I. Call to Order

A Regular Meeting was called to order of the Zoning Board of Appeals of the Town of Cheektowaga, Erie County, New York at the Town Hall Council Chambers, corner of Broadway and Union Roads, in said town on August 15, 2012 at 7:00 PM there were:

<table>
<thead>
<tr>
<th>Attendee Name</th>
<th>Organization</th>
<th>Title</th>
<th>Status</th>
<th>Arrived</th>
</tr>
</thead>
<tbody>
<tr>
<td>Robert J. Brandon</td>
<td>Town of Cheektowaga</td>
<td>Chairman</td>
<td>Present</td>
<td></td>
</tr>
<tr>
<td>Jane Wiercioch</td>
<td>Town of Cheektowaga</td>
<td>Board Member</td>
<td>Present</td>
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<tr>
<td>James Speyer</td>
<td>Town of Cheektowaga</td>
<td>Board Member</td>
<td>Present</td>
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<tr>
<td>John M. Ptak</td>
<td>Town of Cheektowaga</td>
<td>Board Member</td>
<td>Present</td>
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<tr>
<td>John Abraham</td>
<td>Town of Cheektowaga</td>
<td>Board Member</td>
<td>Present</td>
<td></td>
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<tr>
<td>Jeffrey Whiting Esq</td>
<td>Town of Cheektowaga</td>
<td>Deputy Town Attorney</td>
<td>Present</td>
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II. Tabled Items

2012-42 2331 Union Road, LLC/Paul Rosa
2331-2335 Union Road
Use Variance

Appeal:
The applicant desires to re-establish retail sales within his westerly building, whereas, the Zoning Law does not permit the re-establishment of lawful non-conforming uses once abandoned for a period of a year or more.

Comments:
A motion was made to keep on the table as no representative from Rosa’s was present.

History:
06/20/12 Zoning Board of Appeals TABLED Next: 07/18/12
A motion was made to table this item because there was no representative from the company.
07/18/12 Zoning Board of Appeals TABLED Next: 08/15/12
A motion was made to keep on the table.

RESULT: TABLED [UNANIMOUS] Next: 9/19/2012 7:00 PM
MOVER: James Speyer, Board Member
SECONDER: Jane Wiercioch, Board Member
AYES: Brandon, Wiercioch, Speyer, Ptak, Abraham
2012-43 Manga Airport, LLC/The Garas Law Firm, LLP/John C. Garas  
SBL Nos. 92.03-1-19.122 & 92.03-1-25.12  
Area Variance

**Appeal:**  
The applicant’s proposed building at its highest point will be (77’6”) tall, whereas, law permits a maximum height of (40) forty feet, and

The applicant’s proposed building at its highest point will be (77’6”) tall, whereas, law permits a maximum height of (50) fifty feet since the project is within (500’-1,000’) of the Buffalo Niagara International Airport (BNIA), and

The applicant’s northwest building corner and building entrance canopy will be (30) thirty feet and (37) thirty seven feet respectively from the road right of way, whereas, law requires (50) fifty feet minimum, and

A portion of the applicant’s parking area will be a minimum of (3) three feet from the westerly property line, a minimum of (4) four feet from an easterly property line and (0) zero feet to the westerly property line, whereas, law requires (10) ten feet of landscaping adjacent to the parking area, and

A portion of the applicant’s parking area will be (0) zero feet to the road right of way, whereas, law requires (25) twenty five feet minimum, and

**Comments:**  
Sean Hopkins was present on behalf of Manga Airport from the Garas Law Firm for Mr. John Garas who was out of the country.

A motion was made by James Speyer and seconded by John Abraham to grant the (5) five variances as given in 2008.

**History:**  
07/18/12 Zoning Board of Appeals TABLED Next: 08/15/12  
John C. Garas, representing the proposed Aloft Hotel on Burgess Drive, as well as Engineer, Mr. Marino, asked the Board to approve the very same variances that were approved in 2008 and due to financial issues at that time did not proceed with the project. Mr. Marino gave a letter from the Federal Aviation Administration stating that there was no problem with the project.

Mr. Jason Schmidt, 63 Central, Fredonia, New York representing the motel (Econolodge) next to this project asked that the Board delay approval until his firm has time to review the variances.

Mr. Brandon asked them for a time frame required. Mr. Schmidt stated that the motel was built in the 1960’s and they would like an extension of one month to review the previous variances granted in 2008 and if there would be any conflicts with their property.

A motion was made to table the decision for one month so that both firms could review the previous variances granted in 2008.
RESULT:       GRANTED [UNANIMOUS]
MOVER:        James Speyer, Board Member
SECONDER:     John Abraham, Board Member
AYES:         Brandon, Wiercioch, Speyer, Ptak, Abraham

2012-49       Anthony J. Gullo
288 South Roycroft Boulevard
Area Variance

Appeal:
The applicant desires to construct a (6) six foot high fence within the exterior side yard and construct a second driveway for his travel camper/motor home, whereas, the Zoning Law limits the height of fencing within such yard to (3.5) feet in height and the proposed second driveway is inconsistent with the variance issued on October 21, 2004.

Comments:
Mr. Gullo asked the Board to move his fence seven feet toward Cleveland Drive.

Mr. Speyer felt that it should be republished again and Attorney Whiting agreed.

A motion was made to republish the location of the fence as being (7) seven feet toward Cleveland Drive. It will not infringe on the County Right of Way.

History:
07/18/12    Zoning Board of Appeals    TABLED    Next: 08/15/12

Mr. Gullo was present asking that we approve the second driveway so that he could store his motor home. While the variance was approved in 2004, the County of Erie was concerned about his entrance onto Cleveland Drive and gave three options for him to consider. There will also be a six (6) foot fence enclosing the property. Since it is on a corner lot, the Board had concerns about it.

A motion was made to table for further study.

RESULT:       TABLED [UNANIMOUS]    Next: 9/19/2012 7:00 PM
MOVER:        James Speyer, Board Member
SECONDER:     John Abraham, Board Member
AYES:         Brandon, Wiercioch, Speyer, Ptak, Abraham

III. New Items

2012-54       Thaddeus Kendziora/Community Services/Mark R. Foley
2471 Union Road
Area Variance

Appeal:
The applicant's proposed apartment building will have a lot frontage along Union Road of (78.28) and a private drive (24) twenty four feet wide, whereas, the Zoning Law requires (100) one hundred feet of frontage and a (28) twenty eight feet wide drive.
The applicant’s apartment building will have (9) nine off-street parking spaces, whereas, the Zoning Law requires (15) fifteen parking spaces.

Comments:
Mr. Kendziora, as well as, Patricia Bitter of Lancaster Community Services and Sharon Chmielewski of Buffalo Community Services were all present to present their variance. The reason for fewer parking spaces is that there will be no 24 hour supervision on site or staff. This will be independent type living for disabled residents.

Jane Wiercioch asked whether the Fire Department had approved the entrance and exit of any fire vehicle.

This is still pending according to Ms. Chmielewski and they will be going to the EAC meeting on August 22, 2012.

A motion was made to grant the variances as requested.

History:

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2012-55  Maureen Malark and Betty Malark
75 Southgate Road
Area Variance

Appeal:
The applicant’s deck will be approximately (14) fourteen feet from the rear property line, whereas, the Zoning Law requires a minimum of (17) seventeen feet.

Comments:
Maureen Malark was present to explain the need for a variance and explained that the contractor did obtain a permit last fall for the deck, but this year it was determined that it was not according to the Zoning Law.

A motion was made to grant the variance as requested.

History:

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2012-56  Joseph L. Skrobacz
3635 Genesee Street
Area Variance

Appeal:
The applicant’s proposed shed will be (4) four feet from the west property line and (6) six feet from the south property line, whereas, the Zoning Law requires a minimum of (10) ten feet and (20) twenty feet respectively.

Comments:
Mr. Sutton, representing Mr. Skrobacz, explained that the present old garage will be demolished and trees will be removed, and that the fence will be extended to property line on the west side. The shed will then be placed on open area for storage of his maintenance equipment.

A motion was made to grant the variance as requested.

History:

RESULT: GRANTED [UNANIMOUS]
MOVER: James Speyer, Board Member
SECONDER: John Abraham, Board Member
AYES: Brandon, Wiercioch, Speyer, Ptak, Abraham

2012-57  Madeline Dietz
255 Fonda Drive
Area Variance

Appeal:
The applicant’s proposed garage addition will cause the total square footage for all accessory structures to be (1,122) square feet in area, whereas, the Zoning Law limits all accessory structures to (750) square feet total.

Comments:
A motion was made by John Abraham and seconded by James Speyer to grant the variance as requested.

History:

RESULT: GRANTED [UNANIMOUS]
MOVER: John Abraham, Board Member
SECONDER: James Speyer, Board Member
AYES: Brandon, Wiercioch, Speyer, Ptak, Abraham

SBL No. 102.06-1-26 (McNaughton Road)
Use Variance
Appeal:
The applicant desires to utilize advertising signs, whereas, the Zoning Law does not permit such signage.

Comments:
Mr. Dave Nestico was present representing the Beverly Hills Baseball Association a 501 (3) Not for Profit which uses the Cheektowaga Central School District property.

Since they requested a Use Variance, Mr. Brandon advised them that the School District must give financial documentation as to the reason they cannot sell this property. Mr. Whiting cited that the Burden of Proof falls with the owner of the property. Mr. Brandon stated that a temporary permit could be given by this Board but that it would be for only two (2) years and they would have to renew then. The Board did not have a problem with the advertising signs.

A motion was made by James Speyer and seconded by John Ptak to grant a Temporary Permit when Mr. Whiting interjected that he wanted to check if School Districts were under the NYS Use Variance Law that would save the Association from having to get approval every two years.

A motion was made to amend the previous motion to table for further review.

History:

RESULT: TABLED [UNANIMOUS]  Next: 9/19/2012 7:00 PM
MOVER:    James Speyer, Board Member
SECONDER: Jane Wiercioch, Board Member
AYES:      Brandon, Wiercioch, Speyer, Ptak, Abraham

2012-59    Robert M. Funk, Jr.  
74 Hemenway Road  
Area Variance

Appeal:
The applicant’s proposed enclosed porch will be (18.62) feet from the front property line, whereas, the Zoning Law requires a minimum of (25) twenty five feet.

Comments:
Mr. Funk was not present, however, the Board did not have a problem with the variance.

A motion was made to grant the variance as requested.

History:

RESULT: GRANTED [UNANIMOUS]
MOVER:    James Speyer, Board Member
SECONDER: John Abraham, Board Member
AYES:      Brandon, Wiercioch, Speyer, Ptak, Abraham
2012-60  Benderson Development Company, LLC/James A. Boglioli
3700 Harlem Road
Area Variance

**Appeal:**
The applicant’s proposed building will be (3.28) feet from the front property line, whereas, the Zoning Law requires (50) fifty feet, and the applicant’s parking area will be (0.86) feet from the front exterior property line and a minimum of (8) eight feet from a rear property line, whereas, the Zoning Law requires (25) twenty five feet and (10) ten feet respectively. The applicant’s project will provide (2.6%) interior green space, whereas, the Zoning Law requires (5%) five percent minimum.

**Comments:**
Mr. Matt Oates was present representing Benderson. He stated that the Bank has not been identified as yet.

A motion was made to grant the variance as requested provided they have the approval of all Town Agencies.

**History:**

<table>
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<td>John M. Ptak, Board Member</td>
</tr>
<tr>
<td>AYES:</td>
<td>Brandon, Wiercioch, Speyer, Ptak, Abraham</td>
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</table>

**IV. Reserved Items**

**V. Reviewed Items**

2012-61  Joseph Biondolillo/Otto’s Restaurant
3972 Union Road
Area Variance

**Appeal:**
The applicant desires to enlarge/expand his nonconforming use (restaurant) by constructing a (1,000) square foot accessory storage garage, whereas, the Zoning Law only permits the expansion of a nonconforming building (not the construction of a new building).

**Comments:**
Mr. Biondolillo was present asking for approval of the area variance on the same lot as his restaurant. Mr. Whiting stated that the area variance was to allow for storage on the same lot and not as previously granted.

A motion was made by James Speyer and Jane Wiercioch to open a rehearing of previous variance.
Roll Call: John Abraham, aye; John Ptak, aye; James Speyer, aye; Jane Wiercioch, aye; Robert Brandon, aye. 5 ayes, 0 no.

A motion was made to amend previous variance on the existing lot for accessory garage for storage of equipment only.

History:

RESULT: GRANTED [UNANIMOUS]
MOVER: James Speyer, Board Member
SECONDER: Jane Wiercioch, Board Member
AYES: Brandon, Wiercioch, Speyer, Ptak, Abraham

VI. Adjournment

MOTION TO ADJOURN AT 8:20 PM

RESULT: ADOPTED [UNANIMOUS]
MOVER: James Speyer, Board Member
SECONDER: Jane Wiercioch, Board Member
AYES: Brandon, Wiercioch, Speyer, Ptak, Abraham
 Whereas, 2331 Union Road, LLC/Paul Rosa has made application for a(n) Use Variance, under

ARTICLE(S): VII  SECTION(S): 260-65

of the zoning law for property located at:

2331-2335 Union Road

The applicant desires to re-establish retail sales within his westerly building, whereas, the Zoning Law does not permit the re-establishment of lawful non-conforming uses once abandoned for a period of a year or more.

Whereas, a public hearing was held on 6/20/2012 after proper notice,

Whereas, this Board, after reviewing the application, and conducting a public hearing and after due deliberation and vote of the Board,

Be it resolved, by virtue of the power vested in the Zoning Board of Appeals, this Use Variance is hereby Granted.

RESULT: GRANTED [UNANIMOUS]
MOVER: Jane Wiercioch, Board Member
SECONDER: John M. Ptak, Board Member
AYES: Brandon, Wiercioch, Speyer, Ptak, Abraham

*Note – Construction cannot begin until a building permit is applied for and approved. This decision will be automatically revoked unless a building permit is obtained within six (6) months of the date hereof and unless construction commences within one (1) year of the date hereof.
Town of Cheektowaga
Zoning Board of Appeals Request
Office of Building Inspections
Cheektowaga Town Hall
3301 Broadway
Cheektowaga, New York 14227  (716) 686-3490  686-3510 fax

Application for: (check one)

☐ Area Variance  ☐ Temporary Permit  ☐ Special Permit (residential/professional/other family dwelling)
☐ Use Variance  ☐ An Interpretation of the Zoning Law  ☐ Certificate of Zoning Compliance

The undersigned (____________________, representing)
Phoebe Rentz, owner of the property located at 2331 - 2335 Union Rd.
Cheektowaga, New York, hereby appeals to the Zoning Board of Appeals from the decision of the Code Enforcement Officer not to approve

on the above referenced property, which property is located in a

II. Zoning District, as per the plans, data and application hereof filed and which are attached and made part of this application.

A. AN AREA Variance TO THE ZONING LAW IS REQUESTED BASED ON THE FOLLOWING:

1) Describe why you believe that the character of the neighborhood/community will not change, and/or why there will not be a detriment to nearby properties if the Zoning Board of Appeals grants you a variance:

B. A TEMPORARY PERMIT/SPECIAL PERMIT IS REQUESTED FOR THE FOLLOWING REASONS:

1) 

2) Describe why you feel that the temporary permit/special permit will:
   a. be in harmony with the general purposes and intent of the Zoning Law;
   b. not tend to depreciate the value of adjacent property;
   c. not create hazard to health, safety or general welfare;
   d. not alter the essential character of the neighborhood nor be detrimental to the residents thereof;
   e. not otherwise be detrimental to the public convenience and welfare.

3) If you are requesting a temporary permit:
   a. how many months is your request for?
   b. what is the purpose / use intended?
   C. does it involve the erection or enlargement of any structure?
Zoning Board of Appeals Request

C. AN INTERPRETATION OF ARTICLE______ SECTION______ OF THE ZONING LAW IS REQUESTED BECAUSE:


ANSWER THE FOLLOWING ADDITIONAL QUESTIONS:

1. Has a Zoning Board of Appeals request application previously been filed for the subject property? If yes, indicate date(s) of application and determination(s) made.
   No

2. Are there any private restrictions (i.e., deed, easements) as to uses or setbacks, building lines, etc. on this property?
   
3. State whether Section 609 of the General Municipal Law is applicable to this application? (see Instructions/guidelines).
   
4. Using the diagram box below, show property lines and actual dimensions of the lot to be built upon, the size and shape of the main building and other accessory buildings existing on the lot. Show all proposed structures and their dimensions and distances to nearest property lines and nearest on site structures. A separate site plan may be attached in lieu of the diagram box below. All applications must be accompanied by a property survey reflecting existing conditions.

1 HEREBY SWORE that all statements made herein are true and that all drawings submitted correctly show the situations involved in this appeal. I hereby submit the sum of $100.00 payable to pay the cost associated with this application.

STATE OF NEW YORK
COUNTY OF ERIE

Subscribed and sworn to before me this 4th day of June, 2012

NANCY M. McNALLY
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires June 30, 2015

Packet Pg. 11
Packet Pg. 12

Zoning Board of Appeals Request

Page 3 to be completed only when a use variance is being requested

D. A USE VARIANCE IS REQUESTED BECAUSE THE APPLICABLE REGULATIONS AND RESTRICTIONS HAVE CAUSED UNNECESSARY HARDSHIP AS DEMONSTRATED BY THE FOLLOWING:

1) I as applicant cannot realize a reasonable return on my property for each and every permitted use allowed in the current zoning classification as demonstrated by the accompanying financial evidence (provide financial evidence to support your argument).

