

## TESTS FOR GRANTING AREA VARIANCES

### BE VERY SPECIFIC WHEN ANSWERING THESE QUESTIONS

"Area variance" shall mean the authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.  
(Town Law Section 267, subsection 1.(b)).

In deciding whether to grant an area variance, the Zoning Board of Appeals takes into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community. (Town Law Section 267-b, subsection 3.(b)).

To enable the Zoning Board of Appeals to grant an area variance, the applicant must present substantial evidence concerning the following topics by providing supporting evidence for each. Attach additional sheets if necessary.

- (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 area variance.

See attached

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

See attached

- (3) Whether the requested area variance is substantial.

See attached

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

See attached

- (5) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the ZBA, but shall not necessarily preclude the granting of the area variance.

See attached

## Variance Tests – Canandaigua Popeyes

### 3225 State Route 64

1. The requested variance will not create an undesirable change in character of the neighborhood or a detriment to nearby properties for the following reasons:

- The existing structure (bank) is actually located closer to the NYSDOT ROW boundary for Routes 5 & 20. The proposed structure will actually be located 0.8' further from the ROW boundary.
- The proposed site design allows us to maintain the mature landscaping and berms along the westerly side of the proposed development and the existing limits of pavement and development are only exceeded on the rear of the parcel internal to the shopping center. In fact the easterly boundary of the limits of pavement are reduced with this proposal

2. Given the configuration of the parcel it is impossible to achieve the intent of the site design without a variance. This is evident by the need for the bank to encroach within the setback under the existing conditions. The parcel was thoroughly evaluated to attempt to minimize any variances on the site. The variance would still be required but could be reduced if the proposed structure was shifted to the west and an "industry typical" fast food drive through design was proposed. This type of design involves one-way traffic around the building with the drive through stacking lanes along curb line and sidewalk of the building. The applicant has deviated from this design citing pedestrian concerns. In the "industry typical" design customers (pedestrians) are required to cross through the drive through traffic to enter the restaurant. This often becomes even more challenging for those requiring accessible routes and ramps which are often blocked. The proposed design offers an excellent traffic pattern for both pedestrian access and drive through traffic by separating the drive through traffic from the parking lot. It also allows for more stacking preventing traffic concerns during peak periods. Additionally, moving the building to the west will impact the existing mature landscaping and berm area between the main center parking lot and the site. While the removal of this landscaping would increase the visibility of the site we feel that maintaining this landscaped area is important to maintaining the overall character of the site and surrounding area.

3. The requested variance is not substantial. The applicant is requesting a 20.4% variance from the required 100' building setback. The existing structure varies from the 100' building setback by 21.2%.

4. 1. The requested variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district for the following reasons:

- The existing structure (bank) is actually located closer to the NYSDOT ROW boundary for Routes 5 & 20. The proposed structure will actually be located 0.8' further from the ROW boundary.
- The proposed site design allows us to maintain the mature landscaping and berms along the westerly side of the proposed development and the existing limits of pavement and development are only exceeded on the rear of the parcel internal to the shopping center. In fact the easterly boundary of the limits of pavement are reduced with this proposal

5. The variance is not self created. The configuration of the parcel and proposed use would require a variance regardless of design or configuration; however, the magnitude of the variance is for the reasons described in question 2. The applicant believes that the proposed design is the best design for the parcel to provide safe vehicle and pedestrian access to and from the proposed establishment.