



Department of Planning, Housing, & Community Development

Mayor, Richard C. David
Director, Dr. Juliet Berling

STAFF REPORT

TO: Zoning Board Members
FROM: Planning Housing and Community Development
DATE: March 25, 2015
SUBJECT: 1168 Vestal Avenue; Area Variances
TM ID #: 160.72-3-1
CASE: 2015-05

A. REVIEW REQUESTED

This application is associated with the establishment of a 1,947ft² drive-through restaurant and associated parking in the C-4 Neighborhood Commercial District. As proposed, the restaurant would operate seven days a week between the hours of 5:00am and 10:00pm. The applicant approximates that 3-10 employees would work at the site daily. The projected number of customers per day is approximately 650. The proposed project includes 29 parking spaces, including 10 stacking spaces. Site improvements include the addition of a 170ft² walk-in cooler/freezer and a 220ft² interior landscaped area.

Area variances are needed for the following:

Development Standard	Proposed	Required
Landscape buffer	None	5 foot buffer along side and rear lot lines
Lot coverage	86 percent	70 percent maximum
Wall signs	3 signs	2 signs
Minimum setback of ground sign	None	5 foot setback from any property line
Maximum size of ground sign	64.51ft ²	40ft ²
Electronic Message Center (EMC) sign	1 EMC sign	None permitted

In granting an area variance, the Zoning Board of Appeals must weigh the benefit to the applicant if the variance is granted against the detriment to the health, safety, and welfare of the neighborhood or community by such a grant. The following must also be considered:

- (a). **Undesirable change:** Whether an undesirable change will be produced in the character of the neighborhood, or whether a detriment to nearby properties will be created;
- (b). **Reasonable alternative:** Whether the Applicant can achieve his goals via a reasonable alternative that does not involve the necessity of an area variance;
- (c). **Substantial request:** Whether the variance requested is substantial;
- (d). **Physical and Environmental Conditions:** Whether the requested variance will have an adverse impact on the physical or environmental conditions in the neighborhood or district;

- (e). **Self-created hardship**: Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.

The Zoning Board of Appeals, in granting an area variance, 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.

B. STAFF FINDINGS

Planning Staff has the following findings:

Area Variance Findings: Section 410.92D states that where there are practical difficulties or special conditions which make regulations governing lot size, yard size, building height, solar access or any other regulations pertaining to bulk and not specifically related to use of land or buildings unreasonable or impossible to comply with, the Zoning Board of Appeals may vary or modify these regulations as long as the spirit of the regulation to be altered is observed. In making its determination, the Zoning Board of Appeals 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 consider:

(a) Undesirable change in neighborhood character: 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(s).

(b) Alternative cure sought: whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance(s);

(c) Substantiality: whether the area variance(s) requested is substantial;

The number of variances requested could be considered substantial.

(d) Adverse effect or impact: whether the requested variance(s) will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;

(e) Not self-created: whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance(s).

The hardships associated with the proposed signage are self-created.

C. ADDITIONAL REVIEWS

The Traffic Board reviewed this project at their March 12, 2015 meeting. There was no action for the Traffic Board to take regarding this project.

The proposed project is located within 500 feet of a State/County owned road and therefore is subject to 239 l and m review. Comments have been received and distributed.

Series A Site Plan review by the Planning Commission is required. The Planning Commission will hold a public hearing for this project at the April 13, 2015 meeting.

D. SITE REVIEW

The subject parcel is located on the south east corner of the Vestal Avenue and Park Avenue intersection. 1168 Vestal Avenue is a 25,508ft² site improved with a one-story, 1,947ft² commercial building. There is a landscaped area at the front of the building between the public sidewalk and building. The remainder of the site is paved.

Land uses along Vestal Avenue are primarily commercial. There is some multi-unit housing to the rear of the site.

Commercial uses in the area include: Walgreens Pharmacy, All State Insurance, Mirabito Gas Station, Star Cleaners, The Medicine Shop Pharmacy, Subway, and Grande's.

E. PREVIOUS ZONING BOARD & PLANNING COMMISSION ACTIVITY

1167 Vestal Avenue:

- In 2012, a Series A Site Plan Review Exception application was approved for expansion of off-street parking area in the C-4, Neighborhood Commercial District.
- The Zoning Board of Appeals granted a use variance to Benjamin Medolla in January, 1977 to convert a neighborhood grocery store to a cabinet and furniture making and repair shop.