FINANCIAL EVIDENCE PROVIDED: YES ☐ NO ☐ (financial evidence is required as per NYS Town Law)

2) Describe why your alleged hardship relating to the subject property is unique and does not apply to other properties in the zoning district or neighborhood?

The Property Has A Buyout. The Building Has Been Up For Sale For 12 Years. The Buyer Needs To Have The Front Building For Retail.

3) Describe why you believe that the essential character of the neighborhood/community will not change if the zoning Board of Appeals grants you a use variance?

It Has Been Retail For Over 20 Years.

4) Is your need for a variance a result of your own actions (is your difficulty self created)? Please explain.

It's Needed For The Sale Of The Property.

ZONING LAW SECTIONS / BUILDING INSPECTIONS DEPARTMENT COMMENTS

Article VII, Section 260-65 ☐ / Article ☐, Section ☐

The applicant desires to re-establish retail sales within the existing building. Whereas, the zoning law does not permit the re-establishment of lawful non-conforming uses once abandoned for a period of a year or more.

Permit Required ☐ to re-occupy building.

239 of Gen. Mun. Law Applies ☐ yes ☐ no


Attachment: 2331-2335 Union Rd (ZBA-2012-42 : 2331-2335 Union Road)
The proposed action described herein is referred in accordance with the provisions of the General Municipal Law, which provides that if no reply is received in 30 days after receipt of full information including a SEQR EAF if applicable, the municipal agency may take final action without considering such reply. If, however, reply is received at any time prior to municipal Action, such reply must be considered.

### Description of Proposed Action

1. **Name of Municipality:** Town of Cheektowaga

2. **Hearing Schedule:**
   - **Date:** 6/20/2012
   - **Time:** 7 PM
   - **Location:** 3301 Broadway
   - **Action is before:** Board of Appeals

3. **Action consists of:**
   - ☐ Site Plan
   - ☐ Variance
   - ☐ Special Use Permit
   - ☐ Other

4. **Location of Property:**
   - ☐ Entire Municipality
   - ☑ Specific as follows: 2331-2335 Union Road, Cheektowaga NY

5. **Referral required as Site is within 500’of:**
   - ☐ State or County Property/Institution
   - ☐ Municipal Boundary
   - ☑ Farm Operation located in an Agricultural District
   - ☐ County Road
   - ☑ State Highway
   - ☐ Proposed State or County Road, Property, Building/Institution, Drainageway

6. **Proposed change or use: (be specific)**
   The applicant desires to re-establish retail sales within his westerly building, whereas, the Zoning Law does not permit the re-establishment of lawful non-conforming uses once abandoned for a period of a year or more.

7. **Other remarks:**
   (ID#, SBL#, etc.)

### Submitted by:
Cynthia A. Dauscher, Senior Clerk typist
3301 Broadway, Cheektowaga, New York 14227
6/06/2012

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Reply to Municipality by Erie County Division of Planning

Receipt of the above-described proposed action is acknowledged on ____________. The Division herewith submits its review and reply under the provisions of applicable state and local law, based on the information submitted with this referral.

1. ☐ The proposed action is not subject to review under the law.
2. ☐ Form ZR-3, Comment on Proposed Action is attached hereto.
3. ☐ The proposed action is subject to review; the Division makes the recommendation shown on Form ZR-4, Recommendation on Proposed Action, which is attached hereto.
4. ☐ No recommendation; proposed action has been reviewed and determined to be of local concern

By the Division of Planning: ___________________________ Date: ___________________
Whereas, Manga Airport, LLC/The Garas Law Firm, LLP/John C. Garas has made application for an Area Variance, under

**ARTICLE(S):** III  **SECTION(S):** 260-32D

**ARTICLE(S):** VI  **SECTION(S):** 260-58B(1)

of the zoning law for property located at:

**SBL Nos. 92.03-1-19.122 & 92.03-1-25.12**

The applicant’s proposed building at its highest point will be (77’6”) tall, whereas, law permits a maximum height of (40) forty feet, and

The applicant’s proposed building at its highest point will be (77’6”) tall, whereas, law permits a maximum height of (50) fifty feet since the project is within (500’-1,000’) of the Buffalo Niagara International Airport (BNIA), and

The applicant’s northwest building corner and building entrance canopy will be (30) thirty feet and (37) thirty seven feet respectively from the road right of way, whereas, law requires (50) fifty feet minimum, and

A portion of the applicant’s parking area will be a minimum of (3) three feet from the westerly property line, a minimum of (4) four feet from an easterly property line and (0) zero feet to the westerly property line, whereas, law requires (10) ten feet of landscaping adjacent to the parking area, and

A portion of the applicant’s parking area will be (0) zero feet to the road right of way, whereas, law requires (25) twenty five feet minimum, and

Whereas, a public hearing was held on 7/18/2012 after proper notice,

Whereas, this Board, after reviewing the application, and conducting a public hearing and after due deliberation and vote of the Board,

Be it resolved, by virtue of the power vested in the Zoning Board of Appeals, this Area Variance is hereby Granted.

It was noted by the Board that this is the same request as was made in 2008. The site plan is the same and the requested variances are the same. The commencement of construction was delayed due to the economic downturn of 2008 and the applicant is now prepared to proceed as originally planned. This piece of property is challenging in size and layout and variances are needed to get a proper return on investment. A hotel is the best use for this property and Applicant did receive FAA clearance for this project. They did not close the purchase of the property until after variance approval was obtained in 2008.
At the hearing held on July 18, 2012 Jason Schmidt appeared, who represents the Quality Inn that has operated a hotel to the east of this property for years. According to Mr. Schmidt, one variance will be abutting against the 32 units operated by the Quality Inn. He additionally mentioned that there will be a 50% increase in height that will create problem for the Quality Inn. The Quality Inn was aware of the original application made in 2008 and consented to the variance requests after negotiations with Applicant. However, they requested this matter be tabled and stated they did not receive prior notice of this project and wanted to verify whether or not the agreed terms with Applicant were ever memorialized and/or recorded. They merely want to know where they stand.

At the August 15, 2012 Board meeting it was noted that the most recent submissions from Applicant show that everything Applicant agreed to honor was set forth in a written agreement that was recorded. A copy was sent to Mr. Schmidt and no one from the Quality Inn was present at the August 15 Board meeting. No one else appeared in opposition to this application.

It was determined that the granting of this application will not create an undesirable change in the character of the neighborhood, nor is this requested area variance substantial. There has been an adequate showing that strict compliance with the zoning ordinance will result in practical difficulties to the applicant and that granting this variance will not create a substantial detriment to adjoining property owners.

In reaching this decision the Board balanced the benefit to the applicant against the detriment to the health, safety and welfare of the neighborhood community. In conducting this balancing test the Board considered the following five factors: (a) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variances; (b) whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance; (c) whether the requested area variances are substantial; (d) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (e) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not preclude the granting of the area variance.

Dated: October 1, 2012

RESULT: GRANTED [UNANIMOUS]
MOVER: James Speyer, Board Member
SECONDER: John Abraham, Board Member
AYES: Brandon, Wiercioch, Speyer, Ptak, Abraham

*Note – Construction cannot begin until a building permit is applied for and approved. This decision will be automatically revoked unless a building permit is obtained within six (6) months of the date hereof and unless construction commences within one (1) year of the date hereof.
Town of Cheektowaga  
Zoning Board of Appeals Request  
Office of Building Inspections  
Cheektowaga Town Hall  
3301 Broadway  
Cheektowaga, New York 14227  
(716) 686-3480  686-3516 fax

Application for: (check one)  
☐ Area Variance  ☐ Temporary Permit  ☐ Special Permit (residential professional/family dwellings)  
☐ Use Variance  ☐ An interpretation of the Zoning Law  ☐ Certificate of Zoning Compliance

The undersigned (John C. Garas, representing) Manga Apartments, LLC, owner of the property located at SBL Nos 92.03-1-19.122 & 25.12, hereby appeals to the Zoning Board of Appeals from the decision of the Code Enforcement Officer not to approve the building permit for proposed hotel on the above referenced property, which property is located in a Commercial Zoning District, as per the plans, data and application herein filed and which are attached and made part of this application.

A. AN AREA VARIANCE TO THE ZONING LAW IS REQUESTED BASED ON THE FOLLOWING:

1) Describe why you believe that the character of the neighborhood/community will not change, and/or why there will not be a detriment to nearby properties if the Zoning Board of Appeals grants you a variance:

The area is predominantly commercial/industrial with hotels, restaurants and office buildings in immediate vicinity. No same VARIANCES APPROVED IN BOX BUT APPROVED AS REQUESTED.

2) Describe why it is necessary for you to obtain a variance, rather than modify your project to meet the minimum requirements of the Zoning Law:

Site is too narrow to accommodate a hotel that is economically viable without variances.

3) Is your need for a variance a result of your own actions (is your difficulty self-created)?

No. Site conditions and economic dictate that without variance the site will remain unimproved.

B. A TEMPORARY PERMIT/SPECIAL PERMIT IS REQUESTED FOR THE FOLLOWING REASONS:

1) __________________________________________________________________________

2) Describe why you feel the temporary permit/special permit will:

a. be in harmony with the general purposes and intent of the Zoning Law;

b. not tend to depreciate the value of adjacent property;

c. not create hazard to health, safety or general welfare;

d. not alter the essential character of the neighborhood nor be detrimental to the residents thereof;

e. not otherwise be detrimental to the public convenience and welfare.

3) If you are requesting a temporary permit:

a. how many months is your request for?

b. what is the purpose/use intended?

C. Does it involve the erection or enlargement of any structure?

DOCUMENT ID NUMBER 6129  
Receipt Number 376921  Paid 100.00
C. An Interpretation of article _______ Section ________ of the zoning law is requested because:


Answer the following additional questions:

1) Has a Zoning Board of Appeals request application previously been filed for the subject property? If yes, indicate date(s) of application and determination(s) made.
   Yes. Some variances approved in 2008 (See attached)

2) Are there any private restrictions (i.e. deed, easements) as to uses or setbacks, building lines, etc. on this property?
   Yes, but project complies with all of them.

3) State whether Section 809 of the General Municipal Law is applicable to this application?
   (see instructions/guidelines).
   Not Applicable

4) Using the diagram box below, show property lines and actual dimensions of the lot to be built upon, the size and shape of the main building and other accessory buildings existing on the lot. Show all proposed structures and their dimensions and distances to nearest property lines and nearest on site structures. A separate site plan may be attached in lieu of the diagram box below. All applications must be accompanied by a properly surveyed reflecting existing conditions.

See attached site plan prepared by Treedo Engineers

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I HEREBY SWEAR that all statements made herein are true and that all drawings submitted correctly show the situations involved in this appeal. I hereby submit the sum of $100.00 payable to pay the cost associated with this application.

STATE OF NEW YORK
COUNTY OF ERIE


Subscribed and sworn to before me this _____ day of _______ 2012

[Signature]

John C. Garas
435 Main Street, Suite 211
Buffalo, NY 14202
Elected Attorney
716-842-6200

Packet Pg. 17
Zoning Board of Appeals Request

Page 3 to be completed only when a use variance is being requested

D. A USE VARIANCE IS REQUESTED BECAUSE THE APPLICABLE REGULATIONS AND RESTRICTIONS HAVE CAUSED UNNECESSARY HARDSHIP AS DEMONSTRATED BY THE FOLLOWING:

1) I am applicant cannot realize a reasonable return on my property for each and every permitted use allowed in the current zoning classification as demonstrated by the accompanying evidence (provides financial evidence to support your argument).

Financial Evidence Provided: YES ☑ NO ☐ (financial evidence is required as per NYS Town Law)

2) Describe why your alleged hardship relating to the subject property is unique and does not apply to other properties in the zoning district or neighborhood?

3) Describe why you believe that the essential character of the neighborhood/community will not change if the zoning Board of Appeals grants you a use variance?

4) Is your need for a variance a result of your own actions (is your difficulty self created)? Please explain.

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ZONEING LAW SECTIONS / BUILDING INSPECTIONS DEPARTMENT COMMENTS

Article III, Section 260-32D / Article VI, Section 260-58B(1)

WHEREAS, 1. THE APPLICANT'S PROPOSED BUILDING AT ITS HIGHEST POINT WILL BE (77'6") TALL, WHEREAS, LAW PERMITS A MAXIMUM HEIGHT OF (40) FEET

2. THE APPLICANT'S PROPOSED BUILDING AT ITS HIGHEST POINT WILL BE (77'6") TALL, WHEREAS, LAW PERMITS A MAXIMUM HEIGHT OF (50) FEET, SINCE THE PROJECT IS WITHIN 500'-1,000' OF THE BUFFALO INTERNATIONAL AIRPORT (BNA)

3. THE APPLICANT'S NORTHWEST BUILDING CORNER AND BUILDING ENTRANCE CANOPY WILL BE (30') AND (37') RESPECTIVELY FROM THE ROAD RIGHT OF WAY, WHEREAS, LAW REQUIRES (80) FEET MINIMUM

4. A PORTION OF THE APPLICANT'S PARKING AREA WILL BE A MINIMUM OF (3) FEET FROM THE WESTERN PROPERTY LINE, A MINIMUM OF (6) FEET FROM AN EASTERLY PROPERTY LINE, AND (9) FEET TO THE WESTERN PROPERTY LINE, WHEREAS, LAW REQUIRES (10) FEET OF LANDSCAPING ADJACENT TO THE PARKING AREA

5. A PORTION OF THE APPLICANT'S PARKING AREA WILL BE (0) FEET TO THE ROAD RIGHT OF WAY, WHEREAS, LAW REQUIRES (25) FEET MINIMUM, AND

Permit Required: ☑ YES NO

239 of Gen. Mun. Law Applies: ☑ Yes ☐ No

Reviewed By: DJU

Date: 6/6/12
DECISION OF THE ZONING BOARD OF APPEALS

CHEEKTOGA, NEW YORK

WHEREAS, MANGA, LLC/HOPKINS GARAS & SORGI/SEAN HOPKINS HAS MADE APPLICATION FOR AN AREA VARIANCE UNDER ARTICLE III, SECTION 260-32D AND 260-32C(1); ARTICLE IV, SECTION 260-58B(1)(c) AND 260-51D(2) AND ARTICLE V, SECTION 260-43B(2) OF THE ZONING ORDINANCE FOR PROPERTY LOCATED AT SBL 92.03-1-19.12 & 92.03-1-18.111/BURGESS BOULVARD

WHEREAS, A PUBLIC HEARING WAS HELD ON THE 16TH DAY OF APRIL, 2008, AFTER PROPER NOTICE, AND

WHEREAS, 1. THE APPLICANT'S PROPOSED BUILDING AT ITS HIGHEST POINT WILL BE (77'6") TALL, WHEREAS, LAW PERMITS A MAXIMUM HEIGHT OF (40) FEET
2. THE APPLICANT'S PROPOSED BUILDING AT ITS HIGHEST POINT WILL BE (77'6") TALL, WHEREAS, LAW PERMITS A MAXIMUM HEIGHT OF (50) FEET, SINCE THE PROJECT IS WITHIN 500'-1,000' OF THE BUFFALO INTERNATIONAL AIRPORT (BNIA)
3. THE APPLICANT'S NORTHWEST BUILDING CORNER AND BUILDING ENTRANCE CANOPY WILL BE (30') AND (37') RESPECTIVELY FROM THE ROAD RIGHT OF WAY, WHEREAS, LAW REQUIRES (50) FEET MINIMUM
4. A PORTION OF THE APPLICANT'S PARKING AREA WILL BE A MINIMUM OF (3) FEET FROM THE WESTERLY PROPERTY LINE, A MINIMUM OF (4) FEET FROM AN EASTERLY PROPERTY LINE, AND (0) FEET TO THE WESTERLY PROPERTY LINE, WHEREAS, LAW REQUIRES (10) FEET OF LANDSCAPING ADJACENT TO THE PARKING AREA
5. A PORTION OF THE APPLICANT'S PARKING AREA WILL BE (0) FEET TO THE ROAD RIGHT OF WAY, WHEREAS, LAW REQUIRES (25) FEET MINIMUM, AND

WHEREAS, THIS BOARD, AFTER REVIEWING THE APPLICATION, AND CONDUCTING A PUBLIC HEARING, AND UPON THE REASONS ENUMERATED IN THE APPLICATION, AND AFTER DUE DELIBERATION AND VOTE OF THE BOARD,

NOW, THEREFORE, BE IT RESOLVED BY VIRTUE OF THE POWER VESTED IN THE ZONING BOARD OF APPEALS, THIS VARIANCE IS HEREBY GRANTED (MARKED) SUBJECT TO THE FOLLOWING CONDITIONS:
This matter was initially brought before the Zoning Board of Appeals (ZBA) on August 15, 2007 and was tabled at that time. Thereafter the applicant amended the request for the area variances and this matter was again heard by the ZBA on April 16, 2008 at which time the request for five (5) variances as set forth in this subsequently filed ZBA Request that was subscribed and sworn to by applicant on March 28, 2008 was granted by the ZBA on the condition that the notice for these variances was re-published to reflect a corrected property line reference. That republishing was completed and this matter came before the ZBA on July 16, 2008 at which time the ZBA reaffirmed its prior granting of the five (5) variances as set forth in ZBA Request subscribed and sworn to by applicant on March 28, 2008 based on the republishing of the legal notice.

