

Ari M. Goldberg
Associate

November 14, 2023

BY HAND DELIVERY
VIA ELECTRONIC MAIL

Village of Williamsville
Village Zoning Board of Appeals
c/o Suzanne Canell, Village Clerk
5565 Main Street
Williamsville, NY 14221
scanell@village.williamsville.ny.us

Re: 95 Mill Street
Accessory Apartment Special Use Permit Renewal

Dear Members of the Village Zoning Board of Appeals:

Barclay Damon LLP represents Rachel and Javid Rzayev (“Applicants”), owners of 95 Mill Street, SBL 69.17-3-87.1 (“Property”) in the Village. As you may recall, on November 18, 2021, this Board granted area variances and issued a Special Use Permit for an accessory structure to be used as an accessory apartment in-law suite at the Property.

Under the Village Zoning Code, the Special Use Permit generally expires only if the special use does not obtain a building permit or certificate of occupancy. Village Zoning Code § 112-25A. However, this Board required the Applicants to return to the Board every two years.

Applicants submit this application to seek the required renewal under the November 18, 2021 approval. In addition, Applicants respectfully request that this Board’s approval conform to general Village Zoning Code standards and that the obligation to seek an approval of the Special Use Permit every two (2) years be removed subsequent to this Board’s renewal.

Importantly, since initial approval, construction and issuance by the Village of a Certificate of Occupancy on July 27, 2022, Applicants have used the accessory apartment as an in-law suite in line with the Village Zoning Code. Applicants have no reason to modify use of the accessory apartment because the in-law suite is essential to Applicants’ family care and family atmosphere cultivated at their home.

Village of Williamsville
95 Mill Street – SUP Renewal
November 14, 2023
Page 2

Enclosed, please find the following exhibits in support of the requested renewal:

1. Special Use Permit Application Form
2. November 8, 2021 Special Use Permit Application
3. November 18, 2021 Special Use Permit Approval
4. July 27, 2022 Certificate of Occupancy
5. Special Use Permit Renewal Zoning Code Analysis
6. Short Environmental Assessment Form
7. Owner Authorization

Please note, Applicants consider this special use permit renewal a Type II action pursuant to State Environmental Quality Review Act Regulations, 6 NYCRR 617.5(c)(12) and/or (32). A short environmental assessment form is provided as a courtesy. Please also refer a full statement of this action to the Erie County Department of Environment and Planning pursuant to General Municipal Law § 239-m. Lastly, please also notice and conduct a public hearing for the requested contained herein pursuant to Village Zoning Code § 112-24E(2).

We look forward to discussing this renewal request with the Zoning Board at its next meeting. Please reach out with any questions. Thank you for your consideration.

Very truly yours,



Ari M. Goldberg

Exhibits

cc: Rachel and Javid Rzayev (via email)
Tom Voigt and Gary Palumbo, Town of Amherst Planning Department (via e-mail and hand delivery)

Exhibit 1

Special Use Permit Application Form

Village Of Williamsville

Building Department
5565 Main Street
Williamsville NY, 14221



Phone: 716-632-7747
Fax: 716-626-4964
www.walkablewilliamsville.com

Application for Zoning Board of Appeals

<u>For Official Use Only</u>		
ZBA #: _____	Zoning: _____	Total Fees: \$ _____
Materials Received by Building Department	_____	_____
	Verified by	Date
Denial Letter Written	_____	_____
	Verified by	Date
Referral to Erie County	_____	_____
	Verified by	Date
Legal Notice Published	_____	_____
	Verified by	Date
Notices Sent to Neighbors	_____	_____
	Verified by	Date
Fee Paid to Village Clerk	_____	_____
	Verified by	Date
<u>Fees:</u>		Mark Appropriate Fee
Residential Variance Request	\$100.00	<input type="checkbox"/>
Commercial Variance Request	\$150.00	<input type="checkbox"/>

To Be Completed By Applicant

Application for:

- | | |
|---|---|
| <input type="checkbox"/> A Variance for the use of a structure or lot | <input checked="" type="checkbox"/> A Special use Permit |
| <input type="checkbox"/> A Variance from a requirement of the Zoning Code | <input checked="" type="checkbox"/> Other <u>Special Use Permit Renewal</u> |

The undersigned, owner of the property located at 95 Mill Street _____, Address

SBL # 69.17-3-87.1 _____, (_____) in Zoning District R-3 _____, Business/Development Name

appeals from the ruling of the Building Inspector not to approve the issuance of a building permit/accessory structure permit for a accessory apartment used as an in-law suite _____ as per plans, data, and application heretofore filed and which are attached and made part of this appeal. And as per July 27, 2022 Certificate of Occupancy

If application is for a Variance, the reason for non-approval is that n/a _____

Application for Zoning Board of Appeals (Cont.)

Is a Full SEQR review required?

Yes

No

The undersigned alleges, upon information and belief, that he or she is entitled to relief for the following reasons:

See attached special use permit renewal analysis

Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by granting the variance?

n/a (variance standard)

Can benefits sought by the applicant be achieved by some method other than the variance? Please explain.

n/a (variance standard)

Is the requested variance substantial? Please describe.

n/a (variance standard)

Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? Please explain.

n/a (variance standard).

Is the alleged difficulty or hardship self-created? Please explain describe.

n/a (variance standard)

Provide evidence to demonstrate that under the applicable Zoning regulations, the applicant cannot realize a reasonable return from the property in question, provided that the lack of return is established by competent financial evidence.

n/a (variance standard)

Application for Zoning Board of Appeals (Cont.)

