



# 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: 162 & 166 Main Street; Area Variances  
TM ID #: 160.213-8&9  
CASE: 2015-04

### **A. REVIEW REQUESTED**

This application is associated with the demolition of a ~18,000ft<sup>2</sup> mixed-use building and construction of a 2,695ft<sup>2</sup> drive-through restaurant in the C-1 Service Commercial District. As proposed, the restaurant would operate seven days a week between the hours of 10:00am and 11:00pm. The applicant approximates that 10 employees would work at the site daily. The project number of customers per day is 300-400. The proposed project includes 34 parking spaces, including 5 stacking spaces. Site improvements include landscape buffers along portions of the public street, side and rear property lines, tree plantings along the perimeter of the property, an interior bioretention area, and installation of new aprons and curbing along the public street.

Area variances are needed for the following:

<b>Development Standard</b>	<b>Proposed</b>	<b>Required</b>
Landscape buffer	5 foot buffer along public street, partially along side and rear lot lines	5 foot buffer along public street, side, and rear lot lines
Lot coverage	83 percent	70 percent maximum
Interior tree plantings	2 trees	7 trees
Wall signs	4 signs	2 signs

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).**

Upgrades to the site, including buffering, perimeter landscaping, interior landscaping, and orderly striped parking will improve the functionality and aesthetics of the site.

**(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);**

The existing development does not meet current Zoning Code requirements. The proposed upgrades to the site will bring the property closer into compliance.

**(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;**

Upgrades to the overall site, including buffering, perimeter landscaping, interior landscaping and bioretention, and orderly striped parking will significantly improve the functionality of the site.

**(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 proposed hardships are self-created.

## **C. ADDITIONAL REVIEWS**

The Traffic Board approved the additional curb cut on Main Street provided that the entrance and exit are each limited to one way traffic.

The proposed project is not subject to 239 l and m review, but was sent at the request of the applicant. Comments have been received and distributed.

Series A Site Plan review by the Planning Commission is required. A public hearing for the project will be held at the April 13, 2015 Planning Commission meeting.

The proposed project involves the demolition of a structure greater than forty (40) years old and thus requires a determination of significance the Commission Architecture and Urban Design (CAUD). CAUD was unable to review the application at the March 24, 2015 meeting due to a lack of a quorum. The applicant will be on the April 28, 2015 meeting agenda.

The Shade Tree Commission reviewed the tree planting plan at the March 16, 2015 Shade Tree Commission meeting and has provided comments regarding tree size to the Planning Commission.

## **D. SITE REVIEW**

The subject parcels are adjacent to one another and located on Main Street between Florence Street and Jarvis Street. 166 Main Street is a 15,800ft<sup>2</sup> site improved with a two-story, 18,096ft<sup>2</sup> masonry building. The remainder of the site is paved. 162 Main Street is a 10,980ft<sup>2</sup> vacant site that is partially paved.

Land uses along Main Street are primarily commercial, while land uses to the rear of the site are residential.

## **E. PREVIOUS ZONING BOARD & PLANNING COMMISSION ACTIVITY**

176 Main Street: In 2014, the Zoning Board of Appeals approved area variances to exceed the maximum number of signs per frontage and the maximum size of a marquee sign in the C-1 District.

285 Main Street: The Planning Commission is currently a Series A Site Plan Review and Special User Permit to convert 32,000 square feet of an existing commercial building into an outpatient medical clinic in the C-1.

311 Main Street/197 Matthews Street: In 1986, the Planning Commission permitted the use of a parking lot located 250 feet from the principal use (medical office building).

312-314 Main Street: A request by Paul Chang to construct an addition to an existing dry cleaning plant was approved by the Planning Commission in May, 1998.

315 Main Street:

- Use and area variances were granted to Binghamton Giant Markets Inc. in October, 1994, to operate a light manufacturing facility to assemble computers.
- The Zoning Board of Appeals granted two area variances to Ferris Akel in September, 1996, to construct an off-street parking lot for a medical office facility located next door on Main Street.

317 Main Street: Permission to enlarge a non-conforming use by constructing a one-story addition to the

rear of a building was granted to the Broome County Board of Realtors, Inc. in 1972 by the Zoning Board of Appeals.

## 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

The removal of the front drive in the revised site plan is consistent with the Main & Court Corridor Plan which places emphasis on development patterns with no or small front setbacks in order to enhance the “walkability” of Main Street.

## 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?	<b>X</b>	
Will the proposed action result in a change in the use or intensity of use of land?	<b>X</b>	
Will the proposed action impair the character or quality of the existing community?	<b>X</b>	
Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	<b>X</b>	
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?		<b>X</b>

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

**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**

None.

**I. ENCLOSURES**

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