

APPLICATION TO BOARD OF APPEALS

Tel. No. Sean Hopkins, Esq.

Appeal No. 2017-014

Date March 29, 2017

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

I (we) SPNY100 LLC c/o Sean Hopkins, Esq. of Hopkins Sorgi & Romanowski PLLC
5500 Main St., Suite 343 - Williamsville, New York 14221

_____, HEREBY APPEAL TO THE ZONING BOARD OF APPEALS FROM THE
DECISION OF THE BUILDING INSPECTOR ON AN APPLICATION FOR A BUILDING PERMIT NO. _____,
DATED Mar. 29, 2017, WHEREBY THE BUILDING INSPECTOR DID DENY TO

Sign permits for two new pedestal signs at 1881 Ridge Road

- A PERMIT FOR USE for a proposed residential project
- A PERMIT FOR OCCUPANCY
- A TEMPORARY PERMIT OR EXTENSION THEREOF
- A CERTIFICATE OF EXISTING USE
- A CERTIFICATE OF ZONING COMPLIANCE
- AREA PERMIT

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

2. LOCATION OF THE PROPERTY 1881 Ridge Road

3. State in general the exact nature of the permission required, Seeking area variances for proposed new pedestal signs for Home Depot and Pep Boys. Color sign plans are provided at Exhibit "C" and a reduced size copy of the Signage Plan is provided at Exhibit "D". A full size copy of the Signage Plan is also attached to this Variance Application.

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

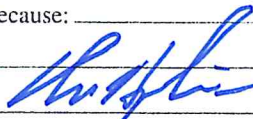
5. REASON FOR APPEAL.

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

A description of the requested area variances for the proposed signage is provided at Exhibit "A" and justification for the requested area variances pursuant to the balancing test and five criteria set set forth in NYS Town Law Section 267-b(3)(b) is provided at Exhibit "B" of this Variance Application.

B. Interpretation of the Zoning Ordinance is requested because: _____

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



Sean W. Hopkins, Esq. Signature

TO BE COMPLETED BY THE BUILDING INSPECTOR

1. Provision(s) of the Zoning Ordinance Appealed, including article, section, subsection or paragraph of the Zoning Ordinance

120.47.7(C) 405Q Allowed 100SQ REQUESTED HOME DEPOT
3 PEDESTAL SIGNS " " 60SQ REQUESTED PEP BOYS

2. Zoning Classification of the property concerned in this appeal M-1

3. Type of Appeal:

- Variance to the Zoning Ordinance.
- Interpretation of the Zoning Ordinance or Zoning Map
- Special or Temporary Permit or an extension thereof under the Zoning Ordinance.

4. A statement of any other facts or data which should be considered in this appeal _____



**Exhibit A: Description of Requested Area
Variances for New Pedestal Signs**

EXHIBIT A

DESCRIPTION OF REQUESTED AREA VARIANCES

I. Project Description:

The Applicant is seeking the necessary relief from the Town of West Seneca Zoning Board of Appeals to allow two new pedestal signs to be installed on the Home Depot Plaza property at 1881 Ridge Road (“Project Site”). Color plans showing the large existing pedestal sign that will be replaced by a Home Depot only pedestal sign and a Pep Boys pedestal sign along with elevations of the two new pedestal signs are provided at Exhibit “C” and a copy of the Signage Plan prepared by Lauer-Manguso & Associates Architects [Drawing C-2.0 – Date: 03/03/17] showing the location of the two new proposed pedestal signs is provided at Exhibit “D”.

II. Description of Requested Area Variances:

The Applicant is seeking the following area variances from the ZBA in connection with the two new proposed pedestal signs:

1. **The size of the new Home Depot pedestal sign will be larger than permitted per Section 120-47.7C(2) of the Zoning Code [100 sq. ft. per side proposed vs. 40 sq. ft. per side permitted].**

[**Note:** The new Home Depot pedestal sign will be 90 sq. ft. per side smaller than the existing pedestal sign that will be replaced.]

2. **The size of the proposed Pep Boys sign will be larger than permitted per Section 120-47.7C(2) of the Zoning Code [60 sq. ft. per side proposed vs. 40 sq. ft. per side permitted].**
3. **There will be a total of three pedestal signs on the 11.7 acre parcel at 1881 Ridge Road and a maximum of two pedestal sign are allowed pursuant to 120-47.7C(2) of the Zoning Code.**

[**Note:** The existing Denny’s restaurant pedestal sign will remain and its location is depicted on the Signage Plan attached as Exhibit “D”.]

**Exhibit B: Justification for Requested
Area Variances Pursuant to Balancing
Test and Five Criteria set forth in NYS
Town Law Section 267-b(3)(b)**

EXHIBIT B OF VARIANCE APPLICATION

JUSTIFICATION FOR REQUESTED AREA VARIANCES PURSUANT TO THE STATUTORY MANDATED BALANCING TEST AND FIVE CRITERIA CONTAINED IN NYS TOWN LAW § 267-b(3)(b)

NYS Town Law §267-b(3)(b) sets forth a statutorily mandated balancing test to be considered by a zoning board of appeals in connection with its review of a request for area variances. The statutorily mandated balancing test requires a zoning board of appeals to balance the benefits that will be realized against the resulting detriments to the health, safety and welfare of the community.

