



Architecture, Engineering, and
Land Surveying Northeast, PLLC

Mr. Scott DeMane, Chairperson
City of Plattsburgh Zoning Board of Appeals
41 City Hall Place
Plattsburgh, NY 12901

Subject: Pearl Physical Therapy Lifestyle Medicine Gym - Request for SUP and Area Variance

Dear Mr. Chairman and Zoning Board Members:

We are respectfully submitting this application for Special Use Permit (SUP) and Area Variances for the above-referenced project. The project generally includes a 3,098-sf addition to the existing Pearl Physical Therapy facility at 135 South Peru Street plus a 784-sf (2-car) garage. The purpose of the addition is to provide a state-of-the-art physical therapy gym / activity area to provide much needed health, physical therapy, strengthening and rehabilitative services to members of the community.

The United States is dealing with a chronic disease epidemic, and our medical system is not currently designed to reduce the burdens of chronic disease. There has been a decline in independent medical providers in the North Country as insurance-based reimbursement models for private practice business is profoundly less than reimbursement models for hospital-based facilities.

Pearl Physical Therapy has been providing exceptional wellness care for thousands of members in our community since 2009. With 7 full-time licensed PT's we have outgrown our current footprint @ 135 S. Peru St. We have also been researching ways to help support better health for our community and are evolving our current practice to include a LifeStyle Medicine model of care inclusive of medically guided fitness and nutritional programming.

Physical therapists, in collaboration with the Lifestyle Medicine care team, are positioned to play a key role in facilitating engagement in the utilization of movement as medicine model to improving the lives and health of a community.

Owner and CEO of Pearl PT, Elizabeth Pearl, has contracted with Pinnacle Medical Wellness in Seattle to help implement LifeStyle Medicine into Pearl PT's practice model as they have successfully designed, implemented, and scaled LifeStyle Medicine into numerous PT practices.

This expansion of a medically based fitness facility will afford better access for community members either directly through Pearl Physical Therapy, referral from primary care providers and or self-referral. This facility will be a cash-based program fee outside of insurance model of reimbursement and offer high client engagement with the use of advanced exercise technology, tracking and monitoring of the member's fitness and health outcomes.

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Successful models of LifeStyle medicine practices have proven to have significant benefit in improving the health of community members, decreasing the need for emergency medicine visits, hospital admissions and co-morbidities that are costly and at times, life threatening.

Through review of the code and consultation with the Building Inspector we have determined that the plan requires two Class B – Area Variances; one for a detached garage located in the side yard rather than the rear yard; and the second for a slight (2-ft) encroachment of the parking lot expansion into the front yard setback. The details of each of the variances are explained below for your consideration.

I. Area Variance for Garage in side yard.

- 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.**

No. The detached garage is proposed to be in the side yard adjacent to the proposed gym. Convenient access is important to the operations of the physical therapy facility. The garage will be attractive in appearance, will blend in with the proposed addition and will not produce an undesirable change in the character of the neighborhood.

- 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.**

No. The detached garage needs to be situated adjacent to the proposed gym facility for convenient access which is important to the operations of the physical therapy facility for transport and storage of equipment.

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

No. The proposed garage is a modest 784-sf, 2-car garage in support of an existing Physical Therapy operation plus a proposed 3,000-sf addition.

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

No. The proposed addition and garage will be an expansion in-kind of the existing Pearl Physical Therapy facility, which has been operating comfortably and successfully on this large 1.5-acre site for many years.

- 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.**

No. The existing facility was constructed in its current location on the property prior to being purchased and repurposed for its current use as a physical therapy facility. The expansion plans are based on an expansion of that existing building.

II. Area Variance for parking in front yard setback.

- 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.**

No. The existing parking lot encroaches very slightly into the 20-ft front yard setback. The parking lot expansion is generally consistent with the existing parking lot alignment and also allowing for the code required 26-ft aisle width. Expansion of the existing parking lot will not produce an undesirable change in the character of the neighborhood.

- 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.**

No. The slight (2-ft) encroachment into the front yard setback is necessary to include the code required 26-ft aisle width.

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

No. The proposed garage is very slight, just 2-ft encroachment into the 20-ft front yard setback and will be buffered by a nicely landscaped front yard.

