

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

386

CA 24-00754

PRESENT: LINDLEY, J.P., OGDEN, DELCONTE, AND KEANE, JJ.

IN THE MATTER OF DANIEL T. WARREN,
PETITIONER-PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

ZONING BOARD OF APPEALS OF TOWN OF WEST SENECA,
TOWN OF WEST SENECA, CODE ENFORCEMENT OFFICER
OF TOWN OF WEST SENECA AND CANISIUS HIGH SCHOOL
OF BUFFALO, BY AND THROUGH FR. DAVID CIANCIMINO,
S.J., AS ITS PRESIDENT, RESPONDENTS-DEFENDANTS-RESPONDENTS.

DANIEL T. WARREN, PETITIONER-PLAINTIFF-APPELLANT PRO SE.

GRECO TRAPP LLC, BUFFALO (CHRIS G. TRAPP OF COUNSEL), FOR RESPONDENTS-
DEFENDANTS-RESPONDENTS ZONING BOARD OF APPEALS OF TOWN OF WEST SENECA,
TOWN OF WEST SENECA, CODE ENFORCEMENT OFFICER OF TOWN OF WEST SENECA.

COSGROVE LAW FIRM, BUFFALO (JAMES C. COSGROVE OF COUNSEL), FOR
RESPONDENT-DEFENDANT-RESPONDENT CANISIUS HIGH SCHOOL OF BUFFALO, BY
AND THROUGH FR. DAVID CIANCIMINO, S.J., AS ITS PRESIDENT.

Appeal from a judgment (denominated order) of the Supreme Court,
Erie County (Craig D. Hannah, J.), entered April 5, 2024, in a
proceeding pursuant to CPLR article 78 and declaratory judgment
action. The judgment, inter alia, dismissed the petition-complaint.

It is hereby ORDERED that the judgment so appealed from is
unanimously affirmed without costs.

Memorandum: Petitioner-plaintiff (petitioner) commenced this
hybrid CPLR article 78 proceeding and declaratory judgment action
seeking, inter alia, to annul the determination of respondent-
defendant Zoning Board of Appeals of the Town of West Seneca (ZBA),
which had dismissed for lack of standing his administrative appeal
challenging the issuance of a building permit by respondent-defendant
Code Enforcement Officer of the Town of West Seneca to respondent-
defendant Canisius High School for the further development of student
athletic facilities. Petitioner appeals from a judgment that, inter
alia, granted respondents' motion to dismiss the petition-complaint.
We affirm.

Contrary to petitioner's contention, the ZBA properly determined
that petitioner was not an aggrieved person pursuant to Town Law
§ 267-a (4) and, thus, lacked standing to prosecute an administrative

appeal inasmuch as petitioner was not a party to the issuance of the building permit, nor an officer, department, board or bureau of the Town of West Seneca, and failed to establish that he "sustained special damage, different in kind and degree from the community generally" from the issuance of the permit (*Matter of Sun-Brite Car Wash v Board of Zoning & Appeals of Town of N. Hempstead*, 69 NY2d 406, 413 [1987], *rearg denied* 70 NY2d 694 [1987]; see *Matter of Nunnally v Zoning Bd. of Appeals of the Town of New Windsor*, 217 AD3d 950, 952 [2d Dept 2023]; *Matter of Hadland v Zoning Bd. of Appeals of Town of Southampton*, 94 AD3d 1001, 1001-1002 [2d Dept 2012]).

In light of our determination, we do not address petitioner's remaining contentions.