In reaching this decision the Board balanced the benefit to the applicant against the detriment to the health, safety and welfare of the neighborhood community. In conducting this balancing test the Board considered the following five factors:

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

b. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;

c. Whether the requested area variance is substantial;

d. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

e. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not preclude the granting of the area variance.

There has been an adequate showing that strict compliance with the zoning ordinance will result in practical difficulties to the applicant and that granting these variances will not create a substantial detriment to adjoining property owners.

DATED: August 6, 2008

[Signature]
CHAIRMAN

[Signature]
[Signature]

*NOTE – CONSTRUCTION CANNOT BEGIN UNTIL A BUILDING PERMIT IS APPLIED FOR AND APPROVED. THIS DECISION WILL BE AUTOMATICALLY REVOKED UNLESS A BUILDING PERMIT IS OBTAINED WITHIN SIX (6) MONTHS OF THE DATE HEREOF AND UNLESS CONSTRUCTION COMMENCES WITHIN ONE (1) YEAR OF THE DATE HEREOF.*
Via Messenger

Daniel Ulatowski, AICP
Town of Cheektowaga Town Planner
3301 Broadway
Cheektowaga, NY 14227

Re: Proposed Aloft Hotel—Burgess Boulevard

June 4, 2012

Dear Mr. Ulatowski:

As we discussed, the above project has been “on hold” for several years due to the poor economy and unavailability of financing. However, my client now desires to proceed with the project at the earliest possible date.

The subject premises were rezoned to CM in March of 2008 and you have advised that the premises continue to be zoned CM and nothing further in respect of zoning needs to be done. If I am incorrect concerning the zoning status of the premises, please let me know.

The project received site plan approval in or about April of 2008, however, you have advised that this approval has lapsed and a new approval of the site plan must be obtained. Accordingly I submit a Development Plan Review Application together with a copy of the existing survey of the premises and ten (10) copies of the 2008 site plan, which has not changed. I also enclose a check for $150.00 in payment of the Town’s fee in this matter. I presume the SEQRA negative declaration from 2008 remains effective inasmuch as no changes to the project are proposed. If you feel otherwise, please let me know.

The project also received a number of area variances in about April of 2008. You have advised that these variances have also lapsed. I therefore enclose a ZBA Request together with a copy of the 2008 site plan, together with a check for $100.00 in payment of the requisite fee.

I would very much appreciate it if you would be so kind as to take steps necessary to get these matter on the Planning Board and ZBA agendas for the month of June.
Please contact me if the attached Applications are deficient in any respect. Thank you for your kind assistance.

Very Truly Yours,

John C. Garas

Cc Mr. Vahe Kouyoumdjian
Andrew Marino, Tredo Engineers
Walter Sobieraj, R.A.
The proposed action described herein is referred in accordance with the provisions of the General Municipal Law, which provides that if no reply is received in 30 days after receipt of full information including a SEQR EAF if applicable, the municipal agency may take final action without considering such reply. If, however, reply is received at any time prior to municipal Action, such reply must be considered.

### Description of Proposed Action

1. **Name of Municipality:** Town of Cheektowaga

2. **Hearing Schedule:**
   - **Date:** 7/18/2012
   - **Time:** 7 PM
   - **Location:** 3301 Broadway

3. **Action is before:**
   - [X] Board of Appeals
   - [ ] Legislative Body
   - [ ] Planning Board

4. **Action consists of:**
   - [X] Variance
   - [ ] Rezone/Map Change
   - [ ] Ordinance Amendment
   - [ ] Site Plan
   - [ ] Special Use Permit
   - [ ] Other

5. **Location of Property:**
   - [X] Specific as follows
     - SBL 92.03-1-19.122 & 25.12
     - Cheektowaga NY
   - [ ] Entire Municipality

6. **Referral required as Site is within 500’ of:**
   - [ ] State or County Property/Institution
   - [ ] County Road
   - [ ] Municipal Boundary
   - [ ] Farm Operation located in an Agricultural District
   - [ ] State Highway
   - [ ] Proposed State or County Road, Property, Building/Institution, Drainageway

7. **Proposed change or use:** (be specific)
   1. The applicant’s proposed building at its highest point will be (77’6”) tall, whereas law permits a maximum height of (40) forty feet.
   2. The applicant’s proposed building at its highest point will be (77’6”) tall, whereas law permits a maximum height of (50) fifty feet since the project is within (500’-1,000’) of the Buffalo Niagara International Airport (BNIA).
   3. The applicant’s northwest building corner and building entrance canopy will be (30) thirty feet and (37) thirty seven feet respectively from the road right of way, whereas, law requires (50) fifty feet minimum.
   4. A portion of the applicant’s parking area will be a minimum of (3) three feet from the westerly property line, a minimum of (4) four feet from an easterly property line and (0) zero feet to the westerly property line, whereas, law requires (10) ten feet of landscaping adjacent to the parking area.
   5. A portion of the applicant’s parking area will be (0) zero feet to the road right of way, whereas, law requires (25) twenty five feet minimum.

8. **Other remarks: (ID#, SBL#, etc.)**

9. **Submitted by:** Cynthia A. Dauscher, Senior Clerk typist
   - **Date:** 07/03/2012
   - **Address:** 3301 Broadway, Cheektowaga, New York 14227

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Reply to Municipality by Erie County Division of Planning

Receipt of the above-described proposed action is acknowledged on ___________. The Division herewith submits its review and reply under the provisions of applicable state and local law, based on the information submitted with this referral.

1. [ ] The proposed action is not subject to review under the law.
2. Form ZR-3, Comment on Proposed Action is attached hereto.

3. The proposed action is subject to review; the Division makes the recommendation shown on Form ZR-4, Recommendation on Proposed Action, which is attached hereto.

4. No recommendation; proposed action has been reviewed and determined to be of local concern

By the Division of Planning: _______________________________ Date: __________________________
Whereas, Anthony J. Gullo has made application for a(n) Area Variance, under

ARTICLE(S): VI  SECTION(S): 260-59F(1)(b)

of the zoning law for property located at:

288 South Roycroft Boulevard

The applicant desires to construct a (6) six foot high fence within the exterior side yard and construct a second driveway for his travel camper/motor home, whereas, the Zoning Law limits the height of fencing within such yard to (3.5) feet in height and the proposed second driveway is inconsistent with the variance issued on October 21, 2004.

Whereas, a public hearing was held on 7/18/2012 after proper notice,

Whereas, this Board, after reviewing the application, and conducting a public hearing and after due deliberation and vote of the Board,

Be it resolved, by virtue of the power vested in the Zoning Board of Appeals, this Area Variance is hereby Pending.

*Note – Construction cannot begin until a building permit is applied for and approved. This decision will be automatically revoked unless a building permit is obtained within six (6) months of the date hereof and unless construction commences within one (1) year of the date hereof.
Town of Cheektowaga  
Zoning Board of Appeals Request  
Office of Building Inspections  
Cheektowaga Town Hall  
3301 Broadway  
Cheektowaga, New York 14227  
(716) 688-3490  688-3516 fax

Application for: (check one)  
☐ Area Variance  ☐ Special Permit (such as profession/office/family dwellings)  
☐ Use Variance  ☐ An interpretation of the Zoning Law  ☐ Certificate of Zoning Compliance

The undersigned, [name], representing [address], owner of the property located at 288 S. Roycroft Blvd, hereby appeals to the Zoning Board of Appeals from the decision of the Code Enforcement Officer not to approve the variance on the above referenced property, which property is located in a Zoning District, as per the plans, data and application herein filed and which are attached and made part of this application.

AN AREA VARIANCE TO THE ZONING LAW IS REQUESTED BASED ON THE FOLLOWING:

1) Describe why you believe that the character of the neighborhood/ community will not change, and/or why there will not be a detriment to nearby properties if the Zoning Board of Appeals grants you a variance. 

There are no structural changes. By bringing fence not still enough property not to block view of pedestrians or motorists.

2) Describe why it necessary for you to obtain a variance, rather than modify your project to meet the minimum requirements of the Zoning Law.

Need approval to construct a fence on property line.

3) Is your need for a variance a result of your own actions (ie your difficulty self created)?

NO.

B. A TEMPORARY PERMIT/SPECIAL PERMIT IS REQUESTED FOR THE FOLLOWING REASONS:

1) 

2) Describe why you feel the temporary permit/special permit will:

a. be in harmony with the general purposes and intent of the Zoning Law; 

b. not tend to depreciate the value of adjacent property; 

c. not create hazard to health, safety or general welfare; 

d. not alter the essential character of the neighborhood nor be detrimental to the residents thereof;

e. not otherwise be detrimental to the public convenience and welfare.

3) If you are requesting a temporary permit:

a. how many months is your request for?

b. what is the purpose I use intended?

C. does it involve the erection or enlargement of any structure?


DOCUMENT ID NUMBER  
07/23/2013

Receipt Number 397486 Paid 6/26/12 100.00
C. AN INTERPRETATION OF ARTICLE _______ SECTION _______ OF THE ZONING LAW IS REQUESTED BECAUSE:


ANSWER THE FOLLOWING ADDITIONAL QUESTIONS:

1. Has a Zoning Board of Appeals request application previously been filed for the subject property? If yes, indicate date(s) of application and determination(s) made.
   YES 10/21/04 Application for Driveway

2. Are there any private restrictions (i.e. deeds, easements) as to uses or setbacks, building lines, etc. on this property?
   NO

3. State whether Section 809 of the General Municipal Law is applicable to this application?
   (see instructions/guidelines)
   NO

4. Using the diagram box below, show property lines and actual dimensions of the lot to be built upon, the size and shape of the main building and other accessory buildings existing on the lot. Show all proposed structures and their dimensions and distances to nearest property lines and nearest on site structures. A separate site plan may be attached in lieu of the diagram box below. All applications must be accompanied by a property survey reflecting existing conditions.

I HEREBY SWEAR that all statements made herein are true and that all drawings submitted correctly show the situations involved in this appeal. I hereby submit the sum of $100.00 payable to pay the cost associated with this application.

STATE OF NEW YORK
COUNTY OF ERIE


SS:

Subscribed and sworn to before me
this 20 day of June 2012

DONNA BECHTOLD
No. 016E6193564
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 06/22/2012

(INDICATE NORTH ARROW)

(288 S Roycroft Blvd)

(8634493)
Zoning Board of Appeals Request

Page 3 to be completed only when a use variance is being requested

D. A USE VARIANCE IS REQUESTED BECAUSE THE APPLICABLE REGULATIONS AND RESTRICTIONS HAVE CAUSED UNNECESSARY HARDSHIP AS DEMONSTRATED BY THE FOLLOWING:

1) I as applicant cannot realize a reasonable return on my property for each and every permitted use allowed in the current zoning classification as demonstrated by the accompanying financial evidence (provide financial evidence to support your argument).

   Financial Evidence Provided: YES ☑ NO ☐ (financial evidence is required as per NYS Town Law)

2) Describe why your alleged hardship relating to the subject property is unique and does not apply to other properties in the zoning district or neighborhood.

   

3) Describe why you believe that the essential character of the neighborhood/community will not change if the zoning Board of Appeals grants you a use variance.

   

4) Is your need for a variance a result of your own actions (is your difficulty self created)? Please explain.

   

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ZONING LAW SECTIONS / BUILDING INSPECTIONS DEPARTMENT COMMENTS

| Article | Section | THE APPLICANT DESIRES TO CONSTRUCT A ( ) SIX FOR HIGH FENCE WITHIN THE EXISTING SIDE YARD AND CONSTRUCT A SECOND DRIVEWAY FOR TRAVEL CAMPERS / MOTOR HOMES. WHEREAS, THE ZONING LAW LIMITS THE HEIGHT OF FENCING WITHIN SUCH YARD TO 3.5 FEET IN HEIGHT, AND THE PROPOSED SECOND DRIVEWAY IS INCONSISTENT WITH THE VARIANCE ISSUED ON OCTOBER 21, 2004 |

Permit Required: NO - DECE CO. HAD DEPT. PERMIT REQUIRED

239 of Gen. Mun. Law Applies: ☑ Yes ☐ No

Reviewed By: DATE: 6/28/12

Packet Pg. 30
DECISION OF THE ZONING BOARD OF APPEALS

CHEEKADOWAGA, NEW YORK

WHEREAS, ANTHONY GULLO HAS MADE APPLICATION FOR
A VARIANCE UNDER ARTICLE(S) VI & II, SECTION(S) 260-59F(1) &
260-28F(1) OF THE ZONING ORDINANCE FOR PROPERTY LOCATED AT
288 S. ROYCROFT BLVD

WHEREAS, A PUBLIC HEARING WAS HELD ON THE 20TH
DAY OF OCTOBER, 2004, AFTER PROPER NOTICE AND,

WHEREAS, THE APPLICANT DESIRES TO CONSTRUCT A SIX
(6) FOOT HIGH FENCE WITHIN THE REQUIRED EXTERIOR SIDE
YARD ALONG CLEVELAND DRIVE, WHEREAS, LAW DOES NOT
PERMIT FENCING TO EXCEED 3.5 FEET IN HEIGHT WITH SUCH
REQUIRED EXTERIOR SIDE YARD, AND THE APPLICANT DESIRES
TO CONSTRUCT A SECOND DRIVEWAY, WHEREAS, LAW PERMITS
ONLY ONE DRIVEWAY, AND

WHEREAS, THIS BOARD, AFTER REVIEWING THE
APPLICATION, AND CONDUCTING A PUBLIC HEARING, AND UPON
THE REASONS ENUMERATED IN THE APPLICATION, AND AFTER
DUE DELIBERATION AND VOTE OF THE BOARD,

NOW, THEREFORE, BE IT RESOLVED BY VIRTUE OF THE
POWER VESTED IN THE ZONING BOARD OF APPEALS, THIS
VARIANCE IS HEREBY GRANTED (MARKED) SUBJECT TO THE
FOLLOWING CONDITIONS:

1. Driveway shall be located a minimum of five (5) feet
   from the west property line;
2. Fence shall be situated a minimum of thirteen (13)
   feet from the exterior side lot line.

DATED: October 21, 2004

Andrew A. Kurly
CHAIRMAN

Edward J. Schiefer
Robert Beiler
James J. Spiegel

*NOTE – CONSTRUCTION CANNOT BEGIN UNTIL A BUILDING PERMIT IS
APPLIED FOR AND APPROVED. THIS DECISION WILL BE AUTOMATICALLY
REVOKED UNLESS A BUILDING PERMIT IS OBTAINED WITHIN SIX (6)
MONTHS OF THE DATE HEREOF AND UNLESS CONSTRUCTION
COMMENCES WITHIN ONE (1) YEAR OF THE DATE HEREOF.
June 22, 2012

Daniel Ulatowski
Town of Cheektowaga Building Inspection
3301 Broadway
Cheektowaga, New York 14127

Reference: 288 South Roycroft Boulevard at Cleveland Drive (CR 141)
Town of Cheektowaga, County of Erie

Dear Ulatowski:

Rick Reed and I met with the property owner, Anthony Gullo, to discuss his parking pad and access drive to the pad on site on June 18, 2012. Erie County would have no problem with a parking pad on his property, but it cannot be in the Right of Way (ROW).

Option 1: Pad parallel to Cleveland Drive; the pad has to be located on private property and not in the ROW. We suggested that the entrance for the pad be off of South Roycroft Boulevard so he could back straight in from the wide pavement area at the intersection of South Roycroft and Cleveland Drive.

Option 2: Pad parallel west property line and back in from Cleveland Drive; this would be acceptable to us, but the driveway width and entrance to Cleveland Drive would need to be designed to handle the turn radius of the motor home. This may require the property owner to move the fence out towards the ROW line. The fence cannot be put into the ROW.

Option 3: Pad parallel to Cleveland Drive and a single driveway to Cleveland Drive; this would allow him to back into the parking pad from Cleveland Drive. This also should be designed as the motor home has a rear overhang, and the driveway width and pad width have to take the turning radius of the motor home into account. This would require the property owner to move his fence back to the location shown on the survey. The pad cannot be located in the ROW. It must be on private property.

Should you have any questions or require additional information, please contact our office at 858-8371.

Sincerely,

ERIE COUNTY DEPARTMENT OF PUBLIC WORKS

[Signature]
Carl P. Dimmig, Jr., P.E.
Senior Civil Engineer

cc: Charles A. Sickler, P.E., Acting Deputy Commissioner – Highways
Rick Reed, Senior Highway Maintenance Engineer
Anthony Gullo
File CR 141
The proposed action described herein is referred in accordance with the provisions of the General Municipal Law, which provides that if no reply is received in 30 days after receipt of full information including a SEQR EAF if applicable, the municipal agency may take final action without considering such reply. If, however, reply is received at any time prior to municipal Action, such reply must be considered.

**Description of Proposed Action**

1. **Name of Municipality:** Town of Cheektowaga

2. **Hearing Schedule:**
   - **Date:** 7/18/2012
   - **Time:** 7 PM
   - **Location:** 3301 Broadway

3. **Action is before:**
   - ☐ Legislative Body
   - ☒ Board of Appeals
   - ☐ Planning Board
   - ☐ Ordinance Amendment
   - ☐ Other

4. **Action consists of:**
   - ☐ New Ordinance
   - ☒ Variance
   - ☐ Rezone/Map Change
   - ☐ Special Use Permit
   - ☐ Other

5. **Location of Property:**
   - ☒ Specific as follows
     - 288 S Roycroft Blvd
     - Cheektowaga NY
   - ☐ Entire Municipality
   - ☐ Farm Operation located in an Agricultural District
   - ☐ Proposed State or County Road, Property, Building/Institution, Drainageway

6. **Referral required as Site is within 500’of:**
   - ☐ State or County Property/Institution
   - ☒ County Road
   - ☐ Municipal Boundary
   - ☐ State Highway

7. **Proposed change or use: (be specific)**
   - The applicant desires to construct a (6) six foot high fence within the exterior side yard and construct a second driveway for his travel camper/motor home, whereas, the Zoning Law limits the height of fencing within such yard to (3.5) feet in height and the proposed second driveway is inconsistent with the variance issued on October 21, 2004.

8. **Other remarks:** (ID#, SBL#, etc.)

9. **Submitted by:** Cynthia A. Dauscher, Senior Clerk typist 07/03/2012
   - 3301 Broadway, Cheektowaga, New York 14227

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**Reply to Municipality by Erie County Division of Planning**

Receipt of the above-described proposed action is acknowledged on __________. The Division herewith submits its review and reply under the provisions of applicable state and local law, based on the information submitted with this referral.

1. ☐ The proposed action is not subject to review under the law.
2. ☐ Form ZR-3, Comment on Proposed Action is attached hereto.
3. ☐ The proposed action is subject to review; the Division makes the recommendation shown on Form ZR-4, Recommendation on Proposed Action, which is attached hereto.
4. ☐ No recommendation; proposed action has been reviewed and determined to be of local concern

By the Division of Planning: ___________________________ Date: ____________

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Whereas, Thaddeus Kendziora/Community Services/Mark R. Foley has made application for an Area Variance, under

**ARTICLE(S): II** **SECTION(S): 260-25B(1)(b)**
**ARTICLE(S): V** **SECTION(S): 260-40B(2)**

of the zoning law for property located at:

2471 Union Road

The applicant’s proposed apartment building will have a lot frontage along Union Road of (78.28) and a private drive (24) twenty four feet wide, whereas, the Zoning Law requires (100) one hundred feet of frontage and a (28) twenty eight feet wide drive.

The applicant’s apartment building will have (9) nine off-street parking spaces, whereas, the Zoning Law requires (15) fifteen parking spaces.

Whereas, a public hearing was held on 8/15/2012 after proper notice,

Whereas, this Board, after reviewing the application, and conducting a public hearing and after due deliberation and vote of the Board,

Be it resolved, by virtue of the power vested in the Zoning Board of Appeals, this Area Variance is hereby Granted.

Mr. Kendziora as well as Patricia Bitter of Lancaster Community Services and Sharon Chmielewski of Buffalo Community Services were all present to present their variance. This project involves a seven (7) unit building that provides independent type living units for disabled residents. The lot widens to two-hundred (200) feet as you enter the property. The reason there will be a decreased need for parking spaces is that there will no longer be 24 hour supervision on site or staff and, thus, no longer a need to provide parking for that staff. Staff may be there at times for short periods of time only. The building will not be staffed and not all residents will have a vehicle. There will be nine parking spaces and a fire truck would have no problem entering and circling around on property. Sharon Chmielnicki from Community Services stated the apartment building will not be staffed. It is an independent living facility. No one appeared in opposition to this application.

It was determined that the granting of this application will not create an undesirable change in the character of the neighborhood, nor is this requested area variance substantial. There has been an adequate showing that strict compliance with the zoning ordinance will result in practical difficulties to the applicant and that granting this variance will not create a substantial detriment to adjoining property owners.

In reaching this decision the Board balanced the benefit to the applicant against the detriment to
the health, safety and welfare of the neighborhood community. In conducting this balancing test the Board considered the following five factors: (a) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variances; (b) whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance; (c) whether the requested area variances are substantial; (d) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (e) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not preclude the granting of the area variance.

Dated: October 1, 2012

<table>
<thead>
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*Note – Construction cannot begin until a building permit is applied for and approved. This decision will be automatically revoked unless a building permit is obtained within six (6) months of the date hereof and unless construction commences within one (1) year of the date hereof.
Town of Cheektowaga
Zoning Board of Appeals Request

Application for: (check one)
- Area Variance
- Use Variance
- Temporary Permit
- Special Permit (residential/postresidential/two family dwellings)
- An Interpretation of the Zoning Law
- Certificate of Zoning Compliance

The undersigned _______________________, Community Services representing ____________________________

Thaddeus Kandziora, owner of the property located at 2471 Union Road

Cheektowaga, New York, hereby appeals to the Zoning Board of Appeals from the decision of the Code Enforcement Officer not to approve the reduce driveway width, reduce lot width and reduce parking spaces on the above referenced property, which property is located in a NS, RA Zoning District, as per the plans, data and application hereof filed and which are attached and made part of this application.

A. AN AREA VARIANCE TO THE ZONING LAW IS REQUESTED BASED ON THE FOLLOWING:

1) Describe why you believe that the character of the neighborhood/community will not change, and/or why there will not be a detriment to nearby properties if the Zoning Board of Appeals grants you a variance:

See Attachment 1

2) Describe why it necessary for you to obtain a variance, rather than modify your project to meet the minimum requirements of the Zoning Law:

See Attachment 1

3) Is your need for a variance a result of your own actions (is your difficulty self created)?

See Attachment 1

B. A TEMPORARY PERMIT/SPECIAL PERMIT IS REQUESTED FOR THE FOLLOWING REASONS:

1) N/A

2) Describe why you feel that the temporary permit/special permit will:
   a. be in harmony with the general purposes and intent of the Zoning Law;
   __________________________________________________________________________
   b. not tend to depreciate the value of adjacent property;
   __________________________________________________________________________
   c. not create hazard to health, safety or general welfare;
   __________________________________________________________________________
   d. not alter the essential character of the neighborhood nor be detrimental to the residents thereof;
   __________________________________________________________________________
   e. not otherwise be detrimental to the public convenience and welfare.
   __________________________________________________________________________

3) If you are requesting a temporary permit:
   a. how many months is your request for?
   __________________________________________________________________________
   b. what is the purpose / use intended?
   __________________________________________________________________________
   C. does it involve the erection or enlargement of any structure?
   __________________________________________________________________________

DOCUMENT ID NUMBER 6178
Receipt Number 378026 Paid 7/24/12
Packet Pg. 38
Zoning Board of Appeals Request

C. AN INTERPRETATION OF ARTICLE _____ SECTION ___________ OF THE ZONING LAW IS REQUESTED BECAUSE:

N/A

ANSWER THE FOLLOWING ADDITIONAL QUESTIONS:

1) Has a Zoning Board of Appeals request application previously been filed for the subject property? If yes, indicate date(s) of application and determination(s) made.

No

2) Are there any private restrictions (i.e., deeds, easements) as to uses or setbacks, building lines, etc. on this property?

No

3) State whether Section 800 of the General Municipal Law is applicable to this application?

No, Appendix

4) Using the diagram box below, show property lines and actual dimensions of the lot to be built upon, the size and shape of the main building and other accessory buildings existing on the lot. Show all proposed structures and their dimensions and distances to nearest property lines and nearest on-site structures. A separate site plan may be attached in lieu of the diagram box below. All applications must be accompanied by a property survey reflecting existing conditions.

See Attachment 2 - Site Plan

I HEREBY SWEAR that all statements made herein are true and that all drawings submitted correctly show the situations involved in this appeal. I hereby submit the sum of $100.00 payable to the cost associated with this application.

Mark R. Foley, President & CEO
180 Oak Street
Buffalo, NY 14203
mfoley@cssi.net (716) 883-8883

STATE OF NEW YORK
COUNTY OF ERIE

Notary Public, State of New York
No. 01DO5041950
Qualified in Erie County
Commission Expires April 10, 2013

JENNIFER DOWD BARCZAK
Subscribed and sworn before me
this 29th day of June, 2012
D. A USE VARIANCE IS REQUESTED BECAUSE THE APPLICABLE REGULATIONS AND RESTRICTIONS HAVE CAUSED UNNECESSARY HARDSHIP AS DEMONSTRATED BY THE FOLLOWING:

1) I as applicant cannot realize a reasonable return on my property for each and every permitted use allowed in the current zoning classification as demonstrated by the accompanying financial evidence (provide financial evidence to support your argument).

   FINANCIAL EVIDENCE PROVIDED: YES ☐ NO ☐ (financial evidence is required as per NYS Town Law)

2) Describe why your alleged hardship relating to the subject property is unique and does not apply to other properties in the zoning district or neighborhood?

   ______________________________________________________
   ______________________________________________________
   ______________________________________________________
   ______________________________________________________

3) Describe why you believe that the essential character of the neighborhood/community will not change if the zoning Board of Appeals grants you a use variance?

   ______________________________________________________
   ______________________________________________________
   ______________________________________________________
   ______________________________________________________

4) Is your need for a variance a result of your own actions (is your difficulty self created)? Please explain.

   ______________________________________________________
   ______________________________________________________
   ______________________________________________________
   ______________________________________________________

---

**ZONING LAW SECTIONS / BUILDING INSPECTIONS DEPARTMENT COMMENTS**

Article II, Section 260-25B(1)(b) / Article V, Section 260-40B(2)

THE APPLICANT'S PROPOSED APARTMENT BUILDING WILL HAVE A LOT FRONTAGE ALONG UNION ROAD OF 78.29 FEET AND A PRIVATE DRIVE OF 24' THIRTY-FOUR FEET WIDE, WHEREAS, THE ZONING LAW REQUIRES 100 FEET OF FRONTAGE AND A 28' TWENTY-EIGHT FEET WIDE DRIVE. THE APPLICANT'S APARTMENT BUILDING WILL HAVE (9) NINE OFF-STREET PARKING SPACES, WHEREAS, THE ZONING LAW REQUIRES (15) PARKING SPACES.

Permit Required: YES

239 of Gen. Mun. Law Applies: ☑ yes ☐ no

REVIEWED BY: D.J.U. DATE: 7/30/12
ATTACHMENT 1

A. AN AREA VARIANCE TO THE ZONING LAW IS REQUESTED BASED ON THE FOLLOWING:

1.) The character of the neighborhood will not change due to these variances. Community Services is proposing a 7-unit multifamily dwelling apartment unit that will have very little affect on the typical amount of traffic and/or noise in the area, plus Community Services is minimizing overall property impact to maintain as much of natural wooded area as possible.

2.) In an attempt to meet the Town’s setback to a private drive servicing a multifamily dwelling unit, the side yard setback for the driveway has been shown at 25-ft side. This causes the driveway width itself to be reduced from 28-ft to 24-ft. Also, the lot width at the transition point from NS to RA is +/- 115-ft; per code for RA zoning district, the minimum lot width is to be 150-ft. The reduced width is a function of the parcel layout. Parking per code is to be a minimum of 15 parking spaces, since most residents will not own a car and minimal staff will access the site; reducing the parking down to 9 spaces is requested, to reduce cost as well as the amount of impervious surface and related impact to the existing site vegetation.

3.) The request for variances is based on efforts made to meet the Town’s requirements, with the requested reductions a function of cost, as limited by HUD funding and minimizing overall site impacts to preserve as much of the existing natural features of the site as possible.
Town of Cheektowaga Zoning Board of Appeals Request

ATTACHMENT 2

SITE PLAN
### Description of Proposed Action

1. **Name of Municipality:** Town of Cheektowaga

2. **Hearing Schedule:**
   - **Date:** 8/15/2012
   - **Time:** 7 PM
   - **Location:** 3301 Broadway

3. **Action is before:**
   - [ ] Legislative Body
   - [X] Board of Appeals
   - [ ] Planning Board
   - [ ] Ordinance Board
   - [ ] Other

4. **Action consists of:**
   - [X] Rezone/Map Change
   - [ ] Site Plan
   - [ ] Variance
   - [ ] Special Use Permit
   - [ ] Other

5. **Location of Property:**
   - [X] Specific as follows
   - [ ] Entire Municipality

6. **Referral required as Site is within 500’ of:**
   - [ ] State or County Property/Institution
   - [ ] Municipal Boundary
   - [ ] Farm Operation located in an Agricultural District
   - [ ] Proposed State or County Road, Property, Building/Institution, Drainageway
   - [ ] Expressway
   - [ ] County Road
   - [ ] State Highway

7. **Proposed change or use:** (be specific)
   - The applicant’s proposed apartment building will have a lot frontage along Union Road of (78.28) and a private drive (24) twenty four feet wide, whereas, the Zoning Law requires (100) one hundred feet of frontage and a (28) twenty eight feet wide drive.
   - The applicant’s apartment building will have (9) nine off-street parking spaces, whereas, the Zoning Law requires (15) fifteen parking spaces.

8. **Other remarks:** (ID#, SBL#, etc.)

9. **Submitted by:**
   - Cynthia Dauscher, Senior Clerk Typist
   - 8/02/2012
   - 3301 Broadway, Cheektowaga, New York 14227

---

Reply to Municipality by Erie County Division of Planning

Receipt of the above-described proposed action is acknowledged on __________. The Division herewith submits its review and reply under the provisions of applicable state and local law, based on the information submitted with this referral.

1. [ ] The proposed action is not subject to review under the law.
2. [X] Form ZR-3, Comment on Proposed Action is attached hereto.
3. [ ] The proposed action is subject to review; the Division makes the recommendation shown on Form ZR-4, Recommendation on Proposed Action, which is attached hereto.
4. [ ] No recommendation; proposed action has been reviewed and determined to be of local concern

By the Division of Planning: ____________________________

Date: ____________________________
August 1, 2012

Town of Cheektowaga
3223 Union Road
Cheektowaga, NY 14227

Re: Variance for 2471 Union Road, Cheektowaga, NY
Our File No.: 02489-142152000

I, Thaddeus Kendziora a/k/a Thaddeus F. Kendziora, Jr., individually and as surviving spouse of Patricia Kendziora, the owner of premises known as 2471 Union Road, Town of Cheektowaga, NY hereby authorize Community Services for the Developmentally Disabled, Inc. to process an application for an area variance relative to said premises, said Community Services being under contract to purchase said premise.

Respectfully submitted,

[Signature]

Thaddeus Kendziora a/k/a Thaddeus F. Kendziora, Jr.
Whereas, **Maureen Malark and Betty Malark** has made application for a(n) **Area Variance**, under

**ARTICLE(S):** VI  
**SECTION(S):** 260-59F(3)(c)

of the zoning law for property located at:

**75 Southgate Road**

The applicant’s deck will be approximately (14) fourteen feet from the rear property line, whereas, the Zoning Law requires a minimum of (17) seventeen feet.

Whereas, a public hearing was held on **8/15/2012** after proper notice,

Whereas, this Board, after reviewing the application, and conducting a public hearing and after due deliberation and vote of the Board,

Be it resolved, by virtue of the power vested in the Zoning Board of Appeals, this **Area Variance** is hereby **Granted**.

Maureen Malark was present and stated the deck was installed last year by a contractor who did obtain a permit. After it was installed she was advised that a variance would be required. No one appeared in opposition to this application.

It was determined that the granting of this application will not create an undesirable change in the character of the neighborhood, nor is this requested area variance substantial. There has been an adequate showing that strict compliance with the zoning ordinance will result in practical difficulties to the applicant and that granting this variance will not create a substantial detriment to adjoining property owners.

In reaching this decision the Board balanced the benefit to the applicant against the detriment to the health, safety and welfare of the neighborhood community. In conducting this balancing test the Board considered the following five factors: (a) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variances; (b) whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance; (c) whether the requested area variances are substantial; (d) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (e) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not preclude the granting of the area variance.

Dated: October 1, 2012
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</tr>
<tr>
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</table>

*Note – Construction cannot begin until a building permit is applied for and approved. This decision will be automatically revoked unless a building permit is obtained within six (6) months of the date hereof and unless construction commences within one (1) year of the date hereof.*
Town of Cheektowaga
Zoning Board of Appeals Request
Office of Building Inspections
Cheektowaga Town Hall
3301 Broadway
Cheektowaga, New York 14227 (716) 686-3490 686-3516 fax

Application for: (check one)
✓ Area Variance  ○ Temporary Permit  ○ Special Permit (residential-professional family dwellings)
○ Use Variance  ○ An Interpretation of the Zoning Law  ○ Certificate of Zoning Compliance

The undersigned ________________________, owner of the property located at 75 Southgate Rd, Cheektowaga, New York, hereby appeals to the Zoning Board of Appeals from the decision of the Code Enforcement Officer not to approve the plans, data and application hereto filed and which are attached and made part of this application.

A. AN AREA VARIANCE TO THE ZONING LAW IS REQUESTED BASED ON THE FOLLOWING:

1) Describe why you believe that the character of the neighborhood/community will not change, and/or why there will not be a detriment to nearby properties if the Zoning Board of Appeals grants you a variance:

   DO NOT AFFECT ANY NEIGHBORS, ONLY IN THE POOL

2) Describe why it necessary for you to obtain a variance, rather than modify your project to meet the minimum requirements of the Zoning Law:

   INTENT TO BUILD THE DECK FOR ACCESS FROM THE DECK TO THE POOL

3) Is your need for a variance a result of your own actions (is your difficulty self created)?