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

No. The proposed addition and garage will be an expansion in-kind of the existing Pearl Physical Therapy facility and parking lot, which has been operating comfortably and successfully on this large 1.5-acre site for many years.

- 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.**

No. The existing facility was constructed in its current location on the property prior to being purchased and repurposed for its current use as a physical therapy facility. The aisle width of the existing parking lot (24-ft) is a pre-existing / non-conforming condition. The current area variance is being requested in order to bring the proposed parking lot expansion into compliance with the code requirement for aisle width.

Thank you for your thoughtful consideration of this request.
Very truly yours,



Kevin Farrington, P.E.
Partner / Director of Civil Engineering



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41 City Hall Place
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Plattsburgh, New York

PROCEDURE IN APPEALING THE ZONING ORDINANCE SPECIAL USE PERMIT

DEADLINE FOR FILING APPLICATION 9/23/2022

ZONING BOARD MEETING DATE 10/17/2022

The Zoning Board of Appeals has been empowered to hear and decide all appeals to the Zoning Ordinance and to do so the Board holds public meetings once a month.

The attached appeal application must be completely filled out and returned to the office for action by the Zoning Board of Appeals at their monthly meeting. The filing fee for said application is as follows:

One and Two-family dwellings -	\$100.00
Multiple Dwellings	\$150.00
Commercial Properties	\$150.00

All checks should be made payable to the "City Chamberlain". In order for your appeal to be heard in the same month you apply, the appeal form and fee must be received by this office three weeks prior to the scheduled meeting of the Zoning Board of Appeals. All applicants or their representatives should attend the Zoning Board of Appeals Public Meeting of their appeal to answer any questions the Board may have regarding their request.

In filling out the form, please be specific and supply the Zoning Board of Appeals with all the necessary information requested on the form. If you are requesting a Variance from the Ordinance, you must detail why the literal enforcement of the ordinance will produce an undue hardship, while the variance requested will adhere to property is no proof of hardship within the purpose of zoning. In addition to the above, an applicant must submit adequate drawings and a site plan of all requests which will involve any construction, alterations, or physical change of their property. **Thirteen (13) copies of the application, drawings and plans are required, plus the original application.** We recommend the plans be approved before the thirteen (13) copies are made.

Before the Zoning Board of Appeals may hear and decide your appeal, this office must first:

1. Publish the request in three successive issues of the Press-Republican newspaper not less than five nor more than ten days before the hearings.
2. Notify, by letter, all property owners within 500 feet of the appeal property location of your request.

This office is responsible for implementing the above requirements.

If there are any questions, please feel free to contact this office.

Thank you for your cooperation.

ZONING BOARD OF APPEALS

CITY HALL

PLATTSBURGH, NEW YORK 12901

STANDARDS OF PROOF - AREA VARIANCE

A. The applicant for an area variance is not entitled to an area variance unless he has furnished competent proof to satisfy the "practical difficulty standard" and that the variance, if granted will not alter the essential character of the neighborhood.

In order to satisfy the practical difficulty standard, the applicant must prove that the Zoning Ordinance as it applies to his land creates significant economic injury and that the variance, if granted, will not produce a substantial change in the character of the neighborhood. The courts of this state hold that "significant economic injury cannot be established except by dollars and cents proof which includes:

1. The original purchase price of the premises.
2. The current market value of the premises without an area variance.
3. The projected market value of the premises with the variance having been granted."

"Projected market value" in item 3 does not include any cost of valuation for the proposed construction. It includes only the current market value without any variance plus the "value of the right to build." The "value of the right to build" may be said to be the "value of the building permit". How much more valuable is the entire property with a building permit allowing the future construction of the proposed work? Projected market value which includes the value of the work to be constructed will be rejected.

Projected market value can be best shown by the in-person testimony of a real estate appraiser who is present at the hearing. Written appraisals may be less satisfactory because the writer is not present to answer any questions.

The difference between the current market value without the variance and the projected market value with the variance is the amount of economic injury. If the Zoning Board of Appeals determines that this economic injury is significant, then the applicant may be entitled to the area variance.

However, if a town official comes forward at the hearing with testimony establishing that it is important in this particular instance to enforce the Zoning Ordinance as it is written, in order to protect the health, safety and welfare, then the application must be denied. It is important to note that such testimony must be by a town official or someone hired by the town to give the testimony. If the Zoning Board of Appeals agrees with the Town Official that it is important in this case to enforce the Zoning Ordinance as written, then the applicant is not entitled to the area variance, unless he presents further testimony that the enforcement of the ordinance as written will deprive him of any reasonable use of his land. If applicant proves that, then he is entitled to the area variance.