Provide evidence to demonstrate that the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood.

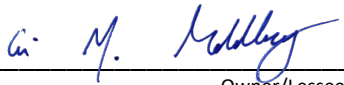
n/a (variance standard)

Other Comments:

See attached analysis regarding Special Use Permit standards.

What is the minimum variance deemed necessary and adequate?

n/a (variance standard)

Signed:  Date: November 14, 2023
Owner/Lessee

Address: 95 Mill Street, Williamsville, NY 14221 c/o Barclay Damon LLP, Ari Goldberg as agent/attorney

Phone: (716) 858-3878 Email: agoldberg@barclaydamon.com

Signed: _____ Date: _____
Owner/Lessee (If other than above)

Address: _____

Phone: _____ Email: _____

Subscribed to and sworn before me, etc.

I hereby certify that this notice of appeal was received by me by: mail personal delivery

on the _____ day of _____, 20____.

Signed: _____

Building Department Clerk
Village of Williamsville, New York

Exhibit 2

November 8, 2021 Special Use Permit Application

BARCLAY DAMON ^{LLP}

Ari M. Goldberg
Associate

November 9, 2021

BY HAND DELIVERY
VIA ELECTRONIC MAIL

Village of Williamsville
Village Zoning Board of Appeals
c/o Tim Masters, Village Code Enforcement Officer
5565 Main Street
Williamsville, NY 14221
tmasters@village.williamsvilly.ny.us

Re: 95 Mill Street
Accessory Apartment Area Variance and Special Permit

Dear Village Zoning Board of Appeals:

Barclay Damon LLP represents Heartland Homes, who is currently constructing an accessory apartment at 95 Mill Street, SBL 69.17-3-87.1, in the Village of Williamsville ("Property").

Enclosed, please find the following:

1. Area Variance and Special Permit Application Form
2. Area Variance Statutory Analysis
3. Special Permit Zoning Code Analysis
4. Short Environmental Assessment Form

We look forward to presenting the project to the Board at the next meeting. Please reach out to me with any questions. Thank you for your consideration.

Very truly yours,



Ari M. Goldberg

AMG:jdp
Enclosures

Area Variance and Special Permit Application Form

Village Of Williamsville

Building Department
5565 Main Street
Williamsville NY, 14221



Phone: 716-632-7747
Fax: 716-626-4964
www.walkablewillamsville.com

Application for Zoning Board of Appeals

<u>For Official Use Only</u>		
ZBA #: _____	Zoning: _____	Total Fees: \$ _____
Materials Received by Building Department	_____ Verified by _____	_____ Date _____
Denial Letter Written	_____ Verified by _____	_____ Date _____
Referral to Erie County	_____ Verified by _____	_____ Date _____
Legal Notice Published	_____ Verified by _____	_____ Date _____
Notices Sent to Neighbors	_____ Verified by _____	_____ Date _____
Fee Paid to Village Clerk	_____ Verified by _____	_____ Date _____
<u>Fees:</u>		Mark Appropriate Fee
Residential Variance Request	\$100.00	<input type="checkbox"/>
Commercial Variance Request	\$150.00	<input type="checkbox"/>

To Be Completed By Applicant

Application for:

- | | |
|--|--|
| <input type="checkbox"/> A Variance for the use of a structure or lot | <input checked="" type="checkbox"/> A Special use Permit |
| <input checked="" type="checkbox"/> A Variance from a requirement of the Zoning Code | <input type="checkbox"/> Other _____ |

The undersigned, owner of the property located at 95 Mill Street _____
Address

SBL # 69.17-3-87.1 _____ (_____) in Zoning District R-3 _____
Business/Development Name

appeals from the ruling of the Building Inspector not to approve the issuance of a building permit/accessory structure permit _____
for a accessory apartment _____ as per plans, data, and application heretofore filed and
which are attached and made part of this appeal.

If application is for a Variance, the reason for non-approval is that accessory apartment is detached from primary residence _____
and greater than 500 feet in floor area _____

Application for Zoning Board of Appeals (Cont.)

Is a Full SEQR review required? Yes No

The undersigned alleges, upon information and belief, that he or she is entitled to relief for the following reasons:

see attached analysis

Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by granting the variance?

see attached analysis

Can benefits sought by the applicant be achieved by some method other than the variance? Please explain.

see attached analysis

Is the requested variance substantial? Please describe.

see attached analysis

Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? Please explain.

see attached analysis

Is the alleged difficulty or hardship self-created? Please explain describe.

see attached analysis

Provide evidence to demonstrate that under the applicable Zoning regulations, the applicant cannot realize a reasonable return from the property in question, provided that the lack of return is established by competent financial evidence.

n/a

Application for Zoning Board of Appeals (Cont.)

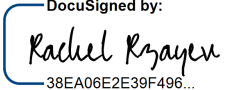
Provide evidence to demonstrate that the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood.

n/a

Other Comments:

What is the minimum variance deemed necessary and adequate?

Approval of detached accessory apartment and

Signed:  Date: 11/09/2021
38EA06E2E39F496...
Owner/Lessee

Address: 95 Mill Street, Williamsville, NY 14221 c/o Barclay Damon LLP

Phone: (716) 858-3878 Email: agoldberg@barclaydamon.com

Signed: _____ Date: _____
Owner/Lessee (If other than above)

Address: _____

Phone: _____ Email: _____

Subscribed to and sworn before me, etc.

I hereby certify that this notice of appeal was received by me by: mail personal delivery

on the _____ day of _____, 20____.