   DID NOT KNOW VARIANCE WAS REQUIRED AND THOUGHT THE PERMIT APPLIED FOR WAS OK TO START WORK.

B. A TEMPORARY PERMIT/SPECIAL PERMIT IS REQUESTED FOR THE FOLLOWING REASONS:

1) ________________________________________________

2) Describe why you feel that the temporary permit/special permit will:

   a. be in harmony with the general purposes and intent of the Zoning Law;

   b. not tend to depreciate the value of adjacent property;

   c. not create hazard to health, safety or general welfare;

   d. not alter the essential character of the neighborhood nor be detrimental to the residents thereof;

   e. not otherwise be detrimental to the public convenience and welfare.

3) If you are requesting a temporary permit:

   a. how many months is your request for?

   b. what is the purpose / use intended?

   C. does it involve the erection or enlargement of any structure?
Zoning Board of Appeals Request

C. AN INTERPRETATION OF ARTICLE ______ SECTION ______ OF THE ZONING LAW IS REQUESTED BECAUSE:

[Blank]

ANSWER THE FOLLOWING ADDITIONAL QUESTIONS:

1) Has a Zoning Board of Appeals request application previously been filed for the subject property? If yes, indicate date(s) of application and determination(s) made.
   - [ ]

2) Are there any private restrictions (i.e. deed, easements) as to uses or setbacks, building lines, etc. on this property?
   - [ ]

3) State whether Section 809 of the General Municipal Law is applicable to this application? (see instructions/guidelines).
   - [ ]

4) Using the diagram box below, show property lines and actual dimensions of the lot to be built upon, the size and shape of the main building and other accessory buildings existing on the lot. Show all proposed structures and their dimensions and distances to nearest property lines and nearest on site structures. A separate site plan may be attached in lieu of the diagram box below. All applications must be accompanied by a property survey reflecting existing conditions.

See Survey Attached

[Diagram with noted north arrow]

I HEREBY SWEAR that all statements made herein are true and that all drawings submitted correctly show the situations involved in this appeal, I hereby submit the sum of $100.00 payable to pay the cost associated with this application.

STATE OF NEW YORK
COUNTY OF ERIE

Subscribed and sworn to before me this ______ day of ______, 2012.

NANCY M. MCNALLY
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires June 30, 20____
Zoning Board of Appeals Request

Page 3 to be completed only when a use variance is being requested

D. A USE VARIANCE IS REQUESTED BECAUSE THE APPLICABLE REGULATIONS AND RESTRICTIONS HAVE CAUSED UNNECESSARY HARDSHIP AS DEMONSTRATED BY THE FOLLOWING:

1) I as applicant cannot realize a reasonable return on my property for each and every permitted use allowed in the current zoning classification as demonstrated by the accompanying financial evidence (provide financial evidence to support your argument).

FINANCIAL EVIDENCE PROVIDED: YES □ NO □ (financial evidence is required as per NYS Town Law)

2) Describe why your alleged hardship relating to the subject property is unique and does not apply to other properties in the zoning district or neighborhood?

3) Describe why you believe that the essential character of the neighborhood/community will not change if the zoning Board of Appeals grants you a use variance?

4) Is your need for a variance a result of your own actions (is your difficulty self-created)? Please explain.

ZONING LAW SECTIONS / BUILDING INSPECTIONS DEPARTMENT COMMENTS

Article V.I, Section 260-57F(8)(c) / Article _____ Section _____

THE APPLICANT’S STRUCTURE WILL BE APPROXIMATELY
(14’) FEET FROM THE REAR PROPERTY LINE.

WHEREAS, THE ZONING LAW REQUIRES A MINIMUM
OF (17’) FEET.

Permit Required □ FILLED  __________

239 of Gen. Mun. Law Applies □ yes □ no

REVIEWED BY: D.J.U. DATE: 8/1/12

Attachment: 75 Southgate Rd (ZBA-2012-55 : 75 Southgate Road)
Whereas, **Joseph L. Skrobacz** has made application for an **Area Variance**, under 

**ARTICLE(S):** III  
**SECTION(S):** 260-31C(2) & (3)

of the zoning law for property located at:

3635 Genesee Street

The applicant’s proposed shed will be (4) four feet from the west property line and (6) six feet from the south property line, whereas, the Zoning Law requires a minimum of (10) ten feet and (20) twenty feet respectively.

Whereas, a public hearing was held on **8/15/2012** after proper notice,

Whereas, this Board, after reviewing the application, and conducting a public hearing and after due deliberation and vote of the Board,

Be it resolved, by virtue of the power vested in the Zoning Board of Appeals, this **Area Variance** is hereby **Granted**.

The application and testimony provided indicated that there is an existing old garage that will be demolished and trees will be removed. The fence will be extended to the property line. There is only one place to put shed due to limited size of lot. No one appeared in opposition to this.

It was determined that the granting of this application will not create an undesirable change in the character of the neighborhood, nor is this requested area variance substantial. There has been an adequate showing that strict compliance with the zoning ordinance will result in practical difficulties to the applicant and that granting this variance will not create a substantial detriment to adjoining property owners.

In reaching this decision the Board balanced the benefit to the applicant against the detriment to the health, safety and welfare of the neighborhood community. In conducting this balancing test the Board considered the following five factors: (a) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variances; (b) whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance; (c) whether the requested area variances are substantial; (d) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (e) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not preclude the granting of the area variance.

Dated: October 1, 2012
RESULT: GRANTED [UNANIMOUS]
MOVER: James Speyer, Board Member
SECONDER: John Abraham, Board Member
AYES: Brandon, Wiercioch, Speyer, Ptak, Abraham

*Note – Construction cannot begin until a building permit is applied for and approved. This decision will be automatically revoked unless a building permit is obtained within six (6) months of the date hereof and unless construction commences within one (1) year of the date hereof.
Town of Cheektowaga
Zoning Board of Appeals Request
Office of Building Inspections
Cheektowaga Town Hall
3501 Broadway
Cheektowaga, New York 14227 (716) 686-3490 680-3516 fax

Application for: (check one)

☐ Temporary Permit  ☐ Special Permit (residential projects within family dwellings)
☐ Use Variance  ☐ An interpretation of the Zoning Law  ☐ Certificate of Zoning Compliance

The undersigned (representing) ______________________________

JOSEPH L. SKROBIKZ owner of the property located at 3635 Genesee St.

Cheektowaga, New York, hereby appeals to the Zoning Board of Appeals from the decision of the Code Enforcement Officer not to approve

THE CONSTRUCTION OF AN ACCESSORY STRUCTURE (SHED) on the above referenced property, which property is located in a

Residential Zoning District, as per the plans, data and application hereto filed and which are attached and made part of this application.

A. AN AREA VARIANCE TO THE ZONING LAW IS REQUESTED BASED ON THE FOLLOWING:

1) Describe why you believe that the character of the neighborhood/community will not change, and/or why there will not be a detriment to nearby properties if the Zoning Board of Appeals grants you a variance:

The proposed shed is to replace an existing dilapidated garage which is much larger in size. The new site plan will create a more favorable site appearance.

2) Describe why it is necessary for you to obtain a variance, rather than modify your project to meet the minimum requirements of the Zoning Law:

The proposed variances are necessary because strict compliance with these sections of the ordinance are not possible due to site restrictions.

3) Is your need for a variance a result of your own actions (i.e., difficulty self-created)?

There is a need for a small storage facility on the site. The proposed storage shed will replace the much larger existing garage structure which will be demolished.

B. A TEMPORARY PERMIT/SPECIAL PERMIT IS REQUESTED FOR THE FOLLOWING REASONS:

1) __________________________________________________________

2) Describe why you feel that the temporary permit/special permit will:

a. be in harmony with the general purposes and intent of the Zoning Law;

b. not tend to depreciate the value of adjacent properties;

c. not create hazard to health, safety or general welfare;

d. not alter the essential character of the neighborhood nor be detrimental to the residents thereof;

e. not otherwise be detrimental to the public convenience and welfare.

3) If you are requesting a temporary permit:

a. how many months is your request for?

b. what is the purpose/use intended?

C. does it involve the erection or enlargement of any structure?

DOCUMENT ID NUMBER: 4180  Receipt Number: 378684  Paid: $100.00
Zoning Board of Appeals Request

C. AN INTERPRETATION OF ARTICLE ___ SECTION _______ OF THE ZONING LAW IS REQUESTED BECAUSE:

ANSWER THE FOLLOWING ADDITIONAL QUESTIONS:

1) Has a Zoning Board of Appeals request application previously been filed for the subject property? If yes, indicate date(s) of application and determination(s) made.

   NO

2) Are there any private restrictions (i.e. deed, easements) as to uses or setbacks, building lines, etc. on this property?

   NO

3) State whether Section 808 of the General Municipal Law is applicable to this application?
   (see instructional/guidelines):

   NO

4) Using the diagram box below, show property lines and actual dimensions of the lot to be built upon, the size and shape of the main building and other accessory buildings existing on the lot. Show all proposed structures and their dimensions and distances to nearest property lines and nearest on site structures. A separate site plan may be attached in lieu of the diagram box below. All applications must be accompanied by a property survey reflecting existing conditions.

   FEET

   (Indicate north arrow)

SEE ATTACHED SITE PLAN

I HEREBY SWEAR that all statements made herein are true and that all drawings submitted correctly show the situations involved in this appeal. I hereby submit the sum of $100.00 payable to pay the cost associated with this application.

STATE OF NEW YORK
COUNTY OF ERIE

Subscribed and sworn to before me
this __16th___ day of July, 2012

[Signature]

STATE OF NEW YORK
COUNTY OF ERIE

Subscribed and sworn to before me
this __16th___ day of July, 2012

[Signature]

Brian Francis Wielinski
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Sept. 10, 2017

Joseph L. Skrobac

[Signature]

DAHANNESI (PLOVA-NAMER)
D. A USE VARIANCE IS REQUESTED BECAUSE THE APPLICABLE REGULATIONS AND RESTRICTIONS HAVE CAUSED UNNECESSARY HARDSHIP AS DEMONSTRATED BY THE FOLLOWING:

1) I as applicant cannot realize a reasonable return on my property for each and every permitted use allowed in the current zoning classification as demonstrated by the accompanying financial evidence (provide financial evidence to support your arguement).

FINANCIAL EVIDENCE PROVIDED: YES ☑️ NO ☑️ (financial evidence is required as per NYS Town Law)

2) Describe why your alleged hardship relating to the subject property is unique and does not apply to other properties in the zoning district or neighborhood?


3) Describe why you believe that the essential character of the neighborhood/community will not change if the zoning Board of Appeals grants you a use variance?


4) Is your need for a variance a result of your own actions (is your difficulty self created)? Please explain.


ZONING LAW SECTIONS / BUILDING INSPECTIONS DEPARTMENT COMMENTS

Article III, Section 260-31.6(e)(3) / Article ☐ Section ☐

THE APPLICANT'S PROPOSED SHED WILL BE (4) FOUR FEET FROM THE WEST PROPERTY LINE AND (6) SIX FEET FROM THE SOUTH PROPERTY LINE, WHEREAS, THE ZONING LAW REQUIRES A MINIMUM OF (10) TEN FEET AND (20) TWENTY FEET RESPECTIVELY.

Permit Required YES ☑️

239 of Gen. Mun. Law Applies ☑️ yes ☑️ no

REVIEWED BY: DSU ☐ DATE: 7/16/2012
SITE PLAN OR ZONING REFERRAL TO COUNTY OF ERIE, NY AND REPLY TO MUNICIPALITY

The proposed action described herein is referred in accordance with the provisions of the General Municipal Law, which provides that if no reply is received in 30 days after receipt of full information including a SEQR EAF if applicable, the municipal agency may take final action without considering such reply. If, however, reply is received at any time prior to municipal Action, such reply must be considered.

Description of Proposed Action

1. Name of Municipality: Town of Cheektowaga

2. Hearing Schedule: Date 8/15/2012 Time 7 PM Location 3301 Broadway

3. Action is before: ☑ Board of Appeals

4. Action consists of: ☐ Legislative Body ☑ Rezone/Map Change ☐ Planning Board

5. Location of Property: ☑ Specific as follows 3635 Genesee Street Cheektowaga, NY

6. Referral required as Site is within 500’of: ☐ State or County Property/Institution ☑ Municipal Boundary ☐ Farm Operation located in an Agricultural District

☐ Expressway ☑ County Road ☑ State Highway ☑ Proposed State or County Road, Property, Building/Institution, Drainageway

7. Proposed change or use: (be specific) The applicant’s proposed shed will be (4) four feet from the west property line and (6) six feet from the south property line, whereas, the Zoning Law requires a minimum of (10) ten feet and (20) twenty feet respectively.

8. Other remarks: (ID#, SBL#, etc.)

9. Submitted by: Cynthia Dauscher, Senior Clerk Typist 8/02/2012

Reply to Municipality by Erie County Division of Planning

Receipt of the above-described proposed action is acknowledged on ___________. The Division herewith submits its review and reply under the provisions of applicable state and local law, based on the information submitted with this referral.

1. ☐ The proposed action is not subject to review under the law.

2. ☑ Form ZR-3, Comment on Proposed Action is attached hereto.

3. ☐ The proposed action is subject to review; the Division makes the recommendation shown on Form ZR-4, Recommendation on Proposed Action, which is attached hereto.

4. ☐ No recommendation; proposed action has been reviewed and determined to be of local concern Date ____________________________

By the Division of Planning: ____________________________

Attachment: 3635 Genesee St (ZBA-2012-56 : 3635 Genesee Street)
Whereas, Madeline Dietz has made application for a(n) Area Variance, under

ARTICLE(S): VI   SECTION(S): 260-59G(3)

of the zoning law for property located at:

255 Fonda Drive

The applicant’s proposed garage addition will cause the total square footage for all accessory structures to be (1,122) square feet in area, whereas, the Zoning Law limits all accessory structures to (750) square feet total.

Whereas, a public hearing was held on 8/15/2012 after proper notice,

Whereas, this Board, after reviewing the application, and conducting a public hearing and after due deliberation and vote of the Board,

Be it resolved, by virtue of the power vested in the Zoning Board of Appeals, this Area Variance is hereby Granted.

The application and testimony provided established that the 16 x 16 foot shed was just built. There will be no change to door of the garage. The lot is a sufficient size to appropriately handle the additional storage space. No one appeared in opposition to this application.

It was determined that the granting of this application will not create an undesirable change in the character of the neighborhood, nor is this requested area variance substantial. There has been an adequate showing that strict compliance with the zoning ordinance will result in practical difficulties to the applicant and that granting this variance will not create a substantial detriment to adjoining property owners.

In reaching this decision the Board balanced the benefit to the applicant against the detriment to the health, safety and welfare of the neighborhood community. In conducting this balancing test the Board considered the following five factors: (a) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (b) whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance; (c) whether the requested area variance is substantial; (d) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (e) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not preclude the granting of the area variance.

Dated: October 1, 2012
<table>
<thead>
<tr>
<th>RESULT:</th>
<th>GRANTED [UNANIMOUS]</th>
</tr>
</thead>
<tbody>
<tr>
<td>MOVER:</td>
<td>John Abraham, Board Member</td>
</tr>
<tr>
<td>SECONDER:</td>
<td>James Speyer, Board Member</td>
</tr>
<tr>
<td>AYES:</td>
<td>Brandon, Wiercioch, Speyer, Ptak, Abraham</td>
</tr>
</tbody>
</table>

*Note – Construction cannot begin until a building permit is applied for and approved. This decision will be automatically revoked unless a building permit is obtained within six (6) months of the date hereof and unless construction commences within one (1) year of the date hereof.*
Town of Cheektowaga  
Zoning Board of Appeals Request 
Office of Building Inspections  
Cheektowaga Town Hall  
3301 Broadway  
Cheektowaga, New York 14227  
(716) 686-3490  
888-3518 fax

Application for: (check one)  
✓ Area Variance  
☐ Temporary Permit  
☐ Special Permit (residential professional family dwellings)  
☐ Use Variance  
☐ An interpretation of the Zoning Law  
☐ Certificate of Zoning Compliance

The undersigned  

[Signature]  
Madeline Dietz  
owner of the property located at 255 Fonda Drive  
Cheektowaga, New York, hereby appeals to the Zoning Board of Appeals from the decision of the Code Enforcement Officer not to approve the above referenced property, which property is located in a Section of the Zoning District, as per the plans, data and application hereto filed and which are attached and made part of this application.

A. AN AREA VARIANCE TO THE ZONING LAW IS REQUESTED BASED ON THE FOLLOWING:

1) Describe why you believe that the character of the neighborhood/community will not change, and/or why there will not be a detriment to nearby properties if the Zoning Board of Appeals grants you a variance:

[Space for text]

2) Describe why it necessary for you to obtain a variance, rather than modify your project to meet the minimum requirements of the Zoning Law:

[Space for text]

3) Is your need for a variance a result of your own actions (is your difficulty self-created)?

[Space for text]

B. A TEMPORARY PERMIT/SPECIAL PERMIT IS REQUESTED FOR THE FOLLOWING REASONS:

1)  

[Space for text]

2) Describe why you feel that the temporary permit/special permit will:

a. be in harmony with the general purposes and intent of the Zoning Law;

[Space for text]

b. not tend to depreciate the value of adjacent property;

[Space for text]

c. not create hazard to health, safety or general welfare;

[Space for text]

d. not alter the essential character of the neighborhood nor be detrimental to the residents thereof;

[Space for text]

e. not otherwise be detrimental to the public convenience and welfare.