B. The second question to be determined by the Zoning Board of Appeals is whether the the propose will alte the essential character of the neighborhood. Will a substantial detriment to adjoining properties be created? If it will, then the variance may be denied.

C. Other Grounds for Denial:

1. Whether the variance applied for is the minimum variance that is necessary.
2. Is the variance sought one that is merely desirable for the greater enjoyment of the property, as opposed to one that is necessary for continued practical utilization of the premises? (Bielak v. Zoning Board of Appeals, 78 AD 2d 435).

ZONING BOARD OF APPEALS

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PLATTSBURGH, NEW YORK 12901

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STANDARDS OF PROOF - AREA VARIANCE

3. Is this hardship self-created? An area variance cannot be denied solely on the ground of self-created hardship, but is a factor to be considered.
4. Is the plight of the owner due to personal problems of the owner as opposed to matters dealing with the land or buildings? While an area variance may not be denied solely on this basis, it is a factor to be considered.

Area Variances Standards

The state statues define area variances as: "the authorization by the zoning board of appeals for the use of land in a manner which is not allowed by dimensional or physical requirements of the applicable zoning regulations."

General City Law, 81-b(1)

The state statues then go on to provide the zoning board with the standards for granting the area variances;

"(b) In making it's determination, the zoning board shall take 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 by such grant. In making such determination the board 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;

(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;

(3) whether the requested area variance is substantial;

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

(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 board of appeals , in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community."

General City Law, 81-b(4)

Area or Dimensional Variances

Area variances may be granted where setback, frontage, lot size or yard requirements of this Code cannot be reasonably met. In making it's determination the ZBA shall take 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 by such grant. In making such determinations the board shall also consider the following criteria: Items 1 thru 5 below are addressed in the attached application cover letter for both the

side yard garage and parking in front yard setback.

Please give a written response to each section.

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

(2) Can the benefit sought by the applicant be achieved by some method, feasible to the applicant to pursue, other than an area variance?

(3) Is the requested area variance substantial?

(4) Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood?

(5) Has the alleged difficulty been self-created?
This information shall be relevant to the decision of the board but shall not necessarily preclude granting of the variance.

Variations

One of the basic powers given by law to a zoning board of appeals is called the "variance" power. The board has the authority to "vary," or modify, the strict letter of a zoning ordinance or local law in cases where this strict interpretation could cause practical difficulties or unnecessary hardships for an individual.

Appeals boards are frequently confronted with requests for variances. There are two types of requests that come before the board, and the standards by which they are judged differ. A use variance is a request to utilize property for a use or activity which is not permitted by the zoning ordinance, and the applicant must demonstrate "unnecessary hardship." An area variance is a request for relief from dimensional standards contained in the zoning ordinance, and it requires a demonstration of "practical difficulty."

The basic standards for determining unnecessary hardship and practical difficulty have been established and refined by the courts in numerous cases.

Use Variance

An individual who wants to utilize property for a use that is not permitted by the zoning ordinance must apply for a use variance. An applicant for a use variance must demonstrate unnecessary hardship by satisfying each of the following three tests:

1. Uniqueness

The applicant must prove that there are certain features or conditions of the land that are not generally applicable throughout the zone AND that these features make it impossible to earn a reasonable return without some adjustment. If the features or conditions are generally applicable throughout the district, a variance should not be granted. In those situations where the difficulty is shared by others, the relief should be accomplished by an amendment to the zoning ordinance, not a variance.

2. Reasonable Return

The applicant must demonstrate an inability to realize a reasonable return under any of the uses permitted by the zoning ordinance. There must be a "dollars and cents" proof of the applicant's inability to realize reasonable return; speculation or qualitative assessment is inadequate.² Failure to realize the highest return is not considered a hardship.

3. Character

The applicant must prove that the requested modification will not change the character or quality of the neighborhood. In addition, the "spirit" of the ordinance or local law should be preserved.

