



Department of Planning, Housing, & Community Development

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

STAFF REPORT

TO: Zoning Board of Appeals Members
FROM: Planning, Housing and Community Development
DATE: June 19, 2014
SUBJECT: 65 Rotary Ave; Use Variance
CASE: 2014-14

A. VARIANCE REQUESTED

The applicant has submitted an application for a use variance to establish a limited-service restaurant, and an expansion of non-conforming use to allow the usage of the tavern to extend to a fenced in rear area at 65 Rotary Avenue. The property is zoned R-1 Residential Single Unit Dwelling District. The establishment of a limited-service restaurant is not permitted in this district, and therefore necessitates a use variance from the Zoning Board of Appeals. Tavern is not a permitted use, and any expansion of the existing, legal non-conforming tavern must be approved by the Zoning Board of Appeals.

The applicant has proposed for the site a takeout-only pizza shop with 1,111 square feet of total floor space. The limited-service restaurant will operate 7 days a week between the hours of 11:00am -11:00pm. The applicant has stated that deliveries will occur several times per week, between the hours of 9:00am and 12:00pm. The limited-service restaurant will have 7 employees and serve a projected 50 customers per day.

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.

The applicant has also proposed expanding the use of the tavern to an outdoor, fenced area on the northwest portion of the property with an area of 720ft². The fenced area includes an existing 87.3ft² deck and accessibility ramp.

In granting approval for an **Expansion of Non-Conforming Use**, the Zoning Board of Appeals may grant permission for the alteration, enlargement, reconstruction, moving, replacement of, or addition to a non-conforming building, structure, or land use activity, provided:

- (a). The owner of such nonconforming building or structure can show that, unless such permission is granted, hardship and injustice will result.
- (b). The proposed alteration, enlargement, reconstruction, moving, replacement or addition will not substantially reduce neighboring property values or otherwise substantially alter the character of the neighborhood.
- (c). The proposed enlargement or addition does not exceed more than 25% of the total square footage of the building, based on the total square footage of the building at the time this chapter was adopted.
- (d). Such permission may be granted only after notice and public hearing as provided in § 410-93 and 410-94 of the zoning code.

B. SITE REVIEW

The property known as 65 Rotary Avenue is located on the southwest corner of Rotary and Seminary Avenues. The lot is occupied by a one story tavern, which is attached to a vacant 2-story residential building. The existing structures are situated on a 6,028ft² lot.

Land use in the vicinity of the site is primarily two-family residential, with a less substantial mix of single- and multi-family structures. Recreation Park is located to the northeast. There is no commercial land usage in the immediate vicinity, with the exception of Abel’s Pub, which is located on the subject property.

C. PREVIOUS ZONING BOARD & PLANNING COMMISSION ACTIVITY

65 Rotary Ave: In April of 2014, the Zoning Board of Appeals granted a Use Variance to allow the establishment of a retail bakery.

D. ENVIRONMENTAL IMPACT

The applicant's proposal is a SEQR **UNLISTED** Action. The Planning Commission may be the lead agency to determine any environmental significance. Motion to determine what type of action:

- a. Type I
 - b. Type II
 - c. Unlisted**
- 2. Determine Lead Agency and other involved agencies.
 - 3. Motion to schedule a public hearing.
 - 4. After the Public Hearing, Determination of Significance. (See EAS Part 2 & Part 3)

	NO, OR SMALL IMPACT MAY OCCUR	MODERATE TO LARGE IMPACT MAY OCCUR
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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 (USE VARIANCE)	X (EXPANSION OF TAVERN)
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	

E. STAFF FINDINGS

Planning Staff has the following findings regarding the Use Variance:

- 1. The Zoning Board of Appeals must determine that under applicable zoning regulations, the applicant is deprived of all economic use or benefit from the property in question.**

The property is currently a 2-unit dwelling. Because of the fact that the building is attached to a tavern with late hours and occasional live entertainment, the property owner has been unable to rent the ground floor unit of the dwelling, thereby depriving the applicant of economic benefit from half of his property. However, it should be noted that the applicant is not without opportunity to soundproof the party wall.

- 2. The Zoning Board of Appeals must determine if the requested variance will produce an undesirable change in the character of the neighborhood.**

Because the property already contains an existing commercial establishment, the establishment of a limited-service restaurant on the same site does not constitute a significant change. However, the hours of operation of the new business should be limited to prevent a significant increase in intensity of use of the site. Where the Zoning Ordinance permits businesses in residential districts, their hours of operation are typically limited to 8:00 pm.

- 3. The Zoning Board of Appeals must determine that the alleged hardship for the property is unique and does not apply to a substantial portion of the district or neighborhood.**

The hardship is unique to the subject property, as it is the only property in the immediate vicinity that has historically been commercial in nature.

- 4. The Zoning Board of Appeals must determine whether or not the requested variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.**

The proposed project may have an impact on vehicular traffic and parking. However, the takeout-only format of the business will not require customers to park nearby for long periods.

- 5. The Zoning Board of Appeals must determine if the alleged difficulty was self-created.**

The hardship was self-created. The applicant willingly purchased the property with the intent to continue the operation of the bar, thereby knowing that the rental of the adjacent residential space would be a challenge.

Planning Staff has the following findings regarding the **Expansion of Non-Conforming Use**:

- 1. The ZBA must determine that the applicant has shown that, unless such permission is granted, hardship and injustice will result.**
- 2. The ZBA must determine that the proposed alteration, enlargement, reconstruction, moving, replacement or addition will not substantially reduce neighboring property values or otherwise substantially alter the character of the neighborhood.**
- 3. The ZBA must determine that the proposed enlargement or addition does not exceed more than 25% of the total square footage of the building.**

The proposed expansion of the fenