

Town of Canandaigua

5440 Routes 5 & 20 West
Canandaigua, NY 14424

Phone: (585) 394-1120 / Fax: (585) 394-9476

RECEIVED	TOWN OF CANANDAIGUA DEVELOPMENT OFFICE	FOR REVIEW
	MAR 26 2018	

CPN #: 2018-018

ZONING BOARD OF APPEALS APPLICATION

FOR: ☐ AREA VARIANCE ☐ USE VARIANCE ☒ INTERPRETATION

Permission for on-site inspection for those reviewing application: ☒ Yes ☐ No

1. Name and address of the property owner: Joel M. Reiser and Nancy E. Hyman
6 Windham Cir. Mendon NY 14506

Telephone Number of property owner: 585-764-9811

Fax # _____ E-Mail Address: JMREISER203@ICLOUD.COM

****If you provide your e-mail address, this will be the primary way we contact you****

2. Name and Address of Applicant if not the property owner: JERRY A. GOLDMAN, ESQ.
WOODS OVIAIT GILMAN LLP 2 STATE ST. ROCHESTER NY 14614

Telephone Number of Applicant: 585-987-2800

Fax # 585-454-3968 E-Mail Address: Jgoldman@woodsoviait.com

****If you provide your e-mail address, this will be the primary way we contact you****

3. Subject Property Address: 5265 Menteth Drive

Nearest Road Intersection: Wells Curtis Road / West Lake Road

Tax Map Number: 140.11-1-25.000 Zoning District: RLD

4. Is the subject property within 500' of a State or County Road or Town Boundary? (If yes, the Town may be required to refer your application to the Ontario County Planning Board.)

Please circle one:

YES

NO

5. Is the subject property within 500' of an Agricultural District? (If yes, an Agricultural Data Statement must be completed and submitted with this application – for use variance applications only.)

Please circle one:

YES

NO

(Continued on back)

6. What is your proposed new project and the variance(s) or interpretation requested?
Removal of existing single-family dwelling and shed and construction of a new single-family dwelling. PLEASE Refer to annexed LETTER OF INTENT FOR DESCRIPTION OF INTERPRETATION REQUESTED

- N/A 7. With your completed application for an Area Variance, attach a tape map/survey/site plan, elevation of the proposed structure, and other documentation necessary describing the requested variance(s) illustrating why it is practically difficult for you to conform to the Zoning Law.

All maps, surveys, or site plans shall accurately depict the property including all existing and proposed structures, setbacks, and dimensions. *All dimensions must be precise.*

- N/A 8. With your completed application for a Use Variance, attach a current survey map/site plan of the subject parcel with a detailed description of the proposed use, a statement as to why you feel this use variance is necessary, and a completed Environmental Assessment Form.

- ✓ 9. With your completed application for an Interpretation, attach a current survey map/site plan of the subject parcel with a detailed description of the proposed use, a statement as to why you are appealing the zoning law determination, and a copy of the zoning law determination of which said appeal is requested.

- N/A 10. If the variance requested is related to signs, attach a Sign Detail Sheet, a site plan, and colored renderings of the proposed signage, and any other documentation required in Article IX (Sign Regulations) of the Town of Canandaigua Zoning Law.

***Property Owner is responsible for any consultant fees*
(Town Engineer, Town Attorney, etc.) incurred during the application process.
*See Town Clerk for current Fee Schedule***

I have examined this application and declare that it is true, correct, and complete. I understand that my application and all supporting documentation will be examined by the Zoning Board of Appeals as an integral component of deliberations.

I hereby grant my designee permission to represent me during the application process.


(Signature of Property Owner)

3/26/2018
(Date)

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2 State Street, Rochester, New York 14614
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Email: jgoldman@woodsoviatt.com
Admitted to practice in New York and Florida

March 26, 2018

Town of Canandaigua Zoning Board of Appeals
5540 Routes 5 & 20 West
Canandaigua, New York 14424

Re: Application for Interpretation
On Appeal from Determination CPN-2018-018
of the Code Enforcement Officer, dated 3.19.2018
LETTER OF INTENT

Dear Zoning Board Members:

On behalf of property owners Joel M. Reiser and Nancy E. Hyman ("Applicants"), we submit herewith a completed Zoning Board of Appeals Interpretation Application form, together with supporting documents, by which we seek to appeal the determination of Christopher Jensen, Town Code Enforcement Officer, dated March 19, 2018, and to obtain an interpretation reversing the Code Enforcement Officer's determination regarding the following:

<u>Property Address:</u>	5265 Menteth Drive
<u>Tax Map Number:</u>	140.11-1-25.000
<u>Zoning District:</u>	RLD

The Applicants proposed removal of an existing single-family dwelling and shed and construction of a new single-family dwelling with detached garage and associated appurtenances. In 2013, certain variances were granted by this Board, under Project 046-13, dated July 23, 2013, and Project 073-13, dated November 22, 2013. Recent submissions by the Applicants by which minor modifications to the plans were made, but which are not related to the variances, resulted in the determination by the Code Enforcement Officer that the variances granted in 2013 are no longer applicable to the project. Mr. Jensen's determination as to each of the variances listed was:

As the Zoning Board of Appeals decisions were conditioned on the plans and information provided with Project #073-13, the variances are specific to that project and do not apply to this new application.

The same statement of the basis for his determination is repeated for each of the other three sets of variances, one more under Project #073-13, and two under Project 046-13.

We submit herewith a copy of the Zoning Law Determination, dated March 19, 2018, by Christopher Jensen, Code Enforcement Officer of the Town of Canandaigua. The main point raised by Mr. Jensen is that the variances were "conditioned" on the designated plans, which were reviewed by the Zoning Board. In fact, the decisions of the Zoning Board of Appeals granting the variances do not reference the plans. There is no language even suggesting that they were conditioned on the plans. Instead, the decisions recite that the "...Board's decision is based on the information received..." (Emphasis added) on the various dates relevant to each decision. Neither the word "conditions" nor the word "plans" appears in the decisions granting the variances.


Neither state law, nor the Town Code of Canandaigua prescribes any authority to cancel variances once granted, provided that conditions established by the ZBA at the time of the grant of a variance must be met. The Court of Appeals, in *Tohr Industries Corp. v. Zoning Board of Appeals of City of Long Beach*, 74 NY2d 575 (1989), held that a zoning board had no authority to revoke variances previously granted without evidence that conditions originally imposed had not been met or had been violated. The current situation in Canandaigua is similar. Variances were granted. There was no evidence of the failure of the Applicants to meet conditions originally imposed, or violation of any conditions (the applicant has submitted plans that conform to the variances granted in 2013). There appears to be no legal basis for Mr. Jensen's determination that the variances no longer apply.

It should be noted that, it is our understanding, as a result of the well-established case law and the Town's apparent desire to tie variances to the plans submitted, the Town Zoning Board of Appeals, subsequent to the decisions made with regard to this property in 2013, has now implemented as a standard condition that variances are specifically applicable only to the plans submitted to the Zoning Board of Appeals. No such condition appears on the subject approvals.

Accordingly, we request that the determination of the Code Enforcement Officer, dated March 19, 2018, be reversed and that the Zoning Board of Appeals determine that the variances granted in 2013 are still in full force and effect.

Very Truly Yours,

WOODS OVIATT GILMAN LLP



Jerry A. Goldman

Please direct responses to Rochester Office

JAG/grs

BE VERY SPECIFIC IN YOUR NARRATIVE

To enable the Zoning Board of Appeals to overturn the Zoning Officer's determination, the applicant must present substantial evidence why the determination should be overturned.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.