Signed: _____

Building Department Clerk
Village of Williamsville, New York

Area Variance Statutory Analysis

Area Variance Analysis
95 Mill Street

Heartland Homes is currently constructing an accessory apartment on 95 Mill Street, SBL 69.17-3-87.1 in the Village of Williamsville (“Property”). The Property is zoned R-3 and measures 0.56 acres at approximately 117 by 204 feet.

Accessory apartments are permitted as of right in the R-3 district. Accessory uses in the R-3 district are permitted the same as R-1 and R-2. Village Zoning Code § 112-14C(3). Pursuant to Village Zoning Code § 112-12A(2)(a), a single accessory apartment is permitted on the Property. However, the accessory apartment must, among other requirements, be created by converting a dwelling unit. Village Zoning § 112-12A(2)(a)[4]. In other words, the accessory apartment must be attached to the primary residence/dwelling on the Property. The Property owner’s proposed accessory apartment is not attached to the primary residence or converted from an existing dwelling unit in the primary dwelling. The proposed accessory apartment is new construction and therefore requires an area variance. Additionally, the accessory apartment is 756 feet where only 500 feet is permitted under Village Zoning Code § 112-12A(2)(a)[6] and therefore requires an additional area variance.

As detailed in the following analysis, the benefits of granting the variance substantially outweigh detriments to health, safety, and welfare of the neighborhood or community.

Variance Standard

As this Zoning Board of Appeals (“ZBA”) is aware, the standard for reviewing an area variance request is set forth in New York State Village Law § 7-712-B(3)(b). In making its determination, the ZBA shall consider 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 by such grant. In making such determination, the ZBA shall also consider:

(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.

Granting a variance to permit a detached accessory apartment will not produce an undesirable change in the character of the neighborhood or detriment nearby properties. Accessory apartments are permitted as of right. It is well settled that the classification of a particular use as a permitted use, or even as a special use, in a zoning district is tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood. *Twin County Recycling Corp. v Yevoli*, 90 NY2d 1000, 1001 (1997). Moreover, the accessory apartment will be solely for family of the Property owners—a 75 year old grandmother to the three children of the Property owners. This resident does not own a car, drive, nor have a license. Also, the Property owners will collect no rent from the accessory apartment. As a result, this accessory apartments poses no risk of noise or light intrusion to neighboring properties because it is solely devoted as dwelling unit for a family member and not a short term rental or other tenancy that does not match the neighborhood. Lastly, the accessory apartment is placed sufficiently distant from property lines and existing structures, and it will be constructed with contemporary siding materials matching the homes along Mill street. The Property owners

and Heartland Homes are committed to working with any interested neighbors on a landscaping plan that ensures the status quo, and even an enhancement where possible, to existing vegetation and buffering.

(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.

The benefit sought by the Property owners and Applicant cannot be achieved by any other method, feasible for the Applicant to pursue. The primary residence is circa early 1900s, and the façade is made up of hand stacked stone all along the foundation and portions of the first story, with the second story being a mix of contemporary siding and roof shingles in a farmhouse style. The Property was part of the Village of Williamsville 2013 “Intensive [Building] Survey.” However, the primary dwelling itself has not been investigated for eligibility on any historic registrar. Nonetheless, the Property owners preferred a cautious strategy that would not disturb the existing stone façade to maintain its aesthetic and structural integrity. As a result, locating the accessory apartment attached to the primary dwelling or converting an existing dwelling unit from the primary dwelling undermines the structural integrity and aesthetic of the stone façade. Therefore, strict compliance with code is not feasible.

Additionally, the size greater than that allowed by the Village Zoning Code is necessary given that separation of the accessory apartment from the primary dwelling. The occupant must go outside and leave the accessory apartment to access the primary dwelling. Increased size is necessary to accommodate all needs of the 75 year old occupant and ensure minimal back and forth, outdoor trips are made. Strict compliance with the code severely undermines the ability to achieve this benefit and poses a potential harm to the accessory apartment occupant. Therefore, strict compliance with the code is not feasible.

(3) whether the requested area variance is substantial.

As the ZBA is aware, the law in New York is clear that a pure mathematical formula cannot be the basis of a determination of whether a variance should be considered substantial. The ZBA must consider the magnitude of the requested variance in light of its impact. 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 Village Law § 7-712-B(3)(b) test. Here, the requested variance is not substantial. The variance permits an accessory apartment in the Property’s back yard but setback and buffered from all other structures, including neighboring homes. Again, accessory apartments are generally permitted subject to a special permit. Accordingly, the variance is not substantial.

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

The requested variance will not adversely affect the environment. The requested variance will not impact drainage, flooding, and runoff or any other topographical changes such as grading, trees, and vegetation. The construction has avoided significant cut down of trees and loss of greenspace. While some trees were taken down, the Property owners are committed to working with neighbors on a substantial landscaping plan.

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

The Applicant did not create the alleged difficulty giving rise to this application. The Property owners and Heartland Homes were initially granted a building permit before the Village Code Enforcement Officer made them aware of prior oversight of relevant portions of the Village Code. Additionally, as mentioned above, the confines of a historical house with unique building materials makes conversion of an existing dwelling unit infeasible. Further the age and capabilities of the occupant, as well as bifurcation from the primary dwelling, require an accessory apartment slightly larger than permitted. If, however, the ZBA should determine that the alleged difficulties are self-created, Village Law § 7-712-B(3)(b) provides that such a determination does not preclude the granting of the requested variance but is merely a factor to consider.

