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City of Buffalo Zoning Board of Appeals
Rev. James Lewis, Chair
Thomas Dearing, James Hornung Jr.
Janice McKinnie, Bernice Radle
65 Niagara Square, Room 901
Buffalo, NY 14202

**Re: 983-985-989-993-995-997 Michigan; 228-230-232-234-240-242-244-248-250 Maple
– Myriad of area variances for N-2R/N-2E Multiple-Unit Residential Building(s)**

Dear Zoning Board of Appeals:

Please consider the following comments in opposition to Symphony’s variance request.

1. The UDO appropriately limits the role of a zoning variance.

As expressed in the UDO, “A **zoning variance** allows a **narrowly circumscribed means** by which **relief** may be granted **from unforeseen applications of this Ordinance that create practical difficulties or particular hardships.**” [UDO, 11.3.5(A)] Despite the UDO’s limiting words, Symphony would have this board *decimate the UDO’s* N-2R requirements that were *fully foreseeable*, to address a particular hardship – its “*need for specific density economically*” – that is *not the result of the UDO’s* requirements, but is *wholly self-created* by its speculative purchase of 15 over-priced parcels. As our state’s highest court has held: “[W]here hardship is self-imposed, loss, if any, is not due to an application of the ordinance in question, but rather the result of the property owner’s conduct.” [Overhill Bldg. Co. v. Delany, 28 NY2d 449, 456]

2. The UDO intends N-2R zones to be moderately-dense residential neighborhoods.

The intent – or, as Symphony disingenuously calls, the “spirit” - of the N-2R district is clearly manifest in its dimensional requirements: The N-2R zone is a residential district comprised of moderate size residential buildings (a maximum of 3-stories high), on moderate size lots (no wider than 60’), and separated by side yards (at least 3-feet wide). And to make certain that developers and this honorable board comprehends its vision for N-2R districts, the UDO imposes the moderate “*Residential density*” maximum of one unit for each 1,250 square feet of lot area. It is this honorably body’s duty to protect and implement, not supplant, the UDO’s intent.

3. Symphony’s application requests 5 “undisputably substantial” variances.

NY’s highest court, in *Ifrac v. Utschig* -a leading area variance case involving lot size and width - holds that, “**The area variances – of at least 60% - are undisputably substantial.**” The applicant wants 5 “*undisputably substantial*” variances (despite their cumulative impact):

- **884% variance** from N-2R’s minimum side yard requirement (6’ rather than 52’).
- **333% variance** from N-2R’s maximum lot width (260’ rather than 60’).
- **223% variance** from N-2R’s maximum density allowed (68 units/acre rather than 21).
- **67% variance** from N-2R’s minimum rear setback requirement (5’ rather than 15’).
- **67% variance** from N-2E’s maximum stories (5 stories rather than 3).

4. The profound contrast between Symphony’s proposed lot width, building scale, and density, and the nearby residential properties on Maple Street, would result in significant adverse impacts to the character of the existing Fruit Belt neighborhood.

According to our state’s highest court, a municipality’s zoning board is “entrusted with safeguarding the character of the neighborhood in accordance with the zoning laws,”¹ and lot size, density, and the scale and style of nearby homes are relevant factors when considering a proposed project’s impacts on the neighborhood’s character.² The following table demonstrates the stark contrast between what Symphony proposes to construct on its nine assembled lots on Maple Street, the average dimensions of the 9 closest houses to Symphony’s assembled parcel, and what is allowed “by right” pursuant to N-2R requirements on Symphony’s 26,000 sf parcel:

	<u>9 Closest Homes³ Proposed on Maple N-2R By Right</u>		
Number of Units:	17 existing units	68 units proposed	21 units max.
Number of stories:	1.91-story (ave.)	4-story proposed	3-story max.
Lot width:	45.7’ ave./85’ max.	260’ proposed	4 x 60’-wide lots
Gross Fl. Area:	2,271 sf (ave.)	95,680 sf (est.) ⁴	4 x 12,600 sf bldgs. ⁵
	[20,442 sf (total)]	[95,680 sf (total)]	[50,400 sf total]
Density:	1 unit/2,345 sf	1 unit/382 sf	1 unit/1,250 sf max.

5. Symphony’s cacophony of disingenuous claims demean the variance process. 4 examples:

- A. “Area variances are required for a few aspects.” FACT: 11 distinct variances are needed.
- B. “[T]he proposed design minimizes the visual impacts associated with a larger structure.”
REALITY: Only a developer or its agents would believe this assertion.
- C. “[T]he two patios create 50’ of open space within the façade, greatly minimizing the impact of a loss of side yard separation.” FACT: UDO requires side yards to extend to rear yard line. The proposed patios extend a quarter of the depth of the lot, and then meet a 4-story wall.
- D. “The design team went to great lengths to create a façade along Maple which mimics separate buildings.” REALITY: UDO requires more than an effort to mimic separate buildings.

In summary, please make the only determination compliant with the law, reason, and justice: disapprove Symphony’s application. To do otherwise would comprise such a massive variance from the UDO’s requirements as to tread on the legislative authority of the Common Council.

Respectfully submitted,
Arthur J. Giacalone

¹ See *Pecoraro v. ZBA of Town of Hempstead*, 2 NY3d 608, 615 (2004).

² See, for example, *Ibrah, supra*, and *Pecoraro, supra*.

³ Derived from City’s on-line Property Information for 241, 235, 231, 227, 221, 217, 215, 188 Maple, 172 Carlton.

⁴ Applicant does not provide GFA for Maple St. building. Estimate uses 26,000 sf lot x 92% coverage x 4 stories.

⁵ Based on 6,000 sf lot area (60’ by 100’) x 70% coverage x 3 stories