[Space for text]

3) If you are requesting a temporary permit:

a. how many months is your request for?

[Space for text]

b. what is the purpose / use intended?

[Space for text]

C. does it involve the erection or enlargement of any structure?

[Space for text]
C. AN INTERPRETATION OF ARTICLE _____ SECTION _______ OF THE ZONING LAW IS REQUESTED BECAUSE:


ANSWER THE FOLLOWING ADDITIONAL QUESTIONS:

1) Has a Zoning Board of Appeals request application previously been filed for the subject property? If yes, indicate date(s) of application and determination(s) made.

   No

2) Are there any private restrictions (i.e. deed, easements) as to uses or setbacks, building lines, etc. on this property?

   No

3) State whether Section 809 of the General Municipal Law is applicable to this application?

   (see instructions/guidelines).

4) Using the diagram box below, show property lines and actual dimensions of the lot to be built upon, the size and shape of the main building and other accessory buildings existing on the lot. Show all proposed structures and their dimensions and distances to nearest property lines and nearest on site structures. A separate site plan may be attached in lieu of the diagram box below. All applications must be accompanied by a property survey reflecting existing conditions.

   [Diagram with property lines and dimensions]

   Attached copy of survey

   (indicate north arrow)

   STREET

   (...feet)

   (...feet)

   (...feet)

I HEREBY SWEAR that all statements made herein are true and that all drawings submitted correctly show the situations involved in this appeal. I hereby submit the sum of $100.00 payable to pay the cost associated with this application.

STATE OF NEW YORK
COUNTY OF ERIE

Subscribed and sworn to before me this _______ day of ________, 20__.

[Signature]

NANCY M MCNALLY
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires June 30, 20__

Madeleine Dietz
255 Fonda Drive
7 Chatoa Mill 14235
(716)-955-0819
D. A USE VARIANCE IS REQUESTED BECAUSE THE APPLICABLE REGULATIONS AND RESTRICTIONS HAVE CAUSED UNNECESSARY HARDSHIP AS DEMONSTRATED BY THE FOLLOWING:

1) I as applicant cannot realize a reasonable return on my property for each and every permitted use allowed in the current zoning classification as demonstrated by the accompanying financial evidence (provide financial evidence to support your argument).

Financial Evidence Provided: YES ☐ NO ☒ (financial evidence is required as per NYS Town Law)

2) Describe why your alleged hardship relating to the subject property is unique and does not apply to other properties in the zoning district or neighborhood?

________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________________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Whereas, Cheektowaga Central School District/Cheektowaga Girls Fastpitch Softball/David Nestico has made application for a(n) Use Variance, under

ARTICLE(S): VI  SECTION(S): 260-50D(1)

of the zoning law for property located at:

SBL No. 102.06-1-26 (McNaughton Road)

The applicant desires to utilize advertising signs, whereas, the Zoning Law does not permit such signage.

Whereas, a public hearing was held on 8/15/2012 after proper notice,

Whereas, this Board, after reviewing the application, and conducting a public hearing and after due deliberation and vote of the Board,

Be it resolved, by virtue of the power vested in the Zoning Board of Appeals, this Use Variance is hereby Pending.

*Note – Construction cannot begin until a building permit is applied for and approved. This decision will be automatically revoked unless a building permit is obtained within six (6) months of the date hereof and unless construction commences within one (1) year of the date hereof.
Town of Cheektowaga
Zoning Board of Appeals Request
Office of Building Inspections
Cheektowaga Town Hall
3201 Broadway
Cheektowaga, New York 14227
(716) 686-3400 686-3516 fax

Application for: (check one)

☐ Area Variance  ☐ Temporary Permit  ☐ Special Permit (residential professionals only check)

Use Variance  ☐ An Interpretation of the Zoning Law  ☐ Certificate of Zoning Compliance

The undersigned David A. Nestico (Cheektowaga Schools, representing Cheektowaga Central School District), owner of the property located at McNaughton Rd. (SBL No. 102.06-1-26) hereby appeals to the Zoning Board of Appeals from the decision of the Code Enforcement Officer not to approve Advertising Sign on Ball Diamond Fences on the above referenced property, which property is located in a

Zoning District, as per the plans, data and application hereto filed and which are attached and made part of this application.

A. AN AREA VARIANCE TO THE ZONING LAW IS REQUESTED BASED ON THE FOLLOWING:

1) Describe why you believe that the character of the neighborhood/community will not change, and/or why there will not be a detriment to nearby properties if the Zoning Board of Appeals grants you a variance:

The softball diamonds have been cleaned up, improved actually make the neighborhood more attractive. Sign would be placed on interior fences as backstop.

2) Describe why it is necessary for you to obtain a variance, rather than modify your project to meet the minimum requirements of the Zoning Law:

In order to accomplish our goal of playing softball again our diamonds we need sponsors to defray the cost as we are a not-for-profit organization.

3) Is your need for a variance a result of your own actions (to your satisfactory request)?

No

B. A TEMPORARY PERMIT/SPECIAL PERMIT IS REQUESTED FOR THE FOLLOWING REASONS:

1) ________________________________

2) Describe why you feel that the temporary permit/special permit will:

a. be in harmony with the general purposes and intent of the Zoning Law;

b. not tend to depreciate the value of adjacent property;

c. not create hazard to health, safety or general welfare;

d. not alter the essential character of the neighborhood or be detrimental to the residents thereof;

e. not otherwise be detrimental to the public convenience and welfare.

3) If you are requesting a temporary permit:

a. how many months is your request for?

b. what is the purpose/use intended?

C. does it involve the erection or enlargement of any structure?

DOCUMENT ID NUMBER 18185

Receipt Number 37837 Paid 120
C. AN INTERPRETATION OF ARTICLE _____ SECTION ______ OF THE ZONING LAW IS REQUESTED BECAUSE:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________


ANSWER THE FOLLOWING ADDITIONAL QUESTIONS:

1) Has a Zoning Board of Appeals request application previously been filed for the subject property? If yes, indicate date(s) of application and determination(s) made.

   No

2) Are there any private restrictions (i.e. deed, easements) as to uses or setbacks, building lines, etc. on this property?

   Not to my knowledge

3) State whether Section 809 of the General Municipal Law is applicable to this application? (See instructional guidelines).

   N/A

4) Using the diagram box below, show property lines and actual dimensions of the lot to be built upon, the size and shape of the main building and other accessory buildings existing on the lot. Show all proposed structures and their dimensions and distances to nearest property lines and nearest on site structures. A separate site plan may be attached in lieu of the diagram box below. All applications must be accompanied by a property survey reflecting existing conditions.

   +

   (Indicate north arrow)

   STREET

I HEREBY SWEAR that all statements made herein are true and that all drawings submitted correctly show the situations involved in this appeal. I hereby submit the sum of $100.00 payable to the cost associated with this application.

STATE OF NEW YORK
COUNTY OF ERIE

(Handwritten Signature)

Subscribed and sworn to before me this 18th day of June, 2012.

(Notary Public)

Pamela J. Nestico
Notary Public
Erie County
My Commission Expires 1/1/15

716 (310-3235)

Packet Pg. 67

Attachment: SBL No 102.06-1-26 (ZBA-2012-58 : SBL No. 102.06-1-26 (McNaughton Road))
Zoning Board of Appeals Request

Page 3 to be completed only when a use variance is being requested

D. A USE VARIANCE IS REQUESTED BECAUSE THE APPLICABLE REGULATIONS AND RESTRICTIONS HAVE CAUSED UNNECESSARY HARDSHIP AS DEMONSTRATED BY THE FOLLOWING:

1) I as applicant cannot realize a reasonable return on my property for each and every permitted use allowed in the current zoning classification as demonstrated by the accompanying financial evidence (provide financial evidence to support your argument).

FINANCIAL EVIDENCE PROVIDED: YES ☐ NO ☐ (financial evidence is required as per NYS Town Law)

2) Describe why your alleged hardship relating to the subject property is unique and does not apply to other properties in the zoning district or neighborhood?

The property is comprised of Softball diamonds with fences surrounding the perimeter of the diamonds. The variance will allow sponsors' signs to be put on the fences. Sponsors are necessary to help defray the costs associated with the upkeep and maintenance of the diamonds.

3) Describe why you believe that the essential character of the neighborhood community will not change if the zoning Board of Appeals grants you a use variance?

These softball diamonds have been in use on and off again for in excess of 30 yrs. The adjoining neighbors are happy to see the property improved by being utilized again.

4) Is your need for a variance a result of your own actions (is your difficulty self-created)? Please explain.

☐ YES ☐ NO

ZONING LAW SECTIONS / BUILDING INSPECTIONS DEPARTMENT COMMENTS

Article VI, Section 260-50D(1) / Article ☐ Section ☐

THE APPLICANT DESIRES TO UTILIZE ADVERTISING SIGNS, WHEREAS, THE ZONING LAW DOES NOT PERMIT SUCH SIGNAGE.

Permit Required ☐ YES ☐ NO

239 of Gen. Mun. Law Applies ☒ yes ☐ no

REVIEWED BY: DJH DATE: 7/21/12

Attachment: SBL No 102.06-1-26 (ZBA-2012-58 : SBL No. 102.06-1-26 (McNaughton Road))
June 14, 2012

Town of Cheektowaga
Zoning Board of Appeals
3301 Broadway
Cheektowaga, NY 14227

Dear Board Members:

At its meeting of June 12, 2012, the Cheektowaga Central School District Board of Education authorized CGFS (Cheektowaga Girls Fastpitch Softball) to file a Zoning Board of Appeals request for the District owned property known as "Beverly Hills" which is identified on tax maps as SBL 102.06-1-26.

Sincerely,

Dennis Kane
Superintendent
## Description of Proposed Action

1. **Name of Municipality:** Town of Cheektowaga  
2. **Hearing Schedule:**  
   - **Date:** 8/15/2012  
   - **Time:** 7 PM  
   - **Location:** 3301 Broadway  
3. **Action is before:**  
   - Legislative Body  
   - Board of Appeals  
   - Planning Board  
4. **Action consists of:**  
   - New Ordinance  
   - Rezone/Map Change  
   - Ordinance Amendment  
   - Site Plan  
   - Variance  
   - Special Use Permit  
   - Other  
5. **Location of Property:**  
   - Entire Municipality  
   - Specific as follows SBL #102.06-1-26 Cheektowaga, NY  
6. **Referral required as Site is within 500’ of:**  
   - State or County Property/Institution  
   - Municipal Boundary  
   - Farm Operation located in an Agricultural District  
   - Expressway  
   - County Road  
   - State Highway  
7. **Proposed change or use:** (be specific)  
   - The applicant desires to utilize advertising signs, whereas, the Zoning Law does not permit such signage.  

## Reply to Municipality by Erie County Division of Planning

Receipt of the above-described proposed action is acknowledged on __________. The Division herewith submits its review and reply under the provisions of applicable state and local law, based on the information submitted with this referral.

1. ☐ The proposed action is not subject to review under the law.
2. ☐ Form ZR-3, Comment on Proposed Action is attached hereto.
3. ☐ The proposed action is subject to review; the Division makes the recommendation shown on Form ZR-4, Recommendation on Proposed Action, which is attached hereto.
4. ☐ No recommendation; proposed action has been reviewed and determined to be of local concern.

By the Division of Planning: ____________________________  

Date: ____________
Whereas, Robert M. Funk, Jr. has made application for a(n) Area Variance, under

**ARTICLE(S): II  SECTION(S): 260-23C(1)**

of the zoning law for property located at:

**74 Hemenway Road**

The applicant’s proposed enclosed porch will be (18.62) feet from the front property line, whereas, the Zoning Law requires a minimum of (25) twenty five feet.

Whereas, a public hearing was held on **8/15/2012** after proper notice,

Whereas, this Board, after reviewing the application, and conducting a public hearing and after due deliberation and vote of the Board,

Be it resolved, by virtue of the power vested in the Zoning Board of Appeals, this Area Variance is hereby **Granted**.

The application indicates that the proposed enclosed front porch will not be any closer to the road that the neighbor’s house to the east. No one appeared in opposition to this application.

It was determined that the granting of this application will not create an undesirable change in the character of the neighborhood, nor is this requested area variance substantial. There has been an adequate showing that strict compliance with the zoning ordinance will result in practical difficulties to the applicant and that granting this variance will not create a substantial detriment to adjoining property owners.

In reaching this decision the Board balanced the benefit to the applicant against the detriment to the health, safety and welfare of the neighborhood community. In conducting this balancing test the Board considered the following five factors: (a) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (b) whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance; (c) whether the requested area variance is substantial; (d) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (e) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not preclude the granting of the area variance.

Dated: October 1, 2012
RESULT: GRANTED [UNANIMOUS]
MOVER: James Speyer, Board Member
SECONDER: John Abraham, Board Member
AYES: Brandon, Wiercioch, Speyer, Ptak, Abraham

*Note – Construction cannot begin until a building permit is applied for and approved. This decision will be automatically revoked unless a building permit is obtained within six (6) months of the date hereof and unless construction commences within one (1) year of the date hereof.
Town of Cheektowaga
Zoning Board of Appeals Request
Office of Building Inspections
Cheektowaga Town Hall
3301 Broadway
Cheektowaga, New York 14227
(716) 886-3490 686-3516 fax

Application for: (check one)
X Area Variance  o Temporary Permit  o Special Permit (request professional to fully evaluate)
 o Use Variance  o An Interpretation of the Zoning Law  o Certificate of Zoning Compliance

The undersigned ( ) owner of the property located at 74 Hemenway Rd

Cheektowaga, New York, hereby appeals to the Zoning Board of Appeals from the decision of the Code Enforcement Officer not to approve

LOCATION OF PORCH on the above referenced property, which property is located in a

Zoning District, as per the plans, data and application hereto filed and which are attached and made part of this application.

A. AN AREA VARIANCE TO THE ZONING LAW IS REQUESTED BASED ON THE FOLLOWING:

1) Describe why you believe that the character of the neighborhood/community will not change, and/or why there will not be a detriment to nearby properties if the Zoning Board of Appeals grants you a variance:

**Enclosed Porch will not be any closer to the road than neighboring house to the east**

2) Describe why it is necessary for you to obtain a variance, rather than modify your project to meet the minimum requirements of the Zoning Law:

**Only partial location to build enclosed porch that would only expand current porch six feet additional**

3) Is your need for a variance a result of your own actions (is your difficulty self-created)?

B. A TEMPORARY PERMIT/SPECIAL PERMIT IS REQUESTED FOR THE FOLLOWING REASONS:

1) **TO BUILD ENCLOSED PORCH**

2) Describe why you feel that the temporary permit/special permit will:

   a. be in harmony with the general purposes and intent of the Zoning Law;

   **Built to code and will improve property value**

   b. not tend to depreciate the value of adjacent property;

   **Will not impact adjacent property views or line of sight**

   c. not create hazard to health, safety or general welfare;

   **Will be 25 from roadway**

   d. not alter the essential character of the neighborhood or be detrimental to the residents thereof;

   **See 2.b. above**

   e. not otherwise be detrimental to the public convenience and welfare.

   **See 2.c. above**

3) If you are requesting a temporary permit:

   a. how many months is your request for?

   **6 months**

   b. what is the purpose/use intended?

   **Enclosed Porch**

   C. Does it involve the erection or enlargement of any structure?

   **Yes 22' x 10' by 12' deep**
C. AN INTERPRETATION OF ARTICLE _____ SECTION _____ OF THE ZONING LAW IS REQUESTED BECAUSE:

ANSWER THE FOLLOWING ADDITIONAL QUESTIONS:

1) Has a Zoning Board of Appeals request application previously been filed for the subject property? If yes, indicate date(s) of application and determination(s) made.

   NO

2) Are there any private restrictions (i.e. covenants, easements) as to uses or setbacks, building lines, etc. on this property?

   NO

3) State whether Section 909 of the General Municipal Law is applicable to this application? (see instructions/guidelines).

   NO

4) Using the diagram box below, show property lines and actual dimensions of the lot to be built upon, the size and shape of the main building and other accessory buildings existing on the lot. Show all proposed structures and their dimensions and distances to nearest property lines and nearest on site structures. A separate site plan may be attached in lieu of the diagram box below. All applications must be accompanied by a properly survey reflecting existing conditions.

---

I HEREBY SWORE that all statements made herein are true and that all drawings submitted correctly show the situations involved in this appeal. I hereby submit the sum of $100.00 payable to the cost associated with this application.

STATE OF NEW YORK
COUNTY OF ERIE

Subscribed and sworn to before me this 24th day of July, 2012

VANCE M. MCNALLY

VETERINARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires June 30, 2015

ROBERT FUNK JR.

74 HEMENWAY RD.

CHEQUE TO WAUSAU NS. 14225
716 491 3541
Zoning Board of Appeals Request

Page 3

Page 3 to be completed only when a use variance is being requested

D. A USE VARIANCE IS REQUESTED BECAUSE THE APPLICABLE REGULATIONS AND RESTRICTIONS HAVE CAUSED UNNECESSARY HARDSHIP AS DEMONSTRATED BY THE FOLLOWING:

1) I as applicant cannot realize a reasonable return on my property for each and every permitted use allowed in the current zoning classification as demonstrated by the accompanying financial evidence (provide financial evidence to support your argument).

FINANCIAL EVIDENCE PROVIDED: YES ☐ NO ☐ (Financial evidence is required as per NYS Town Law)

2) Describe why your alleged hardship relating to the subject property is unique and does not apply to other properties in the zoning district or neighborhood?

3) Describe why you believe that the essential character of the neighborhood/community will not change if the zoning Board of Appeals grants you a use variance?

4) Is your need for a variance a result of your own actions (is your difficulty self-created)? Please explain.

---

ZONING LAW SECTIONS / BUILDING INSPECTIONS DEPARTMENT COMMENTS

Article II, Section 260-23C(1) / Article , Section

THE APPLICANT'S PROPOSED ENCLOSED PORCH WILL BE (18.62) FEET FROM THE FRONT PROPERTY LINE, WHICH IS THE ZONING LAW REQUIRES A MINIMUM OF (25) THIRTY FIVE FEET.

Permit Required ☐ on file

239 of Gen. Mun. Law Applies ☐ yes ☐ no

REVIEWED BY: DATE: 7/24/12
Whereas, Benderson Development Company, LLC/James A. Boglioli has made application for an Area Variance, under

| ARTICLE(S): | III | SECTION(S): 260-31C(1) |
| ARTICLE(S): | V   | SECTION(S): 260-51D(2) |
| ARTICLE(S): | V   | SECTION(S): 260-59C(2) |
| ARTICLE(S): | VI  | SECTION(S): 260-51D(1) |

of the zoning law for property located at:

3700 Harlem Road

The applicant’s proposed building will be (3.28) feet from the front property line, whereas, the Zoning Law requires (50) fifty feet, and the applicant’s parking area will be (0.86) feet from the front exterior property line and a minimum of (8) eight feet from a rear property line, whereas, the Zoning Law requires (25) twenty five feet and (10) ten feet respectively. The applicant’s project will provide (2.6%) interior green space, whereas, the Zoning Law requires (5%) five percent minimum.

Whereas, a public hearing was held on 8/15/2012 after proper notice,

Whereas, this Board, after reviewing the application, and conducting a public hearing and after due deliberation and vote of the Board,

Be it resolved, by virtue of the power vested in the Zoning Board of Appeals, this Area Variance is hereby Granted.

The application and testimony provided indicates that when NYS developed traffic circle they took a piece of the property and caused a curved front. The eight foot setback is only for a small portion. Overall green space is almost double what is required. Applicant cannot develop property without the variances. Variances are for both buildings. One building is going up now and next one will be constructed when a tenant is found. The Planning Board approved this project. No one appeared in opposition to this application.

It was determined that the granting of this application will not create an undesirable change in the character of the neighborhood, nor is this requested area variance substantial. There has been an adequate showing that strict compliance with the zoning ordinance will result in practical difficulties to the applicant and that granting this variance will not create a substantial detriment to adjoining property owners.

In reaching this decision the Board balanced the benefit to the applicant against the detriment to the health, safety and welfare of the neighborhood community. In conducting this balancing test the Board considered the following five factors: (a) whether an undesirable change will be
produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variances; (b) whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance; (c) whether the requested area variances are substantial; (d) whether the proposed variances will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (e) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not preclude the granting of the area variance.

Dated: October 1, 2012

RESULT: GRANTED [UNANIMOUS]
MOVER: James Speyer, Board Member
SECONDER: John M. Ptak, Board Member
AYES: Brandon, Wiercich, Speyer, Ptak, Abraham

*Note – Construction cannot begin until a building permit is applied for and approved. This decision will be automatically revoked unless a building permit is obtained within six (6) months of the date hereof and unless construction commences within one (1) year of the date hereof.
Town of Cheektowaga
Zoning Board of Appeals Request
Office of Building Inspections
Cheektowaga Town Hall
3301 Broadway
Cheektowaga, New York 14227  (716) 686-3490  666-3510 fax

Application for: (check one)

☒ Area Variance  ☐ Temporary Permit  ☐ Special Permit (includes public or private family dwelling)
☐ Use Variance  ☐ An Interpretation of the Zoning Law  ☐ Certificate of Zoning Compliance

The undersigned ___________________________, owner of the property located at 3700 Harlem Road, representing
Benderson Development Co. LLC

Cheektowaga, New York, hereby appeals to the Zoning Board of Appeals from the decision of the Code Enforcement Officer not to approve

Harlem / Claramunt on the above referenced property, which property is located in a
C Zone District, as per the plans, data and application hereo filed and which are attached and made part of this application.

A. AN AREA VARIANCE TO THE ZONING LAW IS REQUESTED BASED ON THE FOLLOWING:

1) Describe why you believe that the character of the neighborhood/community will not change, and/or why there will not be a detriment to nearby properties if the Zoning Board of Appeals grants you a variance:

See Attached

2) Describe why it is necessary for you to obtain a variance, rather than modify your project to meet the minimum requirements of the Zoning Law:

See Attached

3) Is your need for a variance a result of your own actions (is your difficulty self-created)?

See Attached

B. A TEMPORARY PERMIT/SPECIAL PERMIT IS REQUESTED FOR THE FOLLOWING REASONS:

1)

2) Describe why you feel that the temporary permit/special permit will:
   a. be in harmony with the general purposes and intent of the Zoning Law;
   b. not tend to depreciate the value of adjacent property;
   c. not create hazard to health, safety or general welfare;
   d. not alter the essential character of the neighborhood nor be detrimental to the residents thereof;
   e. not otherwise be detrimental to the public convenience and welfare.

3) If you are requesting a temporary permit:
   a. how many months is your request for?
   b. what is the purpose / use intended?

   C. does it involve the erection or enlargement of any structure?
C. AN INTERPRETATION OF ARTICLE _____ SECTION _______ OF THE ZONING LAW IS REQUESTED BECAUSE:


ANSWER THE FOLLOWING ADDITIONAL QUESTIONS:

1) Has a Zoning Board of Appeals request application previously been filed for the subject property? If yes, indicate date(s) of application and determination(s) made.

   No

2) Are there any private restrictions (i.e. deed, easements) as to uses or setbacks, building lines, etc. on this property?

   Unknown

3) State whether Section 803 of the General Municipal Law is applicable to this application?
   (see instructions/guidelines).

   No

4) Using the diagram box below, show property lines and actual dimensions of the lot to be built upon, the size and shape of the main building and other accessory buildings existing on the lot. Show all proposed structures and their dimensions and distances to nearest property lines and nearest on site structures. A separate site plan may be attached in lieu of the diagram box below. All applications must be accompanied by a property survey reflecting existing conditions.

   [Diagram with dimensions and property lines]

   See attached

I HEREBY SWEAR that all statements made herein are true and that all drawings submitted correctly show the situations involved in this application. I hereby submit the sum of $100.00 payable to pay the cost associated with this application.

STATE OF NEW YORK
COUNTY OF ERIE

Subscribed and sworn to before me this 22d day of Feb., 2010

[Signature]

NANCY M. McGARTY
NOTARY PUBLIC
STATE OF NEW YORK
(CERTIFIED IN THE COUNTY)
Zoning Board of Appeals Request

Page 3 to be completed only when a use variance is being requested

D. A USE VARIANCE IS REQUESTED BECAUSE THE APPLICABLE REGULATIONS AND RESTRICTIONS HAVE CAUSED UNNECESSARY HARDSHIP AS DEMONSTRATED BY THE FOLLOWING:

1) I as applicant cannot realize a reasonable return on my property for each and every permitted use allowed in the current zoning classification as demonstrated by the accompanying financial evidence (provide financial evidence to support your argument).

FINANCIAL EVIDENCE PROVIDED: ☐ YES  ☐ NO  (financial evidence is required as per NYS Town Law)

2) Describe why your alleged hardship relating to the subject property is unique and does not apply to other properties in the zoning district or neighborhood?

3) Describe why you believe that the essential character of the neighborhood/community will not change if the zoning Board of Appeals grants you a use variance?

4) Is your need for a variance a result of your own actions (is your difficulty self created)? Please explain.

BUILDING INSPECTIONS DEPARTMENT COMMENTS

The applicant’s proposed building will be (8.28) feet from the front property line, whereas, the zoning law requires (50) fifty feet, and the applicant’s parking area will be (0.86) feet from the front (existing) property line and a minimum of (8) eight feet from a rear property line, whereas, the zoning law requires (25) feet and (10) ten feet respectively. The applicant’s project will provide 2.6% interior green space whereas the zoning law requires 5% minimum.

Permit Required ☒

239 of Gen. Mun. Law Applies ☒ yes  ☐ no

REVIEWED BY:  DSU  DATE: 2/1/10
June 15, 2012

Chairman and Members of the Zoning Board of Appeals
Town of Cheektowaga
Cheektowaga Town Hall
3301 Broadway
Cheektowaga, New York 14227

Re: Application of Benderson Development Company, LLC
for Area Variances
Premises: 3700 Harlem Road

Dear Chairman and Members of the Zoning Board of Appeals:

Benderson Development Company, LLC ("Benderson") submitted applications to the Town to permit the construction of a 2,962 s.f. bank with three (3) drive-thru lanes and a 3,010 s.f. retail building, with associated site improvements, at the above-referenced premises.

Initially, in May 2006, this property was the subject of a taking by the NYSDOT in order to construct the roundabout. As part of that construction, the NYSDOT took approximately 8,700 s.f. of the property. The result was a smaller parcel with a front lot line that is curved, making the property more difficult to develop.

With respect to the site plan, the site has been designed so that the buildings are arranged along the frontage on both Harlem Road and Cleveland Drive, with the parking to the side and rear of the buildings. While this generates the need for variances, the site has been designed to comply with the Traditional Neighborhood Development zoning under consideration by the Town for this area. As demonstrated by the building elevation and rendering, the retail building has been designed to take into account the residential development on Woofcliffe Terrace and utilizes traditional materials, peaked roofs and a varying facade. On June 14, 2012, the application was presented to the Town Planning Board who recommended approval of the site plan.

As a result of the taking and the proposed Traditional Neighborhood Development regulations currently under review by the Town, Benderson respectfully requests the following variance relief:

<table>
<thead>
<tr>
<th>Code Section</th>
<th>Description</th>
<th>Required</th>
<th>Provided</th>
</tr>
</thead>
<tbody>
<tr>
<td>§260-31-C(1)</td>
<td>Front Building Set back</td>
<td>50'</td>
<td>3.28</td>
</tr>
<tr>
<td>§260-51-D(2)</td>
<td>Front Parking Setback</td>
<td>25'</td>
<td>0.86</td>
</tr>
<tr>
<td>§260-51-D(2)</td>
<td>Rear Parking Setback</td>
<td>10'</td>
<td>8'</td>
</tr>
<tr>
<td>§260-59-C(2)</td>
<td>Exterior Side Parking Setback</td>
<td>25'</td>
<td>5.44'</td>
</tr>
<tr>
<td>§260-51-D(1)</td>
<td>Interior Greenspace</td>
<td>5%</td>
<td>2.6%</td>
</tr>
</tbody>
</table>
The Town Law §267-b(3) Balancing Test

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

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

   As noted above, Benderson is in the process of redeveloping the above-referenced property. The property is presently vacant. Initially, it must be remembered that the main reason that a majority of the variances are being requested is as a result of the proposed Traditional Neighborhood Development zoning which requires that the buildings be located along the street.

   The proposed bank and retail building will result in an improvement to the existing conditions, with approximately 29% of the property being utilized as greenspace, where the requirement is only 15%. As demonstrated by the enclosed site plan, significant landscaping and greenspace has been added to buffer the project from the residential dwellings to the rear of the property. Additionally the retail building has been designed to take into account the residential development on Woofcliffe Terrace and utilizes traditional materials, peaked roofs and a varying façade, such that the entire building has a pleasing appearance and conforms to other buildings in the area.

   Based on the improvements to the property, as well has the fact that the site has been designed to comply with the proposed Traditional Neighborhood Development zoning, no undesirable change in area character would occur by granting the requested variance relief.

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

   Without the sought-after variance, Benderson will be unable to construct the project. Based on a combination of the NYS DOT taking, which not only reduced the size of the property but created a curved front lot line, and the proposed Traditional Neighborhood Development zoning there is no way to develop the site without the requested variance relief.

The request is not substantial based on the fact that when the proposed Traditional Neighborhood Development zoning is adopted by the Town a majority of the variances will not be required. The Court stated in Matter of Easy Home Program v. Trotta, 276 A.D.2d 553 (2d Dept. 2000), that the fact that a variance may seem substantial on paper does not justify the denial of an application if there is no demonstrated harm to the community. In the present case, the variance presents no harm to the community as the majority of the project complies with the Traditional Neighborhood Development zoning that will be adopted, the elevation is compatible with the surrounding neighborhood and a significant landscape buffer is provided for the majority of the rear lot line.

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

Simply because a variance may seem noteworthy on paper does not mean that any “harm” would be generated on the surrounding community, and it is “harm” that is balanced against the interest of the applicant according to the Town Law § 267b(3) test. When one looks at the current matter, and the fact that when the proposed Traditional Neighborhood Development zoning is adopted the majority of the variance relief will not be required, the variance relief is not substantial.

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

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

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

Town Law § 267b(3) explicitly states that a self-created hardship is not by itself a sufficient basis to deny an area variance application. Initially, it is Bendersson’s opinion that the hardship is not self-created due to the fact that the variances are being requested as a result of the NYSDOT taking and in order to comply with the proposed Traditional Neighborhood Development.

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

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

**Conclusion**

In conclusion, the approval of the requested variances will not result in any detriment to the surrounding community. As demonstrated by the visual renderings submitted in connection with this application, we are proposing a highly attractive building and landscaping. Based on the application of the Town Law balancing test, we respectfully request that the Zoning Board approve the application. Should you have any questions, please do not hesitate to contact me by phone at (716) 878-9626 or by e-mail at JamesBoglioli@Benderson.com.

Sincerely,

BENDERSO DEVELOPMENT COMPANY, LLC

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

Enc.
# Appendix C
## State Environmental Quality Review
### SHORT ENVIRONMENTAL ASSESSMENT FORM
**For UNLISTED ACTIONS Only**

### PART I - PROJECT INFORMATION (To be completed by Applicant or Project Sponsor)

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<tr>
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<tbody>
<tr>
<td>1. APPLICANT/SPONSOR</td>
<td>2. PROJECT NAME</td>
</tr>
<tr>
<td>Benderson Development Company, LLC</td>
<td>Harlem &amp; Cleveland</td>
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<td>3. PROJECT LOCATION:</td>
<td></td>
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<tr>
<td>Municipality</td>
<td>Town of Cheektowaga</td>
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<tr>
<td>County</td>
<td>Erie</td>
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<td>4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map)</td>
<td></td>
</tr>
<tr>
<td>Southwest corner of Harlem Road and Cleveland Drive, Town of Cheektowaga, County of Erie. Woodcliffe Terrace abuts the property to the south.</td>
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<tr>
<td>5. PROPOSED ACTION IS:</td>
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<tr>
<td>☑ New</td>
<td>☐ Expansion</td>
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<tr>
<td>6. DESCRIBE PROJECT BRIEFLY:</td>
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<tr>
<td>Construction of a 2,962 s.f. bank with three (3) drive-thru lanes and a 3,010 s.f. retail building, with associated site improvements, at the above-referenced premises. The project includes curb-cuts on Cleveland Road and Harlem Road.</td>
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<td>7. AMOUNT OF LAND AFFECTED:</td>
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<tr>
<td>Initially</td>
<td>.055 acres</td>
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<td>Ultimately</td>
<td>.058 acres</td>
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<td>8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS?</td>
<td></td>
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<tr>
<td>☑ Yes</td>
<td>☐ No</td>
</tr>
<tr>
<td>If No, describe briefly:</td>
<td>Area variances will be required</td>
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<tr>
<td>9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT?</td>
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<tr>
<td>☑ Residential</td>
<td>☐ Industrial</td>
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<td>10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)?</td>
<td></td>
</tr>
<tr>
<td>☑ Yes</td>
<td>☐ No</td>
</tr>
<tr>
<td>If Yes, list agency(s) name and permit/approval:</td>
<td>Building/sign permit from the Town of Cheektowaga</td>
</tr>
<tr>
<td>Curb-cut approval from NYSDOT and Erie County DPW</td>
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<tr>
<td>11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL?</td>
<td></td>
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<tr>
<td>☑ Yes</td>
<td>☐ No</td>
</tr>
<tr>
<td>If Yes, list agency(s) name and permit/approval:</td>
<td></td>
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<tr>
<td>12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION?</td>
<td></td>
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<tr>
<td>☐ Yes</td>
<td>☑ No</td>
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**If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment.**

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**Signature:**

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<tbody>
<tr>
<td>Applicant/sponsor name:</td>
<td>Benderson (James Boglioli, Esq, Director of Right to Build)</td>
</tr>
<tr>
<td>Date:</td>
<td>June 15, 2012</td>
</tr>
</tbody>
</table>

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**Packet Pg. 86**
PART II - IMPACT ASSESSMENT (To be completed by Lead Agency)

A. DOES ACTION EXCEED ANY TYPE I THRESHOLD IN 6 NYCRR, PART 617.47? If yes, coordinate the review process and use the FULL EAF.
- Yes  [ ]
- No   [ ]

B. WILL ACTION RECEIVE COORDINATED REVIEW AS PROVIDED FOR UNLISTED ACTIONS IN 6 NYCRR, PART 617.67? If No, a negative declaration may be superseded by another involved agency.
- Yes  [ ]
- No   [ ]

C. COULD ACTION RESULT IN ANY ADVERSE EFFECTS ASSOCIATED WITH THE FOLLOWING: (Answers may be handwritten, if legible)

C1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic pattern, solid waste production or disposal, potential for erosion, drainage or flooding problems? Explain briefly:

C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly:

C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly:

C4. A community’s existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources? Explain briefly:

C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly:

C6. Long term, short term, cumulative, or other effects not identified in C1-C5? Explain briefly:

C7. Other Impacts (including changes in use of either quantity or type of energy)? Explain briefly:

D. WILL THE PROJECT HAVE AN IMPACT ON THE ENVIRONMENTAL CHARACTERISTICS THAT CAUSED THE ESTABLISHMENT OF A CRITICAL ENVIRONMENTAL AREA (CEA)?
- Yes  [ ]
- No   [ ]
If Yes, explain briefly:

E. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS?
- Yes  [ ]
- No   [ ]
If Yes, explain briefly:

PART III - DETERMINATION OF SIGNIFICANCE (To be completed by Agency)

INSTRUCTIONS: For each adverse effect identified above, determine whether it is substantial, large, important or otherwise significant. Each effect should be assessed in connection with its (a) setting (i.e. urban or rural); (b) probability of occurring; (c) duration; (d) irreversibility; (e) geographic scope; and (f) magnitude. If necessary, add attachments or reference supporting materials. Ensure that explanations contain sufficient detail to show that all relevant adverse impacts have been identified and adequately addressed. If question D of Part II was checked yes, the determination of significance must evaluate the potential impact of the proposed action on the environmental characteristics of the CEA.

☐ Check this box if you have identified one or more potentially large or significant adverse impacts which MAY occur. Then proceed directly to the FULL EAF and/or prepare a positive declaration.

☐ Check this box if you have determined, based on the information and analyses above and any supporting documentation, that the proposed action WILL NOT result in any significant adverse environmental impacts AND provide, on attachments as necessary, the reasons supporting this determination.

Name of Lead Agency

Print or Type Name of Responsible Officer in Lead Agency

Signature of Responsible Officer in Lead Agency

Date

Title of Responsible Officer

Signature of Preparer (If different from responsible officer)

June 15, 2012
The proposed action described herein is referred in accordance with the provisions of the General Municipal Law, which provides that if no reply is received in 30 days after receipt of full information including a SEQR EAF if applicable, the municipal agency may take final action without considering such reply. If, however, reply is received at any time prior to municipal Action, such reply must be considered.

### Description of Proposed Action

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<table>
<thead>
<tr>
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<tbody>
<tr>
<td><strong>1. Name of Municipality:</strong></td>
<td>Town of Cheektowaga</td>
</tr>
</tbody>
</table>
| **2. Hearing Schedule:** | Date: 8/15/2012  
Time: 7 PM  
Location: 3301 Broadway |
| **3. Action is before:** | Legislative Body  
Board of Appeals  
Planning Board |
| **4. Action consists of:** | New Ordinance  
Rezone/Map Change  
Ordinance Amendment  
Site Plan  
Variance  
Special Use Permit  
Other |
| **5. Location of Property:** | Entire Municipality  
Specific as follows: 3700 Harlem Road  
Cheektowaga, NY |
| **6. Referral required as Site is within 500' of:** | State or County Property/Institution  
Municipal Boundary  
Farm Operation located in an Agricultural District  
Expressway  
County Road  
State Highway  
Proposed State or County Road, Property, Building/Institution, Drainageway |
| **7. Proposed change or use: (be specific)** | The applicant’s proposed building will be (3.28) feet from the front property line, whereas, the Zoning Law requires (50) fifty feet, and the applicant’s parking area will be (0.86) feet from the front exterior property line and a minimum of (8) eight feet from a rear property line, whereas, the Zoning Law requires (25) twenty five feet and (10) ten feet respectively. The applicant’s project will provide (2.6%) interior green space, whereas, the Zoning Law requires (5%) five percent minimum. |
| **8. Other remarks: (ID#, SBL#, etc.)** |   |
| **9. Submitted by:** | Cynthia Dauscher, Senior Clerk Typist  
3301 Broadway, Cheektowaga, New York 14227  
I8/02/2012 |

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**Reply to Municipality by Erie County Division of Planning**

Receipt of the above-described proposed action is acknowledged on ___________. The Division herewith submits its review and reply under the provisions of applicable state and local law, based on the information submitted with this referral.

1. The proposed action is not subject to review under the law.

2. Form ZR-3, Comment on Proposed Action is attached hereto.

3. The proposed action is subject to review; the Division makes the recommendation shown on Form ZR-4, Recommendation on Proposed Action, which is attached hereto.

4. No recommendation; proposed action has been reviewed and determined to be of local concern

By the Division of Planning: ____________________________  
Date: ____________________________

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Whereas, Joseph Biondolillo/Otto’s Restaurant has made application for an Area Variance, under

**ARTICLE(S): VII**  
**SECTION(S): 260-62**

of the zoning law for property located at:

**3972 Union Road**

The applicant desires to enlarge/expand his nonconforming use (restaurant) by constructing a (1,000) square foot accessory storage garage, whereas, the Zoning Law only permits the expansion of a nonconforming building (not the construction of a new building).

Whereas, a public hearing was held on 8/15/2012 after proper notice,

Whereas, this Board, after reviewing the application, and conducting a public hearing and after due deliberation and vote of the Board,

Be it resolved, by virtue of the power vested in the Zoning Board of Appeals, this Area Variance is hereby Granted.

This matter originally came before the Board on May 16, 2012 and by Decision dated May 30, 2012 the Board granted Applicant an area variance to allow for the expansion of the existing garage that is presently located on the adjacent lot so that it would be only four (4) feet from the side or northerly property line. On August 15, 2012 the matter came before the Board again to reconsider its May 30, 2012 decision as to whether that filed decision correctly stated what the Board actually decided.

Town Law § 267, Subdivision 12 specifically states that any motion for the Zoning Board of Appeals to hold a rehearing to review any order, decision or determination of the board not previously reheard may be made by any member of the board. A unanimous vote of all members of the board then present is required for such rehearing to occur. Pursuant to Town Law § 267, Subdivision 12, a motion was made and a vote was taken at the August 15, 2012 meeting of the Cheektowaga Zoning Board of Appeals as to whether it would hold a rehearing to review the application initially heard at May 16, 2012 Board meeting. The entire Zoning Board of Appeals was present for that vote and the Board unanimously voted to rehear that application. The Board then proceeded to rehear and review that application. The Applicant was present at the August 15, 2012 meeting and no one appeared or spoke in opposition to having this matter reheard and reconsidered.

The Board noted that the Applicant operates a non-conforming use (restaurant) in a neighborhood services district. He had requested both a use variance and an area variance. The use variance pertained to constructing a new 1000 square foot storage garage and expanding and converting an existing residential garage on an adjacent lot to an ice cream
stand. The zoning law restricts expansion of non-conforming uses. An area variance was requested because the Applicant’s proposed new garage and the proposed expansion to the existing garage would bring those garages to between four and five feet from the side and rear property lines whereas the Zoning Law requires a twenty foot minimum.

At the Board meeting held on May 16, 2012 there was discussion about what an applicant must show to be granted a use variance. Generally speaking, there must be a showing that applicable zoning regulations and restrictions have caused unnecessary hardship. The applicant must show there is no reasonable return from the permitted use, the alleged hardship relating to the property is unique, the requested use variance will not alter the essential character of the neighborhood and the alleged hardship is not self-created. Following this discussion, the Applicant stated he was withdrawing his request for a use variance for the proposed ice cream stand and possibly applying for a change in zoning. The remaining issue to be decided was whether the Applicant would be granted an area variance.

While at the May 16, 2012 meeting the Board did grant an area variance for storage/garage use, the filed decision incorrectly granted an area variance that allowed the Applicant to expand the existing garage that was located on the lot adjacent to the lot the existing restaurant is located on so that it would be only four (4) feet from the northerly property line. The decision should have stated that the Applicant was granted an area variance to construct a new storage garage on the main parcel where the existing restaurant is located so that it would be only five (5) feet from the northerly and westerly property lines.

The Board therefore hereby amends the May 30, 2012 by granting Applicant an area variance to construct a new storage garage on the main parcel where the existing restaurant is located so that it would be only five (5) feet from the rear property line. That new storage garage can be used only as an accessory structure for parking and storage of vehicles, equipment, etc., used to maintain that property. In his application, the Applicant specifically stated that he needed more storage for his plow truck, snow blowers, riding mower and other equipment used to maintain this property. This area variance is granted on the condition that Applicant must obtain site plan approval from the Town Board pursuant to Zoning Ordinance § 260-47.1. The requested relief for an area variance to expand the garage on the adjacent parcel is denied.

It was determined that the granting of the area variance to allow for the construction of the proposed garage under the above stated condition will not create an undesirable change in the character of the neighborhood, nor is this requested area variance substantial. There has been an adequate showing that strict compliance with the zoning ordinance will result in practical difficulties to the applicant and that granting this variance will not create a substantial detriment to adjoining property owners. No other relief is granted other than this expansion of the existing garage which cannot be used for any non-conforming uses.

In reaching this decision the Board balanced the benefit to the applicant against the detriment to the health, safety and welfare of the neighborhood community. In conducting this balancing test the Board considered the following five factors: (a) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (b) whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance; (c) whether the requested area variance is substantial; (d) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (e) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not preclude the
granting of the area variance.

Dated: August 22, 2012

<table>
<thead>
<tr>
<th>RESULT:</th>
<th>GRANTED [UNANIMOUS]</th>
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<tbody>
<tr>
<td>MOVER:</td>
<td>James Speyer, Board Member</td>
</tr>
<tr>
<td>SECONDER:</td>
<td>Jane Wiercioch, Board Member</td>
</tr>
<tr>
<td>AYES:</td>
<td>Brandon, Wiercioch, Speyer, Ptak, Abraham</td>
</tr>
</tbody>
</table>

*Note – Construction cannot begin until a building permit is applied for and approved. This decision will be automatically revoked unless a building permit is obtained within six (6) months of the date hereof and unless construction commences within one (1) year of the date hereof.
Town of Cheektowaga
Zoning Board of Appeals Request

Office of Building Inspection
Cheektowaga Town Hall
3801 Broadway
Cheektowaga, New York 14227
(716) 888-3400 686-3518 fax

Application for: (check one)

☐ Area Variance ☐ Temporary Permit ☐ Special Permit ( excuse/permission specific activity/service)
☐ Use Variance ☐ An Interpretation of the Zoning Law ☐ Certificate of Zoning Compliance

The undersigned:  JOSEPH BIANCOLO

1317 O'TOOLE'S RESTAURANT, owner of the property located at 3972 UNION RD.

Cheektowaga, New York, hereby appeals to the Zoning Board of Appeals for the section of the Code Enforcement Officer not to approve the construction of O'TOOLE'S RESTAURANT, as per the plans, site and application herein filed and which are attached and made part of this application.

AN AREA VARIANCE TO THE ZONING LAW IS REQUESTED BASED ON THE FOLLOWING:

3) Describe why you believe that the character of the neighborhood/community will not change, and/or why there will not be a detriment to nearby properties if the Zoning Board of Appeals grants you a variance:

Will be close to back of existing office and adjacent property. Built to code & to blend in with rest of the neighborhood.

4) Describe why it is necessary for you to obtain a variance, rather than modify your project to meet the minimum requirements of the Zoning Law:

2nd floor not properly zoned for use.

5) Is your need for a variance a result of your own actions or (is your difficulty self-created)?

Storage/office for new tech, snowplow, signage, upstairs house & room to upkeep property, signage on roof & sidewalks.

9. A TEMPORARY PERMIT/SPECIAL PERMIT IS REQUESTED FOR THE FOLLOWING REASONS:

3) Describe why you feel that the temporary permit/special permit will:

a. be in harmony with the general purposes and intent of the Zoning Law;

b. not tend to depreciate the value of adjacent property;

c. not create hazard to health, safety or general welfare;

d. not alter the essential character of the neighborhood nor be detrimental to the residents thereof;

a. not otherwise be detrimental to the public convenience and welfare.

3) If you are requesting a temporary permit:

a. how many months is your request for?

b. what is the purpose I use intended?

C. does it involve the erection or enlargement of any structure?
Zoning Board of Appeals Request

C. AN INTERPRETATION OF ARTICLE _____ SECTION _______ OF THE ZONING LAW IS REQUESTED BECAUSE:

__________________________________________________________________________

__________________________________________________________________________

ANSWER THE FOLLOWING ADDITIONAL QUESTIONS:

1) Has a Zoning Board of Appeals request application previously been filed for the subject property? If yes, indicate date(s) of application and denial/allowance made.

   NO

2) Are there any private restrictions (e.g., deed, easements) as to uses or setbacks, building lines, etc., on this property?

   NONE

3) State whether Section 809 of the General Municipal Law is applicable to this application:

   YES

4) Using the diagram box below, show property lines and actual dimensions of the lot to be built upon, the size and shape of the main building and other accessory buildings existing on the lot. Show all proposed structures and their dimensions and distances to relevant property lines and nearest on-site structures. A separate site plan may be attached in lieu of the diagram box below. All applications must be accompanied by a property survey reflecting existing conditions.

   [Diagram]

STATE OF NEW YORK

COUNTY OF ERIE

Subscribe and sworn to before this _______ day of ________, 20__

NANCY M. MCNALLY
NOTARY PUBLIC STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires June 30, 20__

__________________________________________

Joseph Biordiello
3972 Union Rd.
(Area Code) 716-632-2035

Joseph Biordiello
397 Union Rd.
(Area Code) 716-632-2035

Packet Pg. 95
Page 3 to be completed only when a use variance is being requested

D. A USE VARIANCE IS REQUESTED BECAUSE THE APPLICABLE REGULATIONS AND RESTRICTIONS HAVE CAUSED UNNECESSARY HARDSHIP AS DEMONSTRATED BY THE FOLLOWING:

1) I as applicant cannot realize a reasonable return on my property for each and every permitted use allowed in the current zoning classification as demonstrated by the accompanying financial evidence (provide financial evidence to support your argument).

FINANCIAL EVIDENCE PROVIDED: YES ☐ NO ☐ (Financial evidence is required as per NYS Town Law)

2) Describe why your alleged hardship relating to the subject property is unique and does not apply to other properties in the zoning district or neighborhood?


3) Describe why you believe that the essential character of the neighborhood/community will not change if the zoning Board of Appeals grants you a use variance?


4) Is your need for a variance a result of your own actions (is your difficulty self-created)? Please explain.


ZONING LAW SECTIONS / BUILDING INSPECTIONS DEPARTMENT COMMENTS

Article VII, Section 260-G/7 / Article ____, Section __________

THE APPLICANT DESIRES TO ENLARGE/EXPAND HIS
NON-CORRESPONDING USE (RESTAURANT) BY CONSTRUCTING A
1,000 S.F. ACCESSORY STORAGE GARAGE, WHEREAS, THE
ZONING LAW ONLY PERMITS THE EXPANSION OF A
NON-CORRESPONDING BUILDING (NOT THE CONSTRUCTION OF A
NEW BUILDING).

Permit Required YES ☑ NO ☐
239 of Gen. Mun. Law Applies X yes ☐ no

REVIEWED BY: __________ DATE: 01/12/12
The proposed action described herein is referred in accordance with the provisions of the General Municipal Law, which provides that if no reply is received in 30 days after receipt of full information including a SEQR EAF if applicable, the municipal agency may take final action without considering such reply. If, however, reply is received at any time prior to municipal Action, such reply must be considered.

**Description of Proposed Action**

1. Name of Municipality: Town of Cheektowaga

2. Hearing Schedule: Date: 8/15/2012, Time: 7 PM, Location: 3301 Broadway

3. Action is before: □ Legislative Body, ■ Board of Appeals, □ Planning Board, □ Ordinance Amendment

4. Action consists of: □ New Ordinance, □ Rezone/Map Change, □ Rezone/Map Change, □ Other

5. Location of Property: □ Entire Municipality, ■ Specific as follows, 3972 Union Road, Cheektowaga NY

6. Referral required as Site is within 500’ of: □ State or County Property/Institution, □ Municipal Boundary, □ Farm Operation located in an Agricultural District, □ Proposed State or County Road, Property, Building/Institution, Drainageway

7. Proposed change or use: (be specific) The applicant desires to enlarge/expand his nonconforming use (restaurant) by constructing a (1,000) square foot accessory storage garage, whereas, the Zoning Law only permits the expansion of a nonconforming building (not the construction of a new building).

8. Other remarks: (ID#, SBL#, etc.)

9. Submitted by: Cynthia A. Dauscher, Senior Clerk typist, 08/02/2012

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**Reply to Municipality by Erie County Division of Planning**

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1. □ The proposed action is not subject to review under the law.

2. □ Form ZR-3, Comment on Proposed Action is attached hereto.

3. □ The proposed action is subject to review; the Division makes the recommendation shown on Form ZR-4, Recommendation on Proposed Action, which is attached hereto.

4. □ No recommendation; proposed action has been reviewed and determined to be of local concern

By the Division of Planning: ____________________ Date: ____________________