The applicant for a use variance must meet all three tests before the appeals board may grant relief. A use variance should not be granted if the "unnecessary hardship" was created by the applicant. If the appeals board grants a use variance to an applicant who has failed to meet each of the tests, it runs the risk of assuming the function of the legislative body and making a decision contrary to the legislative intent of the zoning ordinance.

An increasing number of use variance requests is often the sign of an "aged" zoning regulation. The appeals board should not circumvent the legislative process by granting use variances. Instead, the appeals board should advise the governing body of the need to reexamine and amend the zoning ordinance.

Area Variance

In the case of an area variance, the applicant is seeking modification of dimensional standards, such as yard requirements, set-back lines, lot coverage, frontage requirements or density regulations, so that the property may be utilized for one of the uses permitted by the zoning ordinance. The appeals board may grant relief if the applicant can demonstrate that strict compliance with the regulations would cause practical difficulty.

The determination of practical difficulty is a three-step process.³

1. First, the applicant must demonstrate that the application of the zoning ordinance to his property causes significant economic injury.
2. Once the applicant has demonstrated economic injury, then the municipality must show that the regulation in question is reasonably related to a legitimate exercise of the police power.
3. Last, assuming the municipality has met its burden of proof, the applicant must demonstrate that the restrictions, as strictly applied in his case, are unrelated to the public health, safety or welfare of the community and that granting the variance will not adversely affect the community.

In making a determination of practical difficulty, the appeals board may consider:⁴

1. How substantial the variation is in relation to the requirement;
2. The potential effect of increased density on available municipal, county and state facilities and services;
3. Whether the variance will cause a substantial change in the character of the neighborhood;
4. Whether the difficulty can feasibly be mitigated by some other method; or
5. Whether the interests of justice will be served in granting the variance.

The appeals board should grant the minimum relief necessary to allow reasonable use of the land in question. Not every applicant for an area variance is automatically entitled to receive relief. Each application should be carefully considered against the requirement for proof of practical difficulty.

Summary

The major difference between a use variance and an area variance involves the use of the property. An area variance results in a modification of physical restrictions so that an allowable use may be established on the property. By contrast, a use variance permits the establishment of a use which is prohibited by the zoning ordinance and the zoning map. It is for this reason that the standards for a use variance are more stringent than the standards established for an area variance.

Frequently, the appeals board is encouraged to make legislative decisions under the guise of use variance requests. The appeals board should exercise caution when confronted with a request for a use variance, and only grant those which meet the tests established for determining unnecessary hardship. The appeals board should resist the inclination to correct deficiencies in the zoning ordinance through the exercise of its variance power. If particular provisions of the zoning ordinance are inappropriate or unjust, the appeals board should recommend that the legislative body (City Council, Town Board, Board of Trustees) take the necessary steps to amend the ordinance or local law.

¹Otto v. Steinhilber, 282 NY 71 (1939), Village of Bronxville v. Francis, 150 NYS 2d 906 (1956); Jayne Estates v. Raynor, 22 NY 2d 417 (1968); Douglaston Civic Association, Inc. v. Klein, 51 NY 2d 963 (1980).

²Fayetteville v. Jarrold, 53 NY 2d 254 (1981).

³Fulling v. Palumbo, 21 NY 2d 30 (1967); National Merrit, Inc. v. Werst, 41 NY 2d 438 (1977).

⁴Weschberger v. Michalls, 19 Misc 2d 909 (1959).

Department of Planning



Note:

This Tech Memo was prepared by the
publication for municipal governments.

Department of Planning as an informational
It is not intended to be a legal opinion.