The granting of the requested area variances for the new pedestal signs as listed in Exhibit “A” will result in substantial benefits to the Applicant without any resulting detriments to the health, safety and welfare of the community. The benefits that will be received by Applicant if the Zoning Board of Appeals (“ZBA”) grants the requested area variances include the ability to install two new pedestal signs for the benefit of long term tenants of the site. It is important to mention that the large existing pedestal sign with numerous tenants including Home Depot will be replaced with two new pedestal signs with less total sign face area than the sign to be replaced.

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

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

The granting of the requested area variances by the ZBA will not create an undesirable change in the character of the neighborhood or a detriment to nearby properties. The Project Site is located in a commercial area and there are numerous pedestal signs in the vicinity that exceed the allowable size of 40 sq. ft. per side. The new signage will be an improvement compared to the

large pedestal sign with a sign face area of 190 sq. ft. per side that will be replaced. Page C-3 of Exhibit “C” of the Variance Application illustrates that the new pedestal signs will be appropriate along the Ridge Road frontage of the Project Site.

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

The benefit that is being sought is the ability to provide new pedestal signs for both Home Depot and Pep Boys that are appropriately sized for the large site and that will be highly visible on Ridge Road. It would not be possible for the Applicant to receive the benefits it will receive if the requested variances are granted without the requested area variances being granted by the ZBA.

3. Whether the requested area variance is substantial?

The requested area variances are not substantial given the fact that the two new pedestal signs will result in a reduction of the overall pedestal sign face area at the Project Site. The new reduction of square footage in pedestal sign face area is 16% as depicted on the color plan at Page C-2 of Exhibit “C” of this Variance Application.

The reason the magnitude of the variance is relevant is that, generally, the larger the difference the more likely it is that a negative effect would be generated. See Matter of Human Development Services of Port Chester v. Zoning Board of Appeals of the Village of Port Chester, 110 A.D.2d 135, aff’d, 67 N.Y.2d 702. However, in any particular case, the facts may demonstrate that while a variance may seem noteworthy on paper, no negative effect would be produced and, accordingly, the sought-after variance should be granted.

For example, in Matter of Frank v. Scheyer, 227 A.D.2d 558, 642 N.Y.S.2d 956 (2d Dept. 1996), the parcel was 19,983 square feet. However, the zoning code required a minimum lot size of one acre or 43,560 square feet. The variance at issue was more than 54%. Nevertheless, based the facts presented, no harm would befall the community and the Court directed the zoning board

of appeals to grant the application. The Court took similar action in Matter of Shaughessy v. Roth, 204 A.D.2d 333, 611 N.Y.S.2d 281 (2d Dept. 1994), in which the premises contained 50 feet of frontage and 5,000 square feet of area. The zoning code required 80 feet of frontage and a minimum lot size of 10,000 square feet. Accordingly, the application concerned a 50% reduction in lot area coupled with a second area variance seeking a 62.5% reduction from the required frontage. Nevertheless, based on the facts in the record, the Court directed the respondents to issue the variances. Additionally, in Matter of Sasso v. Osgood, 86 N.Y.2d 374 (1995), the applicant sought area variances for a 60% reduction in lot area and a 50% reduction in lot width. Based on all of the facts presented, the Court of Appeals, our State's highest court, overturned the holding of the appellate court and directed that the requested area variances be granted.

Merely because a variance may seem noteworthy on paper does not mean that any "harm" would be generated on the surrounding community, and it is "harm" that is balanced against the interest of the applicant according to the Town Law §267-b(3) test. The granting of the requested area variances for the new pedestal signs will not result in any "harm" on the surrounding community. It is the position of the Applicant that if the requested area variances are properly viewed as required by the cases discussed above, it is clear that the requested area variances are not substantial since they will not result in harm to the community.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood.

The granting of the requested area variances will not have any adverse effects or impacts on physical or environmental conditions in the neighborhood.

5. Whether the alleged difficulty was self-created?

Town Law §267-b(3)(b) expressly states that the issue of whether an alleged difficulty is self-created cannot be utilized as the sole criteria in determining whether to grant requested area

variances. It is the position of the Applicant that the alleged difficulty that has resulted in the need for area variances is not self-created since the new pedestal signs are needed based on the needs of Home Depot and Pep Boys, which are both long-term tenants. Nonetheless, if the ZBA determines that the alleged difficulty resulting in the need for the requested area variances is due to a self-created difficulty, such a finding would not lessen the strong justification for the requested area variances per the balancing test and the other four criteria as discussed above.

