have any movement whatsoever as to not distract highway traffic or disturb any adjoining and/or nearby residential properties.

C. Motor vehicles, vans, trucks, trailers, and/or similar items may be parked on the property which advertise the business beyond the name of the business in lettering not to exceed 12 inches per letter.

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Such vehicles shall not be left on the premises except in a fully enclosed garage or in the rear of the property such that the vehicle, truck, van, trailer or similar item is not visible from the street during any period of time that the cannabis use facility is not open to the public.

D. Any murals or other painting options shall be set forth in the application for a special use permit and are subject to the further reasonable requirements of the Planning Board. No paintings or murals that might distract drivers on any public highway or that could reasonably be interpreted as advertising to minors shall be permitted.

§ 59-11. General regulations.

A. Odor at the facility where a cannabis use shall be established shall be maintained to limit odors onto adjoining properties to the greatest extent possible.

B. Sufficient parking shall be provided on premises for any customers and employees such that no on-street parking shall be required or permitted.

C. Mobile sales shall be strictly prohibited. Nothing herein shall prevent licensed delivery vehicles with sufficient security features from making deliveries. All delivery operations shall be listed and described as part of the special use permit application.

D. No on-site use, consumption, sampling (other than for testing purposes), ingestion, injection, or similar functions shall be permitted at any time.

E. Any permitted use shall be pursuant to a special use permit as provided for under the Zoning Code of the Town of West Seneca.

(1) Reasonable conditions with respect to lighting, signage, hours of operation, parking, and other restrictions may be applied as part of the special use permit grant.

(2) Sufficient setbacks shall be maintained at all times of no less than 15 feet from any property line.

F. Drive-through service windows and/or customer pick-up lanes must provide sufficient security features and shall not provide for direct access between a vehicle in the drive-through and the cannabis employee.

(1) License plate recognition cameras shall be placed such that they record the rear license plate of the vehicle while the vehicle is at the drive-through window and at the entrances to the property. Such placement shall be reviewed by the West Seneca Police Department at the time of installation. Videos must be retained for a minimum of 30 days.

(a) The West Seneca Police Department shall be provided access to the monitoring system upon request. Alternatively, the cannabis use facility may provide a direct link of such camera system to the Police Department.

(2) No sliding windows may be used for drive-through access. Windows must provide sufficient protection from breaking from the outside.

(3) There shall be no direct contact between the employee and the customer. Retractable receipt/ delivery devices shall be used at all times the drive-through window is used.

(4) There shall be adequate space on any site which uses a drive-through window to provide for the stacking of vehicles to prevent vehicles from waiting on any public roadway and/or blocking

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any other sidewalk or area of ingress and egress.

G. Prior to opening any cannabis use facility, the Code Enforcement Office, Engineering Office, and the West Seneca Police Department shall have the right to inspect all premises to ensure compliance with these provisions and all other provisions of law.

(1) As a condition of the issuance of a special use permit, the Town of West Seneca and its respective departments shall have the right to periodically inspect all cannabis use facilities to ensure compliance with these provisions and all other provisions of law without the necessity of an administrative search warrant.

§ 59-12. Definitions.

CANNABIS USE FACILITY — Any location, property, building, structure, accessory structure, or facility where cannabis, cannabis products, and/or related materials are located, stored, warehoused, sold, manufactured, used, smoked, ingested, processed, grown, cultivated, bartered, used, delivered, transported, advertised, or stored, including retail dispensaries, cultivators, nurseries, processing facilities, distributors and distribution centers, adult-use cooperatives, adult-use microbusinesses, warehouses, and delivery services and operations.

COMMUNITY FACILITIES — Any location where children congregate, including, but not limited to, playgrounds, libraries, public parks, bicycle paths, convenience stores and other retail/food establishments which children regularly frequent, public pools, splash pads, athletic facilities and fields, and childcare centers.

CONSUMPTION — Any building, structure, location, property, business, or entity that is licensed by the state for the purposes of consuming, smoking, ingesting, injecting, or otherwise using cannabis, any cannabis product, and/or any cannabis related product.

COOPERATIVE — A state-issued cooperative license authorizes the acquisition, possession, cultivation, processing and sale from the licensed premises of the adult-use cooperative by such licensee to duly licensed distributors, on-site consumption sites, registered organization and/or retail dispensaries, but not directly to cannabis consumers.

CULTIVATOR — The growing, cloning, harvesting, drying, curing, grading, and trimming of cannabis plants. A state-issued cultivator's license authorizes the acquisition, possession, distribution, cultivation and sale of cannabis from the licensed premises of the adult-use cultivator to a licensed processor.

DELIVERY — A state-issued delivery license authorizes the delivery of cannabis and cannabis products by licensees, independent of another adult-use cannabis license, to cannabis consumers. Delivery licenses may not have a total of more than 25 individuals, or the equivalent thereof, providing full-time paid delivery services to cannabis consumers per week under one license.

DISTRIBUTOR — Any person who sells at wholesale any cannabis product for which a license is required. A state-issued distributor's license authorizes the acquisition, possession, distribution and sale of cannabis from the licensed premises of a licensed adult-use processor, adult-use cooperative, microbusiness, or registered organization authorized to sell adult-use cannabis to duly licensed retail dispensaries, on-site consumption sites and adult-use delivery licensees.

HOME CULTIVATION — Growing cannabis on any residential property for personal use.

MICROBUSINESS — A licensee that may act as a cannabis producer for the cultivation of cannabis, a cannabis processor, a cannabis distributor, and a cannabis retailer. A microbusiness license authorizes the limited cultivation, processing, distribution, delivery, and sale of their own adult-use cannabis and cannabis products.

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NURSERY — A licensee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis by licensed adult use cannabis cultivators, microbusinesses, cooperatives and registered organizations. A state-issued nursery license authorizes the production, sale and distribution of clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis by licensed adult-use cultivators, cooperatives, microbusinesses, or registered organizations.

PROCESSOR — A licensee that extracts concentrated cannabis and/or compounds, blends, extracts, infuses, or otherwise manufactures concentrated cannabis or cannabis products. A state-issued processor's license authorizes the acquisition, possession, processing, and sale of cannabis from the licensed premises of adult-use cultivators to licensed distributors.

RETAIL DISPENSARY — Any person who sells at retail any cannabis product, to cannabis consumers. A state-issued retail dispensary license authorizes the acquisition, possession, sale and delivery of cannabis from the licensed premises of the retail dispensary by such licensee to cannabis consumers.

WAREHOUSE — Any building, structure, location, property, business, or entity where any cannabis and/or cannabis product is maintained and/or stored for any length of time.

§ 59-13. Locations.

The following zones shall be used for specific cannabis businesses as described above:

A. Zones M-1 and M-2: retail dispensary, cultivator, nursery, processor, distribution, microbusiness, delivery, warehouse.

B. Zone C-2: retail dispensary, cultivator, nursery, distribution, microbusiness, delivery.

C. Zone C-1: retail dispensary.

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Exhibit F

NEW YORK STATE | Office of Cannabis Management

AN OVERVIEW

LOCAL LAW PREEMPTION & "UNREASONABLY IMPRACTICABLE"

LOCAL LAW PREEMPTION: MEANING & IMPACT

State preemption is a concept that comes out of the New York State Constitution, Article IX, §2 and Cannabis Law §131(2). Preemption of a local law means that, where there is a conflict between a local law or rule and the law of New York State, or where a local law attempts to legislate where state law already has, State law will override and apply (i.e., control), not the local law.

TYPES OF CANNABIS BUSINESSES & LOCAL ACTION

If a municipality has enacted a local law prohibiting adult-use retail dispensary and/or on-site consumption license—known as **"opting-out"**—Cannabis Law §131 (2) still puts limitations on what kinds of local actions the municipality can take toward other types of cannabis businesses. A municipality that has opted-out cannot adopt any local law regarding the operation of licensed registered organizations (e.g. a medical cannabis operator), supply-side adult-use cannabis businesses (e.g. cultivator, processor, distributor), or cannabinoid hemp businesses.

If a municipality did not opt-out of allowing adult-use retail dispensaries and/or on-site consumption, Cannabis Law §131 (2) **does** permit local laws regarding the time, place, and manner of operation of adult-use retail dispensaries and on-site consumption licenses. However, the local law cannot make the operation of the licensed cannabis business "unreasonably impracticable." Unreasonably impracticable is a determination that the Cannabis Control Board (CCB) makes. See, 9 NYCRR, §119.2, §119.5.

HOW TO SUBMIT A 'UNREASONABLY IMPRACTICABLE' CLAIM

If an applicant, licensee, or other entity believes a municipality has passed a local law that makes the operation of the licensed cannabis business unreasonably impracticable, they can submit a claim to the CCB.

Similarly, if a local government wants the CCB to review a law, they may submit it using the same procedures.

An entity must provide the following criteria to initiate an unreasonably impracticable claim:

- Summarize the municipal law or code you believe is unreasonably impracticable.
- Provide a copy of the local ordinance or law you believe is unreasonably impracticable.
- Provide any applicable case law/studies and arguments regarding your claim.
- Provide claims with findings on why you believe the local ordinance or law is unreasonably impracticable.
- Provide supporting arguments and documentation on your claim.

Once all the criteria are gathered, send the documentation to the Office of Cannabis Management (OCM) at **municipalities@ocm.ny.gov**.

NEXT STEPS AFTER SUBMITTING AN 'UNREASONABLY IMPRACTICABLE' CLAIM

After claim submission to **municipalities@ocm.ny.gov**:

- OCM with review and analyze the claim and all supporting information;
- OCM will send the claim to the Cannabis Control Board (CCB) for a final determination;
- The CCB will review and deliberate on the claim. The Board will calendar the claim for discussion at a public Board meeting.
- The Board will vote on the claim at the Board meeting, issue an advisory opinion, and send notice to the claimant and municipality.

See, 9 NYCRR §119.5.

IF THE CANNABIS CONTROL BOARD DETERMINES THAT A LOCAL LAW IS UNREASONABLY IMPRACTICABLE

- If the municipality adopted the local law before the Board issued its advisory opinion, the advisory opinion will be presumptive evidence that the municipality has acted in violation of Cannabis Law §131 (2); and
- If the local law has been proposed, but not yet adopted, the municipality will be preempted from adopting the local law.

WHERE LOCAL GOVERNMENTS ARE PERMITTED TO ACT

The actions that constitute the permissible time, place, and manner restrictions that a municipality can impose are listed in 9 NYCRR §119.2. These are:

- Retail hours of operation;
- The visual or architectural integrity of the building if located within historical districts;
- Parking;
- Traffic control, including but not limited to pedestrian and vehicular traffic;
- Odor, pursuant to article 13-E of the Public Health Law and the Clean Indoor Air Act;
- Noise; and
- Distance requirements between a retail dispensary, microbusiness, or a Registered Organization Dispensing (ROD) and a public youth facility, if, that the distance requirement is no greater than 500 feet from the retail dispensary, microbusiness, or ROD. The distance requirements for a public youth facility do not apply to Conditional Adult-Use Retail Dispensary (CAURD) licensees, see 9 NYCRR §116, et seq.

If the municipal restrictions do not fall within the scope of § 119.2, they are pre-empted by the Cannabis Law and the Cannabis Control Board regulations. Municipal restrictions and requirements that are generic–not specific to businesses licensed by the Board–are not preempted.

Please reach out to municipalities@ocm.ny.gov for any further questions.

Exhibit G

NEW YORK STATE | Office of Cannabis Management

KATHY HOCHUL	TREMAINE WRIGHT	JESSICA GARCIA	HOPE KNIGHT	CRYSTAL J. RODRIGUEZ DABNEY	JENNIFER GILBERT JENKINS	FELICIA A.B. REID
Governor	Cannabis Control Board Chair	Board Member	Board Member	Board Member	Board Member	Acting Executive Director

November 12, 2024 **SENT VIA EMAIL**

City of Niagara Falls
745 Main Street
Niagara Falls, NY 14301

Re: Response from the New York State Cannabis Control Board under Cannabis Law Section 76(4)

Dear City of Niagara Falls:

This letter is in reference to the Cannabis Control Board's decision to approve the license for AJ's Native Wholesale, Inc. located at 118 87th Street, Niagara Falls, NY 14304.

Pursuant to Article 4 of the Cannabis Law, the Cannabis Control Board (Board) is authorized to issue registrations, licenses, and permits related to adult-use retail dispensaries, registered organization with dispensary (ROD), or for on-site consumption (License) within the State. Section 76(4) of the Cannabis Law provides that when a city, town, or village within New York State (Municipality), or a community board within New York City (Community Board), expresses an opinion (Opinion) either for or against the Board's issuance for a License authorizing retail cannabis sale within their geographic bounds, the Board shall respond in writing with an explanation as to how it considered the Opinion. Furthermore, Part 119 of Title 9 of New York Codes Rules and Regulations (9 NYCRR) proscribes the timeframe of thirty (30) days, with the option to request thirty (30) additional days, in which a Municipality or Community Board may submit their Opinion to the Board.

On or about January 17, 2023, the Board received an Opinion from your office (Office) outlining concerns on the review and issuance of a license to AJ's Native Wholesale, Inc. and the Board is responding as follows:

Pursuant to 9 NYCRR, the Board implemented distance and proximity requirements between licensed retail dispensaries, including RODs, on-site consumption sites, and microbusiness retail locations, from other similarly licensed entities, houses of worship, schools, and public youth facilities, where applicable.

The Municipality Rulemaking regulations (9 NYCRR) require:

- A proposed adult-use cannabis retail dispensary location to not be located in a municipality that opted out of allowing retail dispensary locations.
- A minimum distance of 2,000 feet between adult-use cannabis retail dispensaries in municipalities with a population less than 20,000.
- A minimum distance of 1,000 feet between adult-use cannabis retail dispensaries in municipalities with a population 20,000 or more.
- A minimum straight-line measurement of 200 feet between any cannabis dispensary and a

building exclusively used as a house of worship.
    - The two entities must be located on the same street for the 200-foot requirement to be applicable.
- A minimum straight-line measurement of 500 feet between any cannabis dispensary and a public youth facility or building exclusively used as a school.
    - The two entities must be located on the same street for the 500-foot requirement to be applicable.
    - Public Youth facility means a location or structure owned by a government or government subdivision or agency, that is accessible to the public, where the primary purpose is to provide recreational opportunities or services to children or adolescents of whom the primary population is reasonably expected to be seventeen (17) years of age or younger. Please note, in order of a location to be considered a public youth facility it must be designated as such by a local municipality via the passage of a local law.

In the attached municipality opinion, your Office raised concerns regarding distance from the proposed site, 118 87th Street, Niagara Falls, NY 14304, to a "Community Facility." The term Community Facility was replaced with Public Youth Facility in the Cannabis Adult-Use Regulations and defined as "a location or structure owned by a government or government subdivision or agency, that is accessible to the public, where the primary purpose is to provide recreational opportunities or services to children or adolescents of whom the primary population is reasonably expected to be seventeen (17) years of age or younger." Under § 119.2(a)(10) of the Regulations, "municipalities are authorized to adopt local laws and regulations governing the time, place, and manner; provided however, that such local laws and regulations shall not be unreasonably impracticable. The following activities constitute the permissible time, place, and manner restrictions that may be imposed by a municipality: distance requirements between the retail dispensary, microbusiness, or ROD and a public youth facility, provided, however, that such distance requirement is no greater than 500 feet from the retail dispensary, microbusiness, or ROD." The Board has been made aware from the Office of Cannabis Management (OCM"), that the City was informed of the previous definition use and to provide a copy of their Local Law. However, OCM has not received a copy of the revised local law. Please note, to effectively implement distance requirements from public youth facilities, OCM would require you to submit a copy of the Local Law.

At the time of review of the proposed location, OCM did not receive a copy of a local law adopted by the City establishing distance requirements from a Public Youth Facility. As such OCM did not determine any disqualify distance requirement violations. In its consideration of the proposed license, the Board reviewed and confirmed the foregoing proximity requirements in its decision to grant the licensee to the applicant.

After careful review and consideration of the opinion received from your Locality, and pursuant to the Cannabis Law and related regulations, a license was approved for AJ's Native Wholesale, Inc. located at 118 87th Street,

Niagara Falls, NY 14304.

If you have any questions regarding this letter, please contact the New York State Office of Cannabis Management at municipalities@ocm.ny.gov.

Sincerely,
Cannabis Control Board

Exhibit H

Neutral
As of: October 9, 2026 4:55 PM Z

Matter of 1086 OCR, LLC v. Town of Riverhead Zoning Bd. of Appeals

Supreme Court of New York, Appellate Division, Second Department

July 29, 2026, Decided

2025-12945, (Index No. 618489/25)

Reporter
251 A.D.3d 1054 *; 2026 N.Y. App. Div. LEXIS 4992 **; 2026 NY Slip Op 04763 ***; 2026 LX 494713; 2026 WL 2178928

In the Matter of 1086 OCR, LLC, et al., petitioners/plaintiffs-respondents, v Town of Riverhead Zoning Board of Appeals, et al., appellants, New York State Office of Cannabis Management, et al., respondents/defendants-respondents.

Prior History: *1086 OCR LLC v. Town of Riverhead Zoning Bd. of Appeals, 2025 NYLJ LEXIS 3462, 2025 LX 495423 (Sept. 16, 2025)*

Core Terms

preempt, state law, cannabis, dispensary, retail, foot, license, local law, distance, local government, preemption, adult-use, nearest, stark, void

Case Summary

Overview
Key Legal Holdings

- Town of Riverhead Code § 301-283.20(A)(1), requiring cannabis dispensaries to be 1,000 feet from schools measured property-line-to-property-line, was preempted by Cannabis Law § 72's 500-foot requirement measured center-to-center of entrances, because the town provision imposed additional restrictions beyond state-granted rights and the Legislature had specifically addressed school-distance requirements in the Cannabis Law.
- Town of Riverhead Code § 301-283.20(A)(1), (4), and (5)—regulating cannabis establishment distances from schools, spacing between establishments, and proximity to residential properties—did not violate *Town Law § 262*'s uniformity requirement, and Supreme Court erred in declaring them invalid and void on that basis.

Material Facts

- Brian Stark Enterprises held conditional retail dispensary license for property 733 feet from Riverhead High School.
- Cannabis Law § 72 prohibits dispensaries within 500 feet of schools, measured center-to-center of entrances.
- Town Code § 301-283.20(A)(1) required 1,000-foot minimum measured from property lines.
- Town Planning Department denied building permit based on 1,000-foot requirement.
- Zoning Board of Appeals denied area variance application after hearing.

Controlling Law

- Cannabis Law § 131(2).
- Cannabis Law § 72(6)(a), (c).
- *Town Law § 262*.
- *Matter of Cohen v. Board of Appeals of Vil. of Saddle Rock, 100 NY2d 395*.
- *Glen Oaks Vil. Owners, Inc. v. City of New York, 44 NY3d 468*.

Court Rationale

Legislature expressly stated intent to occupy field of adult-use cannabis dispensary operation. Legislature specifically set school-distance requirements and measurement methods in Cannabis Law § 72. Town's 1,000-foot requirement imposed additional restrictions on state-granted rights. Companion case established Town Code provisions comply with *Town Law § 262* uniformity requirements.

Outcome
Procedural Outcome

Appellate Division modified Supreme Court judgment by deleting declaration that Town Code provisions violate Town Law § 262, affirmed preemption finding, and remitted for amended judgment declaring no Town Law § 262 violation.

LexisNexis® Headnotes

Education Law > Administration & Operation > School Safety > Illegal Third Party Activities

HN1 **School Safety, Illegal Third Party Activities**

N.Y. Cannabis § 72 prohibits a cannabis retail dispensary from locating within 500 feet of a school, as measured from the center of the nearest entrance of the premises sought to be licensed to the center of the nearest entrance of the school. § 72[6][c].

Constitutional Law > State Constitutional Operation

Governments > Local Governments > Ordinances & Regulations

Governments > Police Powers

Governments > State & Territorial Governments > Relations With Governments

HN2 **Constitutional Law, State Constitutional Operation**

Although a local government is constitutionally empowered to enact local laws relating to the welfare of its citizens through its police power, it is prohibited from exercising that power through the adoption of local laws that are inconsistent with the New York State Constitution or any general law of the state. Thus, the law-making power

conferred upon local governments, albeit broad, is limited by the preemption doctrine. State law can preempt local law in one of two ways: either through conflict preemption, which occurs when the local and state laws directly conflict, or field preemption, which occurs when a local government legislates in a field for which the State Legislature has assumed full regulatory responsibility.

Constitutional Law > State Constitutional Operation

HN3 Constitutional Law, State Constitutional Operation

The Legislature may expressly state its intent to preempt, or that intent may be implied from the nature of the subject matter being regulated as well as the scope and purpose of the state legislative scheme, including the need for statewide uniformity in a particular area. A comprehensive and detailed statutory scheme may be evidence of the Legislature's intent to preempt. Courts will examine whether the State has acted upon a subject and whether, in taking action, it has demonstrated a desire that its regulations should preempt the possibility of discordant local regulations. Once it has been determined that the State has preempted an entire field, a local law regulating the same subject matter is deemed inconsistent with the State's overriding interests because it either (1) prohibits conduct which the State law, although perhaps not expressly speaking to, considers acceptable or at least does not proscribe or (2) imposes additional restrictions on rights granted by State law.

Governments > Local Governments > Ordinances & Regulations

Governments > Local Governments > Property

HN4 Local Governments, Ordinances & Regulations

As part of the Marihuana Regulation and Taxation Act of 2021, the Legislature enacted *N.Y. Cannabis § 131*, which expressly provides that, with one exception, all county, town, city and village governing bodies are hereby preempted from adopting any law, rule, ordinance, regulation or prohibition pertaining to the operation or licensure of adult-use cannabis licenses. However, towns, cities and villages may pass local laws and regulations governing the time, place and manner of the operation of licensed adult-use cannabis retail dispensaries and/or on-site consumption site, provided such law or regulation does not make the operation of such licensed retail dispensaries or on-site consumption sites unreasonably impracticable as determined by the board. Thus, the Legislature has expressly stated its intent to occupy the field of the operation of licensed adult-use cannabis retail dispensaries.

Constitutional Law > State Constitutional Operation

HN5 Constitutional Law, State Constitutional Operation

Although the Legislature allowed for local regulation of time, place, and manner of the operation of cannabis retail dispensaries, it has specifically set the distance of such dispensaries from a building containing a school and provided the manner in which to measure that distance. *N.Y. Cannabis § 72*. So much of Code of the Town of Riverhead, N.Y., § 301-283.20(A)(1) as purports to set that distance as 1,000 feet as measured from the property line imposes additional restrictions on rights granted by state law, is inconsistent with the State's overriding interest, and is therefore preempted by the state law.

Counsel: **[**1]** Certilman, Balin, Adler & Hyman, LLP, Hauppauge, NY (John M. Wagner of counsel), for appellants.

Twomey, Latham, Shea, Kelley, Dubin & Quartararo, LLP (Martha F. Reichert and Barclay Damon, LLP, New York, NY [Benjamin R. Zakarin], of counsel), for petitioners/plaintiffs-respondents.

Letitia James, Attorney General, New York, NY (Ester Murdukhayeva and Anagha Sundararajan of counsel), for respondents/defendants-respondents.

Judges: Valerie Brathwaite Nelson, J.P., Barry E. Warhit, Phillip Hom, Lisa S. Ottley, JJ. BRATHWAITE NELSON, J.P., WARHIT, HOM and OTTLEY, JJ., concur.

Opinion

[*1054] **[***1]** DECISION & ORDER

In a hybrid proceeding pursuant to *CPLR article 78* to review a determination of the Town of Riverhead Zoning Board of Appeals dated June 12, 2025, which, after a hearing, denied the application of the petitioners/plaintiffs 1086 OCR, LLC, and Brian Stark Enterprises, LLC, for an area variance, and action for declaratory relief, the appeal is from a judgment of the Supreme Court, Suffolk County (Paul M. Hensley, J.), dated September 16, 2025. The judgment granted the petition, annulled the determination, declared that so much of Code of the Town of Riverhead § 301-283.20(A)(1) as provides that a cannabis **[*1055]** retail establishment may not be located within 1,000 feet of a school **[**2]** is preempted by state law, and declared that Code of the Town of Riverhead § 301-283.20(A)(1), (4), and (5) are invalid and void as violative of *Town Law § 262*.

ORDERED that the judgment is modified, on the law, by deleting the provision thereof declaring that Code of the Town of Riverhead § 301-283.20(A)(1), (4), and (5) are invalid and void as violative of *Town Law § 262*; as so modified, the judgment is affirmed, without costs or disbursements, and the matter is remitted to the Supreme Court, Suffolk County, for the entry of an amended judgment, inter alia, declaring that Code of the Town of Riverhead § 301-283.20(A)(1), (4), and (5) do not violate *Town Law § 262*.

The petitioner/plaintiff Brian Stark Enterprises, LLC (hereinafter Stark Enterprises), holds a conditional retail dispensary license to operate a cannabis dispensary at certain property owned by the petitioner/plaintiff 1086 OCR, LLC (hereinafter the owner), located in the Town of Riverhead. The property is located approximately 733 feet from Riverhead High School. ***HN1*** *Cannabis Law § 72* prohibits a cannabis retail dispensary from locating within 500 feet of a school (*see id. § [***2] 72[6][a]*; former *§ 72[6]*), as measured from the center of the nearest entrance of the premises sought to be licensed to the center of the nearest entrance of the school (*see id. § 72[6][c]*). Code of the Town of Riverhead (hereinafter Town Code) § 301-283.20(A)(1) purports to set that minimum distance at 1,000 feet, measured from the nearest property lines of each affected **[**3]** parcel.

The Town of Riverhead Planning Department denied an application for a building and use permit to operate a cannabis retail dispensary at the property because it was located within 1,000 feet of a school, as measured by the Town Code. Stark Enterprises, of which the petitioner/plaintiff Brian Stark is a member, and the owner applied to the Town of Riverhead Zoning Board of Appeals (hereinafter the ZBA) for an area variance for relief from Town Code § 301-283.20(A)(1). After a hearing, in a determination dated June 12, 2025, the ZBA denied the application.

The petitioners/plaintiffs commenced this hybrid proceeding pursuant to *CPLR article 78* to review the determination and action for declaratory relief against the ZBA, the Town, the Town Board of the Town of Riverhead, and certain Town officials in their official capacities (hereinafter collectively the municipal respondents), the New York State Office of Cannabis Management, and the New York State Cannabis Control Board **[*1056]** (hereinafter the board). The petitioners sought declarations that so much of Town Code § 301-283.20(A)(1) as provides that a cannabis retail establishment may not be located within 1,000 feet of a school is preempted by state law and that Town Code § 301-283.20(A)(1), (4), and (5) violate the uniformity requirement **[**4]** of *Town Law § 262* and are void. Town Code § 301-283.20(A)(4) requires 2,500 feet between cannabis establishments and precludes more than one such

establishment in certain commercial corridors of the Town. Town Code § 301-283.20(A)(5) prohibits a cannabis establishment from locating within 1,000 feet of an existing residential property, except for properties with frontage along and located within one of five commercial corridors.

In a judgment dated September 16, 2025, the Supreme Court granted the petition, annulled the determination, declared that so much of Town Code § 301-283.20(A)(1) as provides that a cannabis establishment may not be located within 1,000 feet of a school is preempted by state law, and declared that Town Code § 301-283.20(A)(1), (4), and (5) are invalid and void as violative of Town Law § 262. In light of its declarations, the court determined that no variance was necessary. The municipal respondents appeal.

HN2 "Although a local government is constitutionally empowered to enact local laws relating to the welfare of its citizens through its police power, it is prohibited from exercising that power through the adoption of local laws that are inconsistent with the New York State Constitution or any general law of the state" (*People v Torres, 37 NY3d 256, 265, 155 N.Y.S.3d 548, 177 N.E.3d 973* [internal quotation marks omitted]). Thus, the law-making power conferred upon local governments, **[**5]** albeit broad, is limited by the preemption doctrine (*see id.*; *Albany Area Bldrs. Assn. v Town of Guilderland, 74 NY2d 372, 377, 546 N.E.2d 920, 547 N.Y.S.2d 627*). "State law can preempt local law in one of two ways: either through conflict preemption, which occurs when the local and state laws directly conflict, or field preemption, which occurs when a local government legislates in a field for which the State Legislature has assumed full regulatory responsibility" (*Glen Oaks Vil. Owners, Inc. v City of New York, 44 NY3d 468, 473, 248 N.Y.S.3d 460, 274 N.E.3d 245* [internal quotation marks omitted]; *see Woodbury Hgts. Estates Water Co., Inc. v Village of Woodbury, 111 AD3d 699, 700, 975 N.Y.S.2d 101*).

HN3 "The Legislature may expressly state its intent to preempt, or that intent may be implied from the nature of the subject matter being regulated as well as the scope and purpose of the state legislative scheme, including the need for statewide uniformity in a particular area. A comprehensive and detailed **[*1057]** statutory scheme may be evidence of the Legislature's intent to preempt" (*Matter of Cohen v Board of Appeals of Vil. of Saddle Rock, 100 NY2d 395, 400, 795 N.E.2d 619, 764 N.Y.S.2d 64*; *see Glen Oaks Vil. Owners, Inc. v City of New York, 44 NY3d at 473*). Courts will examine "whether the State has acted upon a subject and whether, in taking action, it has demonstrated a desire that its regulations should preempt the possibility of discordant local regulations" (*Matter of Cohen v Board of Appeals of Vil. of Saddle Rock, 100 NY2d at 400*; *see Glen Oaks Vil. Owners, Inc. v City of New York, 44 NY3d at 473-474*). "Once it has been determined that the State has preempted an entire field, a local **[***3]** law regulating the same subject matter is deemed inconsistent with the State's overriding interests **[**6]** because it either (1) prohibits conduct which the State law, although perhaps not expressly speaking to, considers acceptable or at least does not proscribe or (2) imposes additional restrictions on rights granted by State law" (*Glen Oaks Vil. Owners, Inc. v City of New York, 44 NY3d at 474* [internal quotation marks omitted]; *see Jancyn Mfg. Corp. v County of Suffolk, 71 NY2d 91, 97, 518 N.E.2d 903, 524 N.Y.S.2d 8*).

HN4 As part of the Marihuana Regulation and Taxation Act of 2021, the Legislature enacted *Cannabis Law § 131(2)*, which expressly provides that, with an exception not relevant here, "all county, town, city and village governing bodies are hereby preempted from adopting any law, rule, ordinance, regulation or prohibition pertaining to the operation or licensure of . . . adult-use cannabis licenses . . . . However, towns, cities and villages may pass local laws and regulations governing the time, place and manner of the operation of licensed adult-use cannabis retail dispensaries and/or on-site consumption site, provided such law or regulation does not make the operation of such licensed retail dispensaries or on-site consumption sites unreasonably impracticable as determined by the board." Thus, the Legislature has expressly stated its intent to occupy the field of the operation of licensed adult-use cannabis retail dispensaries. **HN5** Moreover, although the Legislature allowed for local regulation **[**7]** of time, place, and manner of the operation of such businesses, it has specifically set the distance of such dispensaries from a building containing a school and provided the manner in which to measure that distance (*see id. § 72[6][a], [c]*). So much of Town Code § 301-283.20(A)(1) as purports to set that distance as 1,000 feet as measured from the property line imposes additional restrictions on rights granted by state law, is inconsistent with the State's overriding interest, and is therefore preempted by the state law (*see Matter of Cohen v Board of Appeals of Vil. of Saddle Rock, 100 NY2d at 402-403*; *Woodbury Hgts. Estates Water Co., Inc. v Village of Woodbury, **[*1058]** 111 AD3d at*

703; Matter of Chwick v Mulvey, 81 AD3d 161, 171-172, 915 N.Y.S.2d 578). In light of this determination, we need not reach the parties' remaining contentions regarding whether regulations adopted by the board preempt the Town Code and whether such regulations were properly enacted.

As set forth in a related appeal decided herewith, Town Code § 301-283.20(A)(5) does not violate the uniformity requirement of Town Law § 262 (*see Matter of Tink & E. Co., Inc. v Town of Riverhead*, __ AD3d __ [decided herewith]). For similar reasons, we find that Town Code § 301-283.20(A)(1) and (4) comply with the uniformity requirements of Town Law § 262. Accordingly, the Supreme Court erred in declaring that Town Code § 301-283.20(A)(1), (4), and (5) are invalid and void as violative of Town Law § 262 (*see Matter of Tink & E. Co., Inc. v Town of Riverhead*, __ AD3d __).

In light of the foregoing, the Supreme Court properly **[**8]** determined that the petitioners did not need a variance to operate a cannabis establishment at the property.

BRATHWAITE NELSON, J.P., WARHIT, HOM and OTTLEY, JJ., concur.

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Exhibit I

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Real Holding Corp. v. Lehigh

Court of Appeals of New York

March 24, 2004, Argued ; May 6, 2004, Decided

No. 58

Reporter
2 N.Y.3d 297 *; 810 N.E.2d 890 **; 778 N.Y.S.2d 438 ***; 2004 N.Y. LEXIS 979 ****

In the Matter of Real Holding Corp., Respondent, et al., Petitioner, v. Alan Lehigh et al., Appellants.

Prior History: **[****1]** Appeal, by permission of the Court of Appeals, from an order of the Appellate Division of the Supreme Court in the Second Judicial Department, entered April 7, 2003. The Appellate Division affirmed a judgment of the Supreme Court, Westchester County (Francis A. Nicolai, J.), entered in a proceeding pursuant to CPLR article 78, which had granted a petition to review the respondents' determination denying petitioners' request for an area variance, annulled the determination, and remitted the matter to respondents for further proceedings.

Matter of Real Holding Corp. v. Lehigh, 304 A.D.2d 583, 756 N.Y.S.2d 893, 2003 N.Y. App. Div. LEXIS 3705 (N.Y. App. Div. 2d Dep't, 2003), affirmed.

Disposition: Order of the Appellate Division affirmed.

Core Terms

special use permit, variance, zoning, area variance, town board, waive, zoning regulation, zoning board, filling station, planning board, gasoline, modify, vest, empower

Case Summary

Procedural Posture
Appellant town zoning board of appeal (ZBA) challenged the decision of the Appellate Division (New York), which affirmed a trial court holding that granted respondent developer's petition. The developer had commenced a N.Y. C.P.L.R. art. 78 proceeding to seek annulment of the ZBA's determination and judgment directing the ZBA to hear and decide its application for area variances.

Overview

The developer had sought a variance from the ZBA to build a gasoline filling station. The ZBA concluded that it was powerless to grant an area variance from special use permit requirements absent an express grant of authority from the town board, and it denied the developer's application. The ZBA contended that N.Y. Town Law § 274-b(3) and (5) clashed and that, at most, it was permitted to grant an area variance from general zoning requirements, but not from a special use permit requirement unless express authorization to do so had been bestowed by a town board in the town's zoning code. The court disagreed and held that § 274-b(3) plainly stated that application could be made to the ZBA for an area variance in those cases where a proposed special use permit did not comply with the zoning regulations. Moreover, a ZBA was permitted to grant area variances notwithstanding any provision of the law to the contrary. As a result, the court held that the ZBA erred in determining it had no authority to grant the developer's area variance request.

Outcome
The court affirmed the order.

LexisNexis® Headnotes

Real Property Law > Zoning > Variances

Business & Corporate Compliance > Real Property > Zoning > Variances

HN1 *N.Y. Town Law § 274-b(3)* vests a zoning board of appeals with authority to grant an area variance from any requirement in a zoning regulation, including those for a special use permit.

Real Property Law > Zoning > Variances

Business & Corporate Compliance > Real Property > Zoning > Variances

Business & Corporate Compliance > Real Property > Zoning > Regional & State Planning

Real Property Law > Zoning > Regional & State Planning

HN2 See *N.Y. Town Law § 274-b(3)*.

Real Property Law > Zoning > Variances

Business & Corporate Compliance > Real Property > Zoning > Variances

Business & Corporate Compliance > Real Property > Zoning > Regional & State Planning

Real Property Law > Zoning > Regional & State Planning

HN3 An "area variance" is defined as the authorization by the zoning board of appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations. *N.Y. Town Law § 267(1)(b)*.

Real Property Law > Zoning > Variances

Business & Corporate Compliance > Real Property > Zoning > Variances

Business & Corporate Compliance > Real Property > Zoning > Regional & State Planning

Real Property Law > Zoning > Regional & State Planning

HN4 See *N.Y. Town Law § 274-b(5)*.

Real Property Law > Zoning > Variances

Business & Corporate Compliance > Real Property > Zoning > Variances

Business & Corporate Compliance > Real Property > Zoning > Regional & State Planning

Real Property Law > Zoning > Regional & State Planning

HN5 N.Y. Town Law § 274-b is entitled "Approval of special use permits," and § 274-b(3) directs that application for an area variance may be made to a zoning board of appeals (ZBA) pursuant to N.Y. Town Law § 267-b, which supplies the procedures for a ZBA to follow when issuing an area variance. § 267-b(3). Thus, N.Y. Town Law § 274-b authorizes ZBAs to issue area variances from special use permit requirements, following the statutory procedures applicable to ZBAs in the exercise of their area variance jurisdiction. ZBAs are vested with the exclusive power to grant or deny, in the first instance, a variance from the zoning ordinances. The board of zoning appeals is a quasi-judicial body created by state law. It provides a forum for the mitigation of harsh effects which zoning laws may have in exceptional cases. Section 274-b(5) vests a town board with discretion to empower an authorized board to waive any requirement of a special use permit. The waiver authority in § 274-b(5) is broader than a ZBA's authority in § 274-b(3), which is restricted to granting area variances. The "authorized board" referred to in § 274-b(5) is the planning board or such other administrative body that the town board shall designate. § 274-b(2). In effect, § 274-b(5) allows a town board to establish one-stop special use permitting if it so chooses.

Real Property Law > Zoning > Variances

Business & Corporate Compliance > Real Property > Zoning > Variances

Business & Corporate Compliance > Real Property > Zoning > Regional & State Planning

Real Property Law > Zoning > Regional & State Planning

HN6 Where a town board exercises its discretion under N.Y. Town Law § 274-b(5), an applicant may have two avenues to address an inability to comply with a given requirement in connection with a special use permit, but this overlap does not create discord in the Town Law or render either § 274-b(3) or (5) superfluous.

Real Property Law > Zoning > Variances

Business & Corporate Compliance > Real Property > Zoning > Variances

Business & Corporate Compliance > Real Property > Zoning > Regional & State Planning

Real Property Law > Zoning > Regional & State Planning

HN7 A zoning board has no authority, absent an application for a variance, to waive or modify the explicit conditions laid down in the town code for a special use permit. A zoning board of appeal has no authority to waive or modify a setback requirement for a special use permit in the guise of a variance.

Headnotes/Summary

Headnotes

Municipal Corporations -- Zoning -- Special Use Permit -- Authority to Grant Area Variance from Special Use Permit Requirements

Respondent zoning board of appeals (ZBA) had the authority to grant petitioner's request for an area variance from two distance standards for a gasoline filling station special use permit. Town Law § 274-b (3) vests a ZBA with authority to grant an area variance from any requirement in a zoning regulation, including requirements for a special use permit. This authority is clear from the plain language of the statute, and is consistent with the statutes and

case law emphasizing that ZBAs are vested with the exclusive power to grant or deny a variance from zoning ordinances.

Counsel: *Vergilis, Stenger, Roberts, Pergament & Viglotti, LLP,* Wappingers Falls (*Karen P. MacNish* and *Albert P. Roberts* of counsel), for appellant. I. This Court should look to the legislative history of Town Law § 274-b because section 274-b (3) and (5) are in apparent conflict. II. The legislative history, prior case law, and dictionary meanings of "dimensional" and "physical" support a finding that a zoning board of appeals may not grant an area variance from specific special use permit criteria without the zoning board of appeals first being granted such authority by the town board. (Matter of Knadle v Zoning Bd. of Appeals of Town of Huntington, 121 A.D.2d 447, 503 N.Y.S.2d 141; Matter of Jewish Reconstructionist Synagogue of N. Shore v Levitan, 34 N.Y.2d 827, 316 N.E.2d 339, 359 N.Y.S.2d 55; Matter of Cappadoro Land Dev. Corp. v Amelkin, 78 A.D.2d 696, 432 N.Y.S.2d 51, *54 N.Y.2d 833*; Matter of Cathedral of Incarnation v Glimm, 97 A.D.2d 409, 467 N.Y.S.2d 241; Matter of Wegmans Enters. v Lansing, 72 N.Y.2d 1000, 530 N.E.2d 1292, 534 N.Y.S.2d 372; Matter of Tandem Holding Corp. v Board of Zoning Appeals of Town of Hempstead, 43 N.Y.2d 801, 373 N.E.2d 282, 402 N.Y.S.2d 388; Matter of Retail Prop. Trust v Board of Zoning Appeals of Town of Hempstead, 98 N.Y.2d 190, 774 N.E.2d 727, 746 N.Y.S.2d 662.) III. The Appellate Division, Second Department, erroneously determined that the Zoning Board of Appeals of the Town of Wappinger has authority to waive specific special use permit criteria enumerated in the Town's zoning code pursuant to Town Law § 274-b (3). (Matter of AA&L Assoc. v Casella, 207 A.D.2d 1012, 616 N.Y.S.2d 825; Matter of Jewish Reconstructionist Synagogue of N. Shore v Levitan, 34 N.Y.2d 827, 316 N.E.2d 339, 359 N.Y.S.2d 55; Matter of Knadle v Zoning Bd. of Appeals of Town of Huntington, 121 A.D.2d 447, 503 N.Y.S.2d 141; Wisoff v Amelkin, 123 A.D.2d 623, 506 N.Y.S.2d 778.)

Keane & Beane, P.C., White Plains (*Judson K. Siebert* of counsel), for respondent. New York State Town Law § 274-b (3) authorizes a zoning board of appeals to issue an area variance from special use permit requirements. (Matter of State of New York v Ford Motor Co., 74 N.Y.2d 495, 548 N.E.2d 906, 549 N.Y.S.2d 368; Doctors Council v New York City Employees' Retirement Sys., 71 N.Y.2d 669, 525 N.E.2d 454, 529 N.Y.S.2d 732; Majewski v Broadalbin-Perth Cent. School Dist., 91 N.Y.2d 577, 696 N.E.2d 978, 673 N.Y.S.2d 966; Drelich v Kenlyn Homes, 86 A.D.2d 648, 446 N.Y.S.2d 408; Dennis v Zoning Bd. of Appeals of Vil. of Briarcliff Manor, 167 Misc. 2d 555, 637 N.Y.S.2d 266; Matter of Sasso v Osgood, 86 N.Y.2d 374, 657 N.E.2d 254, 633 N.Y.S.2d 259; Matter of AA&L Assoc. v Casella, 207 A.D.2d 1012, 616 N.Y.S.2d 825.)

Judges: Opinion by Judge Read. Chief Judge Kaye and Judges G.B. Smith, Ciparick, Rosenblatt, Graffeo and R.S. Smith concur.

Opinion by: READ

Opinion

[*439] [**891] [*298]** Read, J.

We are asked to decide whether Town Law § 274-b (3) **[*299]** authorizes a zoning board of appeals (ZBA) to grant area variances from special use permit requirements. For the reasons that follow, we hold that Town Law § 274-b (3) ***HN1*** vests a ZBA with authority to grant an area variance from any requirement in a zoning regulation, including those for a special use permit.

I.

In 1992, Real Holding Corp. (RHC) acquired a one-half-acre parcel of land situated within a "Highway Business District" as shown on the Town of Wappinger's zoning map. This parcel had served since the mid-1960's as the site of a gasoline filling station, which closed shortly before RHC's purchase of the land. After cleaning up the property

to the satisfaction of state environmental authorities, RHC opted to develop a new gasoline filling station **[****2]** on it.

In order to undertake this proposed use, RHC was obliged by the Town Code to obtain a "gasoline filling station" special use permit from the Town Planning Board; however, RHC was unable to satisfy two distance standards for this permit. Specifically, the applicable Town Code provisions mandated 1,000 feet between a gasoline filling station and the boundary line of certain residentially zoned lands, and 2,500 feet between gasoline filling stations. In 1995, RHC asked the Town's ZBA for variance relief from these two standards. The ZBA turned RHC down in early 1996, opining that it lacked jurisdiction to waive or modify zoning requirements specific to a special use permit.

In 2000, RHC revived its campaign to reestablish a gasoline filling station on the property by applying to the Planning Board for a special use permit. The Planning Board denied the application for failure to conform with several zoning requirements, including the two distance standards for the special use permit, and advised RHC to seek variances from the ZBA.

RHC requested the necessary variances, and the ZBA voted to entertain the application. After several months of review, however, the ZBA concluded **[****3]** that it was powerless to grant an area variance from special use permit requirements absent an express grant of authority therefor from the Town Board. Accordingly, on June 19, 2001, the ZBA denied RHC's application.

RHC then commenced this *CPLR article 78* proceeding to seek annulment of the **[**892]** **[***440]** ZBA's determination and a judgment directing the ZBA to hear and decide its application for area variances. Supreme Court granted RHC's petition and remitted the matter to the ZBA for further proceedings, holding that **[*300]** *Town Law § 274-b (3)* explicitly authorizes a ZBA to grant area variances from special use permit requirements. Upon the ZBA's appeal, the Appellate Division affirmed (*304 A.D.2d 583, 756 N.Y.S.2d 893 [2d Dept 2003]*). We granted the ZBA leave to appeal, and now affirm.

II.

In the early 1990's, the Legislature authorized the Joint Legislative Commission on Rural Resources to develop recommendations for recodifying local zoning laws. In 1991, the provisions concerning ZBAs in the Town Law were substantially revised as a result (*see* L 1991, ch 692, §§ 1-4; *Town Law §§ 267-267-c*). The following year the **[****4]** Legislature enacted companion legislation, which, as relevant here, included new *Town Law § 274-b* (*see* L 1992, ch 694, § 2). This provision defines and governs approval of special use permits, a widely used zoning device previously unmentioned in state statute.

Two subdivisions of *section 274-b* come into play on this appeal. The first--*subdivision (3)*--addresses the circumstances under which application may be made to a ZBA for an area variance from special use permit requirements:

> ***HN2*** "Application for area variance. Notwithstanding any provision of law to the contrary, where a proposed special use permit contains one or more features which do not comply with the zoning regulations, application may be made to the zoning board of appeals for an area variance pursuant to section two hundred sixty-seven-b of this article,* without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations" (*§ 274-b [3]*).

[**5]** The second--*subdivision (5)*--addresses the waiver of special use permit requirements:

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* ***HN3*** An "[a]rea variance" is defined as "the authorization by the zoning board of appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations" (*Town Law § 267 [1] [b]*). Contrary to the position taken by the ZBA, the distance standards at issue here, which specify how many feet must separate a gasoline filling station from certain residentially zoned areas and from other gasoline filling stations, are clearly "dimensional or physical requirements" subject to area variance relief.

> ***HN4*** "Waiver of requirements. The town board may further empower the authorized board to, when reasonable, waive any requirements for the approval, **[*301]** approval with modifications or disapproval of special use permits submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in the ordinance or local law adopted pursuant to this section, may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular special use permit" (*§ 274-b [5]*).

In the ZBA's view, *subdivisions (3)* and *(5)* clash and, at most, establish that a ZBA may grant an area variance from general zoning requirements, but not from a special use permit requirement unless express authorization to do so has been bestowed by a town board in the town's zoning code. We disagree.

First, *subdivision (3)* plainly states that "application may be made to the [ZBA] for an area variance" in those cases "where a proposed special use permit ... do[es] not comply with the zoning regulations. **[****6]** " **[**893]** **[***441]** Moreover, a ZBA may grant these area variances "[n]otwithstanding any provision of law to the contrary."

Next, *subdivision (3)* refers to "zoning regulations" without qualification. Nothing in the statute's language suggests that area variances for special use zoning regulations should be treated differently than area variances from general, so-called bulk, zoning requirements. To hold that a ZBA may vary certain zoning provisions only if expressly empowered to do so by the town board overlooks the entire purpose of the ZBA, which is to provide relief in individual cases from the rigid application of zoning regulations enacted by the local legislative body.

Finally, *section 274-b* is entitled ***HN5*** "Approval of special use permits," and *subdivision (3)* directs that application for an area variance may be made to the ZBA "pursuant to" *section 267-b* (entitled "Permitted action by board of appeals"), which supplies the procedures for a ZBA to follow when issuing an area variance (*see Town Law § 267-b [3]*). Thus, *section 274-b* authorizes ZBAs to issue area variances from special use permit requirements, following the statutory procedures applicable to ZBAs **[****7]** in the exercise of their area variance jurisdiction. This is not only clear, but entirely consistent with the statutes and case law emphasizing that ZBAs are "vested with the exclusive power to grant or deny, in the first instance, a variance from the zoning ordinances" (*Matter of Commco, Inc. v Amelkin, 62 N.Y.2d 260, 266, 465 N.E.2d 314, 476 N.Y.S.2d 775 [1984]*; *see also Jewish Reconstructionist Synagogue of **[*302]** N. Shore v Incorporated Vil. of Roslyn Harbor, 40 N.Y.2d 158, 162, 352 N.E.2d 115, 386 N.Y.S.2d 198 [1976]* ["(T)he board of zoning appeals is a quasi-judicial body created by State law . . . . It provides a forum for the mitigation of harsh effects which zoning laws may have in exceptional cases"]).

Nor does *subdivision (5)* in any way conflict with *subdivision (3)*, or diminish a ZBA's independent jurisdiction under *subdivision (3)*. *Subdivision (5)* vests a town board with discretion to empower an "authorized board" to waive any requirement of a special use permit. The waiver authority in *subdivision (5)* is broader than a ZBA's authority in *subdivision (3)*, which is restricted to granting area variances. The "authorized board" referred to in *subdivision (5)* is "the planning board or such other administrative body **[****8]** that [the town board] shall designate" (*see Town Law § 274-b [2]*). In effect, *subdivision (5)* allows a town board to establish one-stop special use permitting if it so chooses. As Supreme Court observed, ***HN6*** where a town board exercises its discretion under *subdivision (5)*, an applicant may have "two avenues to address an inability to comply with a given . . . requirement in connection with a special use permit," but this overlap "does not create discord in the Town Law or render either [*subdivision (3)* or *subdivision (5)*] superfluous."