Balancing.

As indicated above, the ZBA must take into consideration the benefit to the Applicant if the variances are granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant. Here, the benefit to the Property Owners and Heartland Homes is substantial. Granting the requested variance allows Heartland Homes to finish construction on the initially approved accessory apartment to provide a safe and comfortable dwelling for an ageing family member without disturbing the integrity of the historical home on the Property. On the other hand, any detriment to the health, safety, and welfare of the neighborhood or community is *de minimis*. With substantial benefit to the Applicant if the variance is granted and no detriment to the health, safety, and welfare of the community by such a grant, it is respectfully requested the proposed variance be approved.

Special Permit Zoning Code Analysis

Special Permit Zoning Code Analysis
95 Mill Street

Heartland Homes is currently constructing an accessory apartment on 95 Mill Street, SBL 69.17-3-87.1, in the Village of Williamsville (“Property”). The Property is zoned R-3 and measures 0.56 acres at approximately 117 by 204 feet.

Accessory apartments are permitted as of right in the R-3 district. Accessory uses in the R-3 district are permitted the same as R-1 and R-2. Village Zoning Code § 112-14C(3). Pursuant to Village Zoning Code § § 112-12A(2)(a), a single accessory apartment is permitted on the Property subject to issuance of a Special Permit.

As set forth in the Village Zoning Code § 112-24E(2), in considering a special permit application, after notice and public hearing, the Zoning Board of Appeals shall determine:

- (a) That the permit will not prevent reasonable use of adjacent properties or of properties in adjacent districts.**
- (b) That the permit will not prevent the reasonable use of permitted or legally established uses in the district wherein the proposed use is to be located or in adjacent districts.**
- (c) That the safety, health and welfare of the Village will not be adversely affected by the proposed permit.**
- (d) That the permit will be in harmony with the intent of this chapter.**
- (e) That the proposed special use conforms to all applicable requirements, conditions or restrictions provided in this chapter with respect to such special use.**

As detailed in the following analysis, the accessory apartment meets the five criteria set forth in the Village Zoning Code.

- (a) That the permit will not prevent reasonable use of adjacent properties or of properties in adjacent districts.**

The special permit for the accessory apartment will not prevent reasonable use of adjacent properties. The Property is zoned R-3, and all adjacent properties are zoned R-3. The accessory apartment is wholly contained within the Property boundaries and sufficiently setback from all other structures, including neighboring homes. The location of the accessory apartment maintains, to the extent practicable, existing vegetative screening. Moreover, the Property owners are committed to working with any neighboring homeowner on a landscaping plan to ensure any necessary vegetative buffering enhancements are implemented.

Additionally, the occupancy of the accessory dwelling will be a 75 year old grandmother to the Property owners’ children. She does not drive, have a license, or own a car. She will not be paying any rent. To that end, her presence and the presence of the accessory

apartment will not disturb the peace or quiet enjoyment of neighboring homeowners.

(b) That the permit will not prevent the reasonable use of permitted or legally established uses in the district wherein the proposed use is to be located or in adjacent districts.

The proposed accessory apartment is sufficiently setback and isolated from all property boundaries and structures to ensure no intrusion in the activities of adjacent parcels. Additionally, the circumstances of this accessory apartment are unique enough that approval herein will not undermine code enforcement capabilities.

(c) That the safety, health and welfare of the Village will not be adversely affected by the proposed permit.

The safety, health, and welfare of the Village will not be adversely affected by the special permit for an accessory apartment at the Property. The accessory apartments is to be occupied by an elderly family member of the Property owners. The accessory apartment is also sufficiently setback from other structures and property boundaries to minimize fire risk. This criteria is also thoroughly addressed in the accompany area variance statutory analysis.

(d) That the permit will be in harmony with the intent of this chapter.

A special permit for the accessory apartment will be in harmony with the intent of the Village Zoning Code. The accessory apartment is for an elderly family member of the Property owners and not a rental property geared for profit. To that end, the accessory apartments furthers the high-quality residential character of the area and does not threaten stability of the homes in this area. For the Property owners, too, there is benefit that enhances their own health, safety, comfort, convenience, prosperity and welfare in having the accessory apartment on the Property. *See* Village Zoning Code § 112-1 (defining the Code's purpose).

(e) That the proposed special use conforms to all applicable requirements, conditions or restrictions provided in this chapter with respect to such special use.

The proposed accessory apartments conform all applicable requirements to the extent practicable. An area variance has been sought because the accessory apartments is not being constructed through conversion of a dwelling unit in the primary dwelling and, as a result and to secure the safety and comfort of the occupant, is slightly larger than 500 feet of floor area permitted. As set forth in that area variance application, the benefit to the Applicant outweighs the detriment to health, safety, and welfare of the neighborhood or community. Therefore, despite the need for a variance, the accessory apartment will not detriment health, safety, and welfare of the neighborhood.