1179 Vestal Avenue: In 2011, the Planning Commission approved a Special Use Permit and Series A Site Plan Review for a Retail and Wholesale Pharmacy in the C-4, Neighborhood Commercial District.

1150 Vestal Avenue:

- The Planning Commission approved a Series A Site Plan submitted by Ferris Akel in 1996 for an off-street parking lot.
- In 1986, a request by Steven Tenney to construct an awning sign with an area of 36 square feet was denied.
- In 2014, a Series A Site Plan Review Exception application was approved for the establishment of a limited-service restaurant in the C-4 District

1148 Vestal Avenue: In 2013, a Series A Site Plan Review Exception application was approved for the establishment of a General Service/Retail - Psychic Readings

1185 Vestal Avenue: In 2013, a Series A Site Plan Review Exception application was approved for the establishment of a hair salon.

1154 Vestal Avenue: In 2013, the ZBA approved a use variance to convert a salon to a cosmetology school.

1179 Vestal Avenue: In 2011, the ZBA approved area variances for maximum number of wall signs, maximum total number of signs, maximum total sign area.

1152 Vestal Avenue: In 2009, the ZBA approved area variances for maximum lot coverage, maximum width of a one-way driveway, and minimum width of a landscaped side buffer associated with the development of a CVS

Pharmacy located in a C-4, Neighborhood Commercial District.

1158 Vestal Avenue: In 2008, the ZBA approved an area variance for signage in the C-4 district.

1159 Vestal Avenue: Marcello Barreiro was granted use and area variances in 1985 to construct a two-story medical office building.

F. COMPREHENSIVE PLAN CONSISTENCY

The future land use map in the City’s 2014 Comprehensive Plan identifies this site as “general commercial”. The general commercial classification is intended to allow auto-oriented commercial land use patterns. The proposed drive-through restaurant, while accessible to pedestrians and via bus, would be primarily auto-oriented. Further, this proposed use would support the surrounding commercial development

G. ENVIRONMENTAL IMPACT

The applicant's proposal is a SEQR **Unlisted** Action. The Zoning Board of Appeals must be the lead agency to determine any environmental significance related to the variances.

1. Motion to determine what type of action:
 - a. Type I
 - b. Type II
 - c. **Unlisted**
2. Determine Lead Agency and other involved agencies.
3. After the Public Hearing, Determination of Significance. The Zoning Board of Appeals, acting as Lead Agency, is responsible for completing Part 2 & Part 3 of the Environmental Assessment Form (EAF)– see below.

SEQR EAF Part 2 - Impact Assessment. The Lead Agency is responsible for the completion of Part 2. Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available. When answering the questions the Zoning Board should be guided by the concept “Have our responses been reasonable considering the scale and context of the proposed action?”

	NO, OR SMALL IMPACT MAY OCCUR	MODERATE TO LARGE IMPACT MAY OCCUR
Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	X	
Will the proposed action result in a change in the use or intensity of use of land?	X	
Will the proposed action impair the character or quality of the existing community?	X	
Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	X	
Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?		X

Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	X	
Will the proposed action impact existing: A. public / private water supplies? B. public / private wastewater treatment utilities?	X	
Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	X	
Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	X	
Will the proposed action result in an increase in the potential for erosion, flooding or drainage Problems?	X	
Will the proposed action create a hazard to environmental resources or human health?	X	

EAF Part 3 - Determination of significance. For every question in Part 2 answered “moderate to large impact may occur”, or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

- If the Zoning Board of Appeals determines that the proposed action may result in one or more potentially large or significant adverse impacts an environmental impact statement is required.
- The Zoning Board of Appeals may issue a Negative Declaration if it is determined that the proposed action would not result in any significant adverse environmental impacts.

H. SUGGESTED CONDITIONS

- 1. That the applicant submit to the Department of Planning, Housing, and Community Development copies of the easements that allow usage of the three properties directly east of the site for ingress and egress- 1180 Vestal Avenue, 2 Mitchell Avenue and, 4 Mitchell Avenue.**

I. ENCLOSURES

Enclosed are copies of the site plan, the application and site photos.