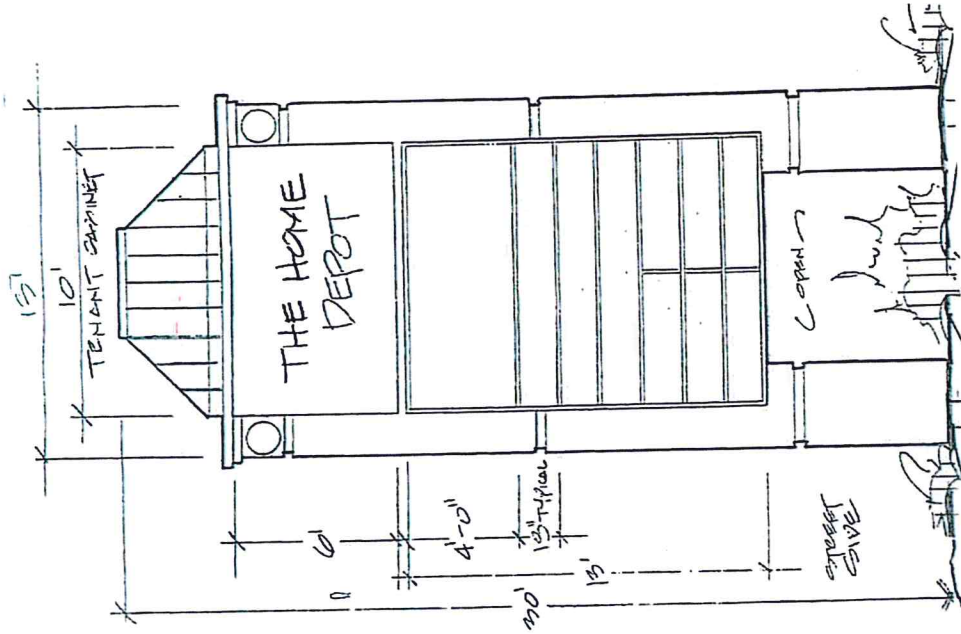
Conclusion:

The benefits that will be received by Applicant if the requested area variances are granted clearly outweigh any resulting detriments per the statutorily mandated balancing test. The Applicant requests that the ZBA grant the requested area variances for the two new pedestal signs for Home Depot and Pep Boys as depicted on the color plans provided at Exhibit “C” of this Variance Application.

**Exhibit C: Color Sign Plan consisting of
Existing Home Depot Sign [Page C-1],
Color Elevations of proposed new Home
Depot and Pep Boys Pedestal Signs [Page
C-2] and Color Street Perspective Plan
[Page C-3]**

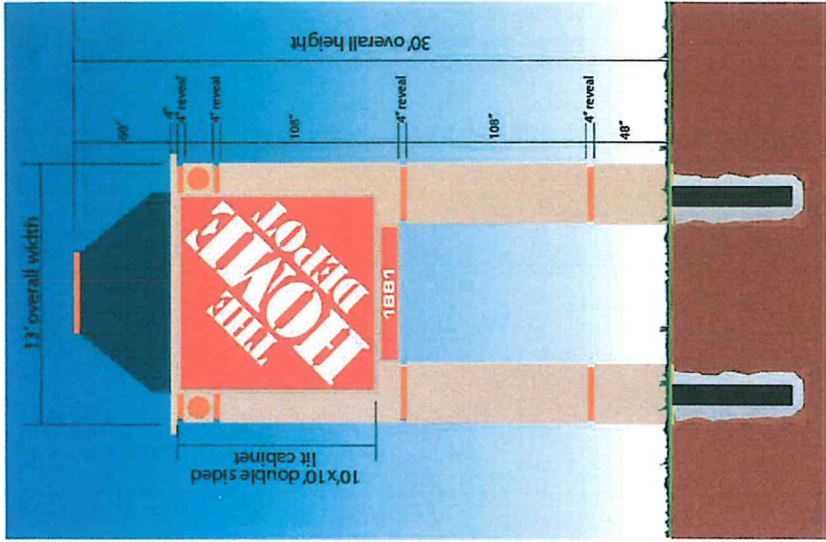
CURRENT: ONE LARGE MULTI-TENANT SIGN

Total Sign Area of \pm 190 square feet



PROPOSED: SEPARATE SIGNS WITH UPDATED PROTOTYPES

Total Sign Area of + 160 square feet (reduction of + 30 square feet)



C-2

Sign Area Calculations		
Width	Height	Square Feet

Current Pylon Sign	10	19	190
Proposed: Home Depot	10	10	100
Proposed: Pep Boys	10	6	60
Combined			<u>160</u>

Net Change in Sign Area -30
% Change in Sign Area -16%

Upon Completion

Two signs with total Sign Area of + 160 square feet (reduction of + 30 square feet)

C-3



Sign Area Calculations			
Width	Height	Square Feet	

Current Pylon Sign 10 19 190

Proposed: Home Depot 10 10 100

Proposed: Pep Boys 10 6 60

Combined 160

Net Change in Sign Area -30
 % Change in Sign Area -16%

**Exhibit D: Reduced Size Copy of Signage
Plan Prepared by Lauer-Manguso
& Associates Architects**

[Drawing C-2.0 – Date: 03/03/17]

[Note: A full size copy is also attached]