Short Environmental Assessment Form

Short Environmental Assessment Form

Part 1 - Project Information

Instructions for Completing

Part 1 – Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

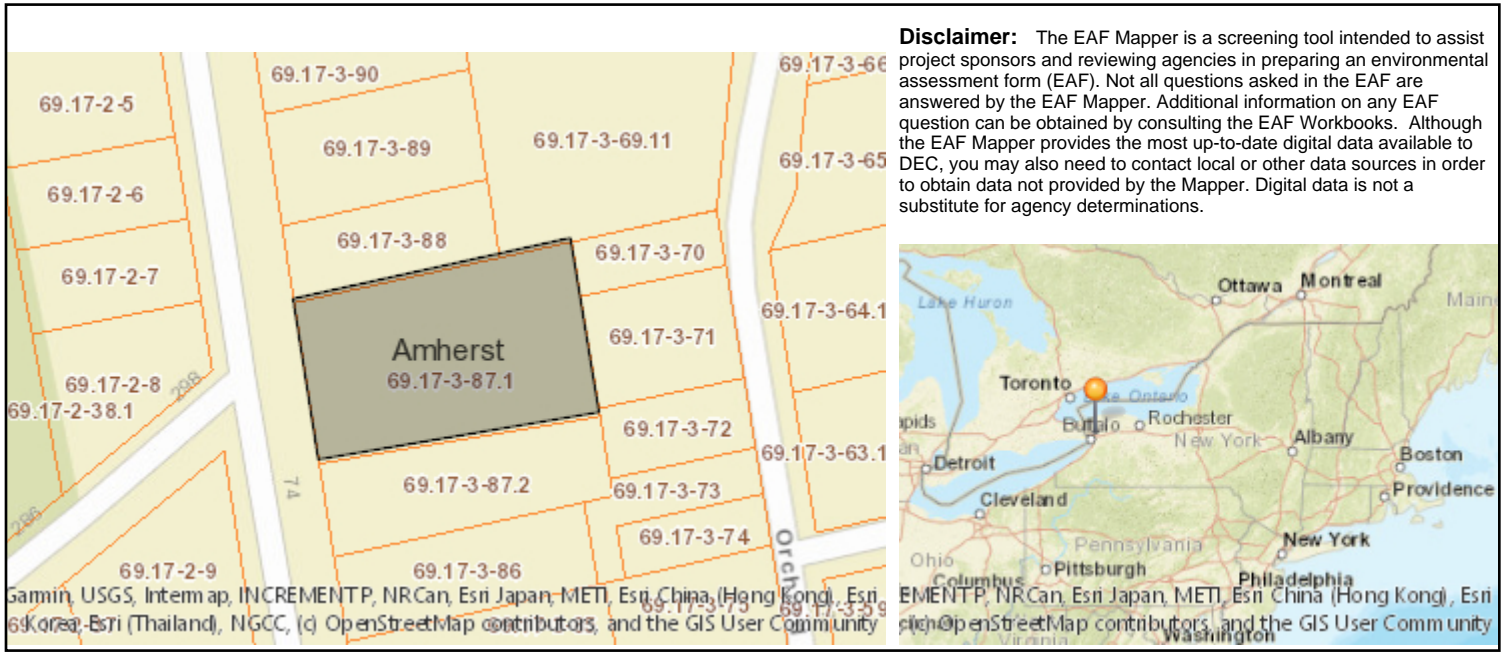
Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 – Project and Sponsor Information			
Name of Action or Project: 95 Mill Accessory Apartment			
Project Location (describe, and attach a location map): 95 Mill Street, SBL 69.17-3-87.1			
Brief Description of Proposed Action: Area Variance and Special Use Permit for detached Accessory Apartment at 95 Mill Street in R-3 zone. Proposed action has been defined broadly to include all site clearing and construction activities.			
Name of Applicant or Sponsor: Property Owners Rachel and Javid Rzayev by Heartland Homes c/o Barclay Damon LLP		Telephone: (716) 858-3878 E-Mail: agoldberg@barclaydamon.com	
Address: 9276 Main Street, Suite 3			
City/PO: Clarence		State: NY	Zip Code: 14031
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO <input type="checkbox"/>
			YES <input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval: Special permit, area variance - Zoning Board of Appeals Building Permit/Accessory Apartment Permit - Building Department			NO <input type="checkbox"/>
			YES <input checked="" type="checkbox"/>
3. a. Total acreage of the site of the proposed action?		_____ 0.56 acres	
b. Total acreage to be physically disturbed?		_____ +/- 0.01 acres	
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		_____ 0.56 acres	
4. Check all land uses that occur on, are adjoining or near the proposed action:			
5. <input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban)			
<input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other(Specify):			
<input type="checkbox"/> Parkland			

5. Is the proposed action,	NO	YES	N/A
a. A permitted use under the zoning regulations?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Consistent with the adopted comprehensive plan?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels? b. Are public transportation services available at or near the site of the proposed action? c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	NO <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	YES <input type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____ _____	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____ _____	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____ _____	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory? *see note below	NO <input checked="" type="checkbox"/> <input type="checkbox"/>	YES <input type="checkbox"/> <input checked="" type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency? b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ There are no wetlands or waterbodies on the property. If the proposed action is within 500 feet of a wetland or waterbody the EAF Mapper tool will automatically check "yes" on the pdf of the SEAF. The proposed action is within 500 feet of Glen Park and Ellicott Creek, which is classified as a federal riverine and state waterbody. The proposed action will not impact these adjacent waterbodies. _____	NO <input type="checkbox"/> <input checked="" type="checkbox"/>	YES <input checked="" type="checkbox"/> <input type="checkbox"/>	

*If the proposed action is within an area designated as containing "sensitive archaeological resources," the EAF Mapper will automatically check "yes" on the PDF of the EAF. Sensitivity for archaeological sites usually covers large areas. Proposed action is within the "Intensive Level Historic Resources Survey of Selected [Building] Resources in the Town of Amherst," Survey No. 17SR0080, which surveyed the entire Town of Amherst and Village, approximately 35,000 acres.

