



# Department of Planning, Housing, & Community Development

Mayor, Richard C. David  
Director, Jennie Skeadas-Sherry AICP

## ***STAFF REPORT***

TO: Zoning Board of Appeals Members  
FROM: Planning, Housing and Community Development  
DATE: August 19, 2013  
SUBJECT: 55 Robinson Street; Use Variance  
CASE: 2013-24

---

### **A. VARIANCE REQUESTED**

This application for a use variance would re-establish a deli and retail store offering food and convenience items at 55 Robinson Street. The property is zoned R-3 Residential Multi-Unit Dwelling District. Retail sales is not permitted in the R-3 District; therefore a use variance is required from the Zoning Board of Appeals.

In granting a use variance, the Zoning Board of Appeals must find the applicant has adequately demonstrated the following:

- (a). **Economic deprivation**: That under applicable zoning regulations, the applicant is deprived of all economic use or benefit from the property in question. Deprivation must be established by competent financial evidence;
- (b). **Unique circumstances**: That the alleged hardship for the property is unique and does not apply to a substantial portion of the district or neighborhood;
- (c). **Neighborhood character**: That granting the variance will be in harmony with the spirit and intent of this ordinance and will not alter the essential character or quality of the neighborhood, endanger public health or safety, or substantially diminish or impair property values in the neighborhood.
- (d). **Self-created hardship**: That the alleged hardship has not been self-created.

The Zoning Board of Appeals, in granting a use 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. SITE REVIEW**

The properties known as 55 Robinson Street located at the northeast corner of Robinson and Liberty Streets. The site is improved with a two story mixed use, with a vacant 975 square foot commercial tenant space on the ground floor and upper floor residential uses. The commercial space has historically been utilized as a retail store selling food and convenience items and a restaurant.

Land use in the vicinity of 55-57 Robinson Street consists primarily of residential parcels. On the western side of the property there is a mix of residential one and two family dwellings. On the parcel to the south is a large vacant lot. On the north side is more residential properties and on the east are the highway and a large bridge running overhead.

**C. PREVIOUS ZONING BOARD & PLANNING COMMISSION ACTIVITY**

46-50 Robinson Street:

- The Zoning Board of Appeals granted an area variance to Anthony and Carol Fabrizio in 1981 to allow the construction of a ranch-style residence.
- Americo DiCamillo was granted an area variance by the Zoning Board of Appeals in 1985 to allow the construction of a six-family house.
- Americo Dicamillo had a recreation plan approved by the Planning Commission in 1985 to allow him the option of building a six-unit apartment building.

55 Robinson Street: In 2006, the Zoning Board of Appeals denied a use variance to establish an automobile repair business and a convenience store.

55 Robinson Street: In 1993, use and area variances were granted to Ilona Rhyno to convert a non-conforming food service take-out business into a restaurant.

67-71 Robinson Street:

- In 2000, Commonwealth Sign Company withdrew an application to the Zoning Board of Appeals for an area variance for maximum sign height.
- In 1975, an area variance of rear yard setback requirements was granted to Harris Enterprises Inc. to allow the construction of a commercial building.

73-75 Robinson Street:

- The Planning Commission granted a Special Use Permit to Cliff Thomas in 1997 to operate a car wash.
- M.J.M. Associates was granted an area variance in 1985 to permit an illuminated business sign on the property.

The applicant's proposal is a SEQR **Unlisted** Action. The Zoning Board should be the lead agency to determine any environmental significance related to the use and area 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 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 (ZBA) 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 to the ZBA. When answering the questions the ZBA should be guided by the concept “Have our responses been reasonable considering the scale and context of the proposed action?”

	<b>NO, OR SMALL IMPACT</b>	<b>MODERATE TO LARGE IMPACT</b>
--	------------------------------------	---

	MAY OCCUR	MAY OCCUR
Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?		
Will the proposed action result in a change in the use or intensity of use of land?		
Will the proposed action impair the character or quality of the existing community?		
Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?		
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?		
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?		
Will the proposed action impact existing: A. public / private water supplies? B. public / private wastewater treatment utilities?		
Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?		
Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?		
Will the proposed action result in an increase in the potential for erosion, flooding or drainage Problems?		
Will the proposed action create a hazard to environmental resources or human health?		

**EAF Part 3 - Determination of significance.** For every question in Part 2 that 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 ZBA determines that the proposed action may result in one or more potentially large or significant adverse impacts an environmental impact statement is required.
- The ZBA may issue a Negative Declaration if it is determined that the proposed action will not result in any significant adverse environmental impacts.

**A. STAFF FINDINGS**

Planning Staff has the following findings:

**Use Variance Findings:** Section 410.92C of the Zoning Code states that the Zoning Board of Appeals shall not grant a use variance until the applicant has shown that the applicable zoning regulations and

restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant must demonstrate the following to the Zoning Board of Appeals:

**(a) Reasonable return: the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.**

The site has historically been utilized for a mix of uses, including commercial and residential. Although the storefront is currently vacant and the prior commercial uses have been abandoned, the site is currently being taxed, essentially, as a mixed use building.

**(b) Unique hardship: the alleged hardship for the property is unique and does not apply to a substantial portion of the district or neighborhood.**

The site is unique in that it is improved with a commercial storefront.

**(c) Essential character of the neighborhood: granting the variance will not alter the essential character of the neighborhood.**

The subject site has historically been utilized for a mixture of commercial and residential purposes. Therefore, re-establish of a commercial use at this site would be consistent with the historic character of the area.

**(d) Not self-created hardship: the alleged hardship has not been self-created.**

The storefront was vacant when the property was purchased by the current property owner. Therefore, the historic commercial uses at the site were not abandoned by the current owner. Further, the owner has been paying taxes at a higher rate due to the fact that the building is classified as a mixed use building.

## **F. RECOMMENDED CONDITIONS OF APPROVAL**

If the Zoning Board approves the proposed variance staff recommends the following conditions of approval:

1. The property owner shall be responsible for collecting litter and debris from the site and adjoining rights-of-way at least once a day.
2. The sales of alcoholic beverages, including beer, wine and liquor, shall be prohibited.
3. Prior to the issuance of permits, plans of the building shall be submitted to the Planning Department for review and approval illustrating the replacement of the siding on the ground floor of the building with a material to be consistent with the upper floor of the building. The plan shall also show the removal of the boards over the windows and doors. If necessary the windows and doors shall be replaced with commercial type windows and doors. The plans shall also illustrate at least two wall mounted light fixtures, one along Robinson Street and one along Liberty Street.
4. Prior to the finalization of permits, the asphalt located within the utility strip along Liberty Street shall be removed and replaced with low maintenance, low growing ground cover appropriate for hardiness zone 5b such as white creeping thyme (*thymus serpyllum* 'Albus').

## **F. ENCLOSURES**

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