Because we rely on the plain meaning of the relevant statutory text, we need not consult legislative history. Not surprisingly, however, *section 274-b*'s legislative history clearly contemplates the distinct purposes of *subdivisions (3)* and *(5)*. Specifically, Senator Cook's memorandum in support notes that this legislation was intended to "authorize[] town . . . boards to empower their planning board (or other authorized body) to waive, subject to appropriate conditions, any requirements for the approval of site plans" (Sponsor's Mem, Bill Jacket, L 1992, ch 694, at 6). In addition, "in the event local site plan or **[****9]** special use permit requirements present dimensional difficulties to a particular applicant, an area variance may be applied for to the zoning board of appeals" (*id.*).

Further, "by allowing appeal to the zoning **[**894]** **[***442]** board of appeals the bill provides applicants faced with dimensional difficulty an opportunity for administrative relief" (*id.* at 7).

Finally, *section 274-b*'s legislative history does not, as the ZBA argues, portray any intention to incorporate existing case law wholesale. Indeed, this case law was not entirely consistent (*compare Matter of Holy Spirit Assn. for Unification of World Christianity v Rosenfeld, 91 A.D.2d 190, 195, 458 N.Y.S.2d 920 [2d Dept 1983]* ***HN7*** ["the **[*303]** zoning board had no authority, *absent an application for a variance*, to waive or modify the explicit conditions laid down in the town code" for a special use permit (emphasis added)] *with Matter of Knadle v Zoning Bd. of Appeals of Town of Huntington, 121 A.D.2d 447, 503 N.Y.S.2d 141 [2d Dept 1986]* [ZBA has no authority to waive or modify a setback requirement for a special use permit in the guise of a variance]). The ZBA cites *Matter of Jewish Reconstructionist Synagogue of N. Shore v Levitan (34 N.Y.2d 827, 316 N.E.2d 339, 359 N.Y.S.2d 55 [1974])* **[****10]** for the proposition that a ZBA may not waive or modify any of the explicit conditions mandated by a town or village board for a special use permit; however, in this memorandum decision we expressly declined to address whether a ZBA might have authority to issue a variance from special use permit requirements, noting that the issue was not presented on the appeal (*id. at 829*).

Accordingly, the order of the Appellate Division should be affirmed, with costs.

Chief Judge Kaye and Judges G.B. Smith, Ciparick, Rosenblatt, Graffeo and R.S. Smith concur.

Order affirmed, with costs.

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Exhibit J

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Tad's Franchises, Inc. v. Pelham Manor

Supreme Court of New York, Appellate Division, Second Department

June 25, 1973

No Number in Original

Reporter
42 A.D.2d 616 *; 345 N.Y.S.2d 136 **; 1973 N.Y. App. Div. LEXIS 4096 ***

Tad's Franchises, Inc., Appellant, v. Incorporated Village of Pelham Manor et al., Respondents, and Julius J. Dworschak, Defendant

Prior History: **[***1]** In an action for a declaratory judgment and related relief, plaintiff appeals from an order of the Supreme Court, Westchester County, dated June 27, 1972, which denied plaintiff's motion for summary judgment, granted the respondents' cross motion for summary judgment and dismissed the amended complaint.

Disposition: Order reversed, on the law, with $ 20 costs and disbursements, respondents' motion denied, plaintiff's motion granted to the extent that judgment is directed to be entered declaring that (1) plaintiff may use its restaurant premises, located in a district zoned "Retail Districts", for the sale of alcoholic beverages for on-premises consumption in accordance with the terms and provisions of the Alcoholic Beverage Control Law and the provisions of the restaurant liquor license issued to it by the State Liquor Authority and (2) respondents and their building inspector shall not refuse to issue a certificate of occupancy for plaintiff's premises on the ground that the sale therein of alcoholic beverages for on-premises consumption is prohibited by the village zoning ordinance.

Core Terms

on-premises, restaurant, consume, liquor, village, sale of alcoholic beverages, retail, exclusive jurisdiction, public eating place, conforming use, liquor license, proper case, circumscribe, eligible, outright

Case Summary

Procedural Posture
In an action for a declaratory judgment and related relief, plaintiff appealed from an order of the Supreme Court, Westchester County (New York), which denied plaintiff's motion for summary judgment, granted respondents' cross motion for summary judgment, and dismissed the amended complaint.

Overview
Plaintiff brought a complaint for a declaratory judgment and related relief. The trial court denied plaintiff's motion for summary judgment, granted respondents' cross motion for summary judgment and dismissed the amended complaint. On appeal, the court held that a portion of defendant village's zoning ordinance was invalid and ineffective insofar as it allowed the use of property in "retail districts" for a restaurant or other establishment serving food and drink for on-premises consumption but, at the same time, prohibited such restaurant or other establishment from selling alcoholic beverages for on-premises consumption. The court held that once the village permitted a restaurant or other public eating place to be conducted in retail districts as a conforming use, it could not turn around and regulate such incidental or extended activities as the sale of alcoholic beverages for on-premises consumption, which activities were solely within the exclusive jurisdiction of the State Liquor Authority.

Outcome

The court held that plaintiff was entitled to use its restaurant premises for the sale of alcoholic beverages for on-premises consumption in accordance with the license previously issued to it by the State Liquor Authority.

LexisNexis® Headnotes

Business & Corporate Compliance > Governments > Agriculture & Food > Distribution, Processing & Storage of Food & Agricultural Products
Governments > Agriculture & Food > Distribution, Processing & Storage

Civil Procedure > ... > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Overview

Governments > State & Territorial Governments > Licenses

Civil Procedure > ... > Jurisdiction > Subject Matter Jurisdiction > General Overview

HN1 Agriculture & Food, Distribution, Processing & Storage of Food & Agricultural Products

Once a village permits a restaurant or other public eating place to be conducted in retail districts as a conforming use, it cannot turn around and regulate such incidental or extended activities as the sale of alcoholic beverages for on-premises consumption, which activities are solely within the exclusive jurisdiction of the State Liquor Authority. While the latter's power to determine the locations where liquor may be sold might, in a proper case, be circumscribed by outright exclusion of the class of establishments eligible to seek liquor licenses, once these establishments are permitted to operate, the Authority's power cannot be limited.

Judges: Munder, Acting P. J., Latham, Gulotta, Christ and Benjamin, JJ., concur.

Opinion

[*616] [137] [***2]** In our opinion, paragraph (a) of subdivision 1 of section 45 of the defendant village's Zoning Ordinance is invalid and ineffective insofar as it allows the use of property, in "Retail Districts", for a restaurant or other establishment serving food and drink for on-premises consumption but, at the same time, prohibits such restaurant or other establishment from selling alcoholic beverages for **[*617]** on-premises consumption. **HN1** Once the village permits a restaurant or other public eating place to be conducted in retail districts as a conforming use, it cannot turn around and regulate such incidental or extended activities as the sale of alcoholic beverages for on-premises consumption, which activities are solely within the exclusive jurisdiction of the State Liquor Authority. While the latter's power to determine the locations where liquor may be sold might, in a proper case, be circumscribed by outright exclusion of the class of establishments eligible to seek liquor licenses, once these establishments are permitted to operate, the Authority's power cannot be limited (cf. *Town of Onondaga v. Hubbell, 19 Misc 2d 999*, affd. *9 A D 2d 1024*, revd. on other grounds *8 N Y 2d 1039*). **[***3]** Therefore, plaintiff is entitled to use its restaurant premises for the sale of alcoholic beverages for on-premises consumption, in accordance with the license previously issued to it by the State Liquor Authority; and, if all other requirements are met, the village building inspector must issue plaintiff a certificate of occupancy.

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