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban		
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16. Is the project site located in the 100-year flood plan?	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes,	NO	YES
a. Will storm water discharges flow to adjacent properties?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
If Yes, briefly describe: _____ Existing conveyance systems within property. _____		
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment: _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
49. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE		
Applicant/sponsor/name: <u>Property Owners Rachel and Javid Rzayev by Heartland Homes c/o Barclay Damon LLP</u> Date: <u>November 8, 2021</u>		
Signature: <u><i>C. M. Kelly</i></u> Title: <u>agent/attorney</u>		



Part 1 / Question 7 [Critical Environmental Area]	No
Part 1 / Question 12a [National or State Register of Historic Places or State Eligible Sites]	No
Part 1 / Question 12b [Archeological Sites]	Yes
Part 1 / Question 13a [Wetlands or Other Regulated Waterbodies]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
Part 1 / Question 15 [Threatened or Endangered Animal]	No
Part 1 / Question 16 [100 Year Flood Plain]	No
Part 1 / Question 20 [Remediation Site]	No

Exhibit 3

November 18, 2021 Special Use Permit Approval

Village Of Williamsville

Building Department
5565 Main Street
Williamsville NY, 14221



Phone: 716-632-7747
Fax: 716-626-4964
www.walkablewilliamsville.com

MEMORANDUM OF DECISION
ZONING BOARD OF APPEALS

95 Mill St. (R-3)
ZBA LOG #-2021ZBA14

To: Judith Kindron, Administrator /Clerk-Treasurer
From: Richard Andrews, Chairman
Date: November 18, 2021
Re: Resolution of the Board of Appeals concerning property at 95 Mill St.:

Pursuant to the rules of procedure of the Board of Appeals, transmitted herewith is a copy of the resolution regarding the above referenced variance application heard on November 17, 2021:

Whereas the Zoning Board of Appeals of the Village of Williamsville heard the case regarding the application for a Special Use Permit to allow the owner of the above address to utilize an accessory structure as an accessory apartment , and

Whereas the applicant also requested an area variance to allow the owners to construct the accessory apartment as freestanding instead of attached to the principle structure, referencing 112-12A(2)(a)[4], and

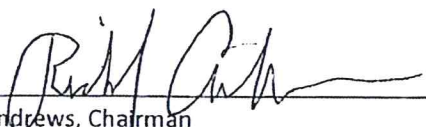
Whereas the applicant also requested an area variance to allow the entrance to not be located in the rear of the building, and for the apartment to be allowed to be constructed at 756 sq. ft. where 500 sq. ft. max is allowed referencing section 112-12A(2)(a)[6], and

Whereas the Zoning Board of Appeals heard all interested parties and their concerns regarding approval or denial of the project; now, therefore, be it

Resolved, that the Zoning Board of Appeals determined the following:

1. That the applicant be GRANTED a Special Use Permit to allow the owner of 95 Mill St. to own and operate an Accessory Apartment per the requirements set forth in 112-12A(2)(a), and that the owner also be GRANTED variances for the structure to be freestanding, entrance to be located facing Mill St. and for the sq. ft. to be increased 256 sq. ft. as proposed. The ZBA determined that to ensure compliance with the requirements regarding the Special Use Permit that the owner shall be required to re-apply for the Special Use Permit every two (2) years to verify the conditions are continuing to be met.

Respectfully Submitted:


Richard Andrews, Chairman

Date 11 - 18 - 2021

Exhibit 4

July 27, 2022 Certificate of Occupancy

Village Of Williamsville

Building Department
5565 Main Street
Williamsville NY, 14221



Phone: 716-632-7747
Fax: 716-626-4964
www.walkablewilliamsville.com

Certificate of Occupancy

Issued To: Heartland Homes Construction, Inc.
525 North Forest Road
Williamsville, NY 14221

Location: 95 Mill St

Permit#: B2021-137 Permit Issued: 8/17/2021 Certificate Issued: 7/27/2022

Contractor: Heartland Homes Construction, Inc. 525 North Forest Road - Williamsville, NY 14221

Property Information:

Tax Map#: 69.17-3-87
Occupant Load:

Occupancy Class:
Construction Type:


Zone:
Sprinkler Required:

Project Description:

New build for Single Family Accessory Apartment. (No separate utilities allowed, must tie to existing home)

This certifies that we have inspected the building at the above location and at the time of inspection has been found to comply with all the requirements of the Village of Williamsville and the NYS Uniform Code relating thereto. Permission is hereby given for the occupancy of said building. In whole or in part, in the manner and for the purposes herein specified.

7-27-22
Date



Tim Masters,
Code Enforcement Officer

Exhibit 5

Special Use Permit Renewal Zoning Code Analysis

Special Permit Renewal Zoning Code Analysis
95 Mill Street

Rachel and Javid Rzayev own 95 Mill Street, SBL 69.17-3-87.1 (“Property”) in the Village. The 0.56 acre, 117’ by 204’ Property is zoned R-3.

Accessory apartments are permitted as of right in the R-3 district. Accessory uses in the R-3 district are permitted the same as R-1 and R-2. Village Zoning Code § 112-14C(3). Pursuant to Village Zoning Code § 112-12A(2)(a), a single accessory apartment is permitted on the Property subject to issuance of a Special Permit.

On November 18, 2021, the Zoning Board of Appeals issued a Special Use Permit for an accessory structure to be used as an accessory apartment at the Property. Importantly, since initial approval, construction, and issuance by the Village of a Certificate of Occupancy on July 27, 2022, Applicants have used the accessory apartment as an in-law suite in line with the Village Zoning Code. Applicants have no reason to modify use of the accessory apartment. The in-law suite is essential to Applicants’ family care and family atmosphere cultivated at their home.