Short Environmental Assessment Form

Part 1 - Project Information

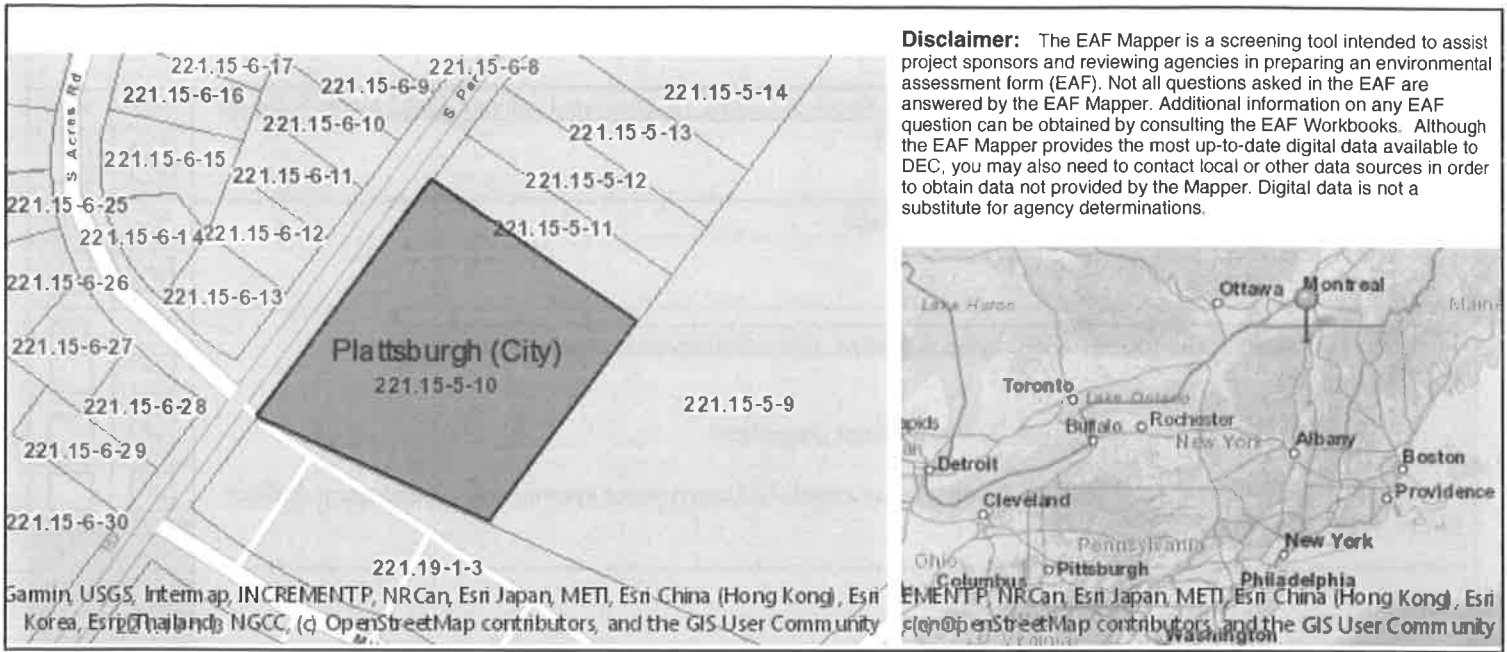
Instructions for Completing

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			
Pearl Physical Therapy - Building Addition			
Name of Action or Project: Building Addition, Garage			
Project Location (describe, and attach a location map): 135 South Peru Street			
Brief Description of Proposed Action: Add building addition to the Pearl Physical Therapy facility to support a gym and physical rehabilitation activities and a garage.			
Name of Applicant or Sponsor: Elizabeth Pearl, CEO, Owner Adirondack Integrative Wellness		Telephone: 518.563.7777	
		E-Mail: elizabeth.pearl@pearlphysicaltherapy.com	
Address: 135 South Peru Street			
City/PO: Plattsburgh		State: NY	Zip Code: 12901
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:			NO <input type="checkbox"/>
			YES <input type="checkbox"/>
3. a. Total acreage of the site of the proposed action?		1.6 acres	
b. Total acreage to be physically disturbed?		<0.5 acres	
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		1.6 acres	
4. Check all land uses that occur on, are adjoining or near the proposed action:			
5. <input checked="" type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input 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, a. A permitted use under the zoning regulations? b. Consistent with the adopted comprehensive plan?	NO	YES	N/A
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	<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	YES	
	<input type="checkbox"/>	<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	YES	
	<input checked="" type="checkbox"/>	<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	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
	<input 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	YES	
	<input type="checkbox"/>	<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	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____ _____	NO	YES	
	<input type="checkbox"/>	<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?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	<input checked="" type="checkbox"/>	<input 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: _____ _____ _____	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	



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]	No
Part 1 / Question 13a [Wetlands or Other Regulated Waterbodies]	No
Part 1 / Question 15 [Threatened or Endangered Animal]	No
Part 1 / Question 16 [100 Year Flood Plain]	No
Part 1 / Question 20 [Remediation Site]	Yes