As set forth in the Village Zoning Code § 112-24E(2), in considering a special permit application, after notice and public hearing, the Zoning Board of Appeals shall determine:

- (a) That the permit will not prevent reasonable use of adjacent properties or of properties in adjacent districts.**
- (b) That the permit will not prevent the reasonable use of permitted or legally established uses in the district wherein the proposed use is to be located or in adjacent districts.**
- (c) That the safety, health and welfare of the Village will not be adversely affected by the proposed permit.**
- (d) That the permit will be in harmony with the intent of this chapter.**
- (e) That the proposed special use conforms to all applicable requirements, conditions or restrictions provided in this chapter with respect to such special use.**

As detailed in the following analysis, the accessory apartment meets the five criteria set forth in the Village Zoning Code.

- (a) That the permit will not prevent reasonable use of adjacent properties or of properties in adjacent districts.**

The special permit renewal for the accessory apartment will not prevent reasonable use of adjacent properties. The Property is zoned R-3, and all adjacent properties are zoned R-3. The accessory apartment is wholly contained within the Property boundaries and sufficiently setback from all other structures, including neighboring homes. The location of the accessory apartment maintains, to the extent practicable, existing vegetative screening.

Additionally, the occupancy of the accessory dwelling is a grandmother to the Applicants' children (i.e. an in-law suite). She does not drive, have a license, or own a car. She does not pay any rent. To that end, her presence and the presence of the accessory apartment does not disturb the peace or quiet enjoyment of neighboring homeowners. Construction was completed and a certificate of occupancy issued in July 2022. Since then, the Applicants have no knowledge of any complaints from neighbors or violations from the Village Building Department. The use and occupancy does not disturb and therefore does not prevent reasonable use of adjacent properties.

(b) That the permit will not prevent the reasonable use of permitted or legally established uses in the district wherein the proposed use is to be located or in adjacent districts.

The accessory apartment is sufficiently setback and isolated from all property boundaries and structures to ensure no intrusion in the activities of adjacent parcels. Additionally, the circumstances of this accessory apartment are unique enough that approval herein will not undermine code enforcement capabilities. Present occupancy has not created any negative impact or prevented reasonable use of other properties.

(c) That the safety, health and welfare of the Village will not be adversely affected by the proposed permit.

The safety, health, and welfare of the Village will not be adversely affected by the special permit renewal for an existing accessory apartment at the Property. The accessory apartment is sufficiently setback from other structures and property boundaries to minimize fire risk. The accessory apartment is occupied by a family member Applicants. Present occupancy and use of the accessory apartment has not created any negative impact to health, safety, and welfare of the Village.

(d) That the permit will be in harmony with the intent of this chapter.

A special permit renewal for the accessory apartment will be in harmony with the intent of the Village Zoning Code. The accessory apartment is for family and not a rental property geared for profit. To that end, the accessory apartment furthers the high-quality residential character of the area and does not threaten stability of the homes in this area. It embodies the essential importance of family; for the Applicants, there is a direct benefit that enhances their own health, safety, comfort, convenience, prosperity and welfare in having the accessory apartment on the Property. *See* Village Zoning Code § 112-1 (defining the Code's purpose).

Importantly, removing the two-year renewal requirement further harmonizes the existing accessory apartment with the Village Zoning Code because it aligns the approval with general requirements of the Code, which do not require Special Use Permit renewals for accessory apartments.

(e) That the proposed special use conforms to all applicable requirements, conditions or restrictions provided in this chapter with respect to such special use.

The accessory apartment conforms to all applicable requirements to the extent practicable. Since occupancy commenced in and around July 2022, the Applicants have not received any violation from the Building Department.

Exhibit 6

Short Environmental Assessment Form

Short Environmental Assessment Form

Part 1 - Project Information

Instructions for Completing

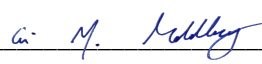
Part 1 – Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

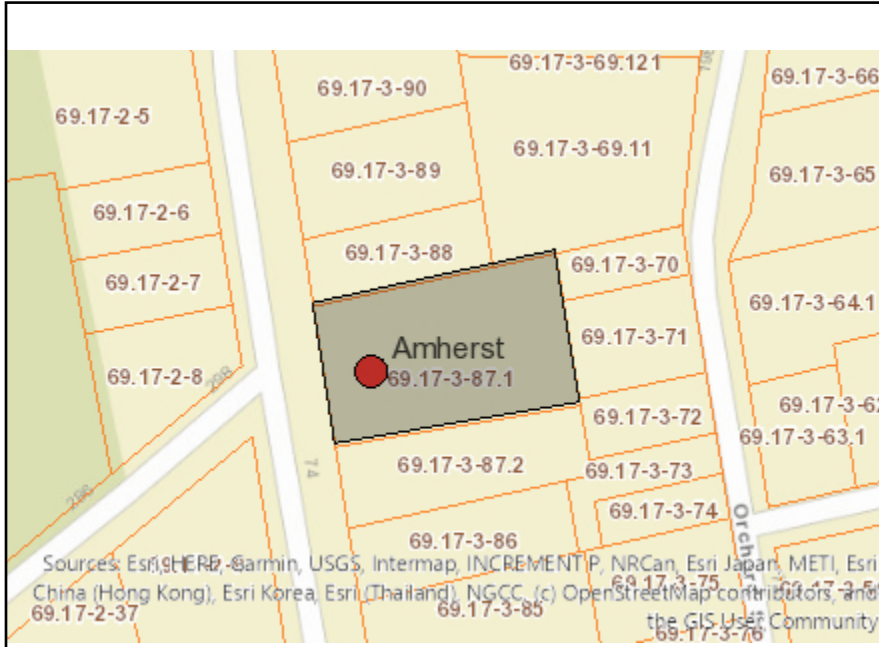
Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 – Project and Sponsor Information			
Name of Action or Project: 95 Mill Street Accessory Apartment			
Project Location (describe, and attach a location map): 95 Mill Streetm SBL 69.17-3-87.1			
Brief Description of Proposed Action: Special Use Permit Renewal for detached Accessory Apartment at 95 Mill Street in R-3 zone previously approved in November 2021, granted Certificate of Occupancy in July 2022, and continuously used as an in-law suite/accessory apartment since. There is no ground disturbance or construction as part of this action.			
Name of Applicant or Sponsor: Rachel and Javid Rzayev by Barclay Damon LLP, Ari Goldberg as agent/attorney		Telephone: (716) 858-3878	
		E-Mail: agoldberg@barclaydamon.com	
Address: The Avant Building, 200 Delaware Avenue Suite 1200			
City/PO: Buffalo		State: NY	Zip Code: 14202
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO <input type="checkbox"/>
			YES <input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval: Special Permit Renewal from the Zoning Board of Appeals is only approval required			NO <input type="checkbox"/>
			YES <input checked="" type="checkbox"/>
3. a. Total acreage of the site of the proposed action?		_____ 0.56 acres	
b. Total acreage to be physically disturbed?		_____ 0.00 acres	
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		_____ 0.56 acres	
4. Check all land uses that occur on, are adjoining or near the proposed action:			
5. <input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban)			
<input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other(Specify):			
<input type="checkbox"/> Parkland			

5. Is the proposed action,	NO	YES	N/A
a. A permitted use under the zoning regulations?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Consistent with the adopted comprehensive plan?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels? b. Are public transportation services available at or near the site of the proposed action? c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	NO <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	YES <input type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____ _____	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____ _____	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____ _____	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory? *see below note	NO <input checked="" type="checkbox"/> <input type="checkbox"/>	YES <input type="checkbox"/> <input checked="" type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency? b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ There are no wetlands or waterbodies on the property. If the proposed action is within 500 feet of a wetland or waterbody the EAF Mapper tool will automatically check "yes" on the pdf of the SEAF. The proposed action is within 500 feet of Glen Park and Ellicott Creek, which is classified as a federal riverine and state waterbody. The proposed action will not impact these adjacent waterbodies; the action includes no ground disturbance or construction. _____	NO <input type="checkbox"/> <input checked="" type="checkbox"/>	YES <input checked="" type="checkbox"/> <input type="checkbox"/>	

*If the proposed action is within an area designated as containing "sensitive archaeological resources," the EAF Mapper will automatically check "yes" on the PDF of the EAF. Sensitivity for archaeological sites usually cover large areas. Proposed action is within the "Intensive Level Historic Resources Survey of Selected [Building] Resources in the Town of Amherst," Survey No. 17SR0080, which surveyed the entire Town of Amherst and Village, approximately 35,000 acres. There is no ground disturbance or construction as part of this action.

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban		
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16. Is the project site located in the 100-year flood plan?	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes,	NO	YES
a. Will storm water discharges flow to adjacent properties?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
If Yes, briefly describe: _____ Existing conveyance systems within property and municipal tie-ins. _____		
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment: _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
49. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE		
Applicant/sponsor/name: <u>Property Owners Rachel and Javid Rzayev c/o Barclay Damon LLP</u> Date: <u>November 14, 2023</u>		
Signature: <u></u> Title: <u>Agent/Attorney</u>		



Disclaimer: The EAF Mapper is a screening tool intended to assist project sponsors and reviewing agencies in preparing an environmental assessment form (EAF). Not all questions asked in the EAF are answered by the EAF Mapper. Additional information on any EAF question can be obtained by consulting the EAF Workbooks. Although the EAF Mapper provides the most up-to-date digital data available to DEC, you may also need to contact local or other data sources in order to obtain data not provided by the Mapper. Digital data is not a substitute for agency determinations.



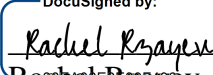
Part 1 / Question 7 [Critical Environmental Area]	No
Part 1 / Question 12a [National or State Register of Historic Places or State Eligible Sites]	No
Part 1 / Question 12b [Archeological Sites]	Yes
Part 1 / Question 13a [Wetlands or Other Regulated Waterbodies]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
Part 1 / Question 15 [Threatened or Endangered Animal]	No
Part 1 / Question 16 [100 Year Flood Plain]	No
Part 1 / Question 20 [Remediation Site]	No

Exhibit 7

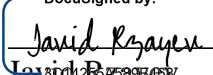
Owner Authorization

OWNER AUTHORIZATION

Rachel Rzayev and Javid Rzayev, record property owners of 95 Mill Street, SBL 69.17-3-87.1, in the Village of Williamsville, Town of Amherst hereby authorize Barclay Damon LLP to file any and all applications and supporting documentation, with the Village and/or Town in connection with approvals sought for the above referenced property.

DocuSigned by:

By: Rachel Rzayev

Dated: 11/13/2023

DocuSigned by:

By: Javid Rzayev

Dated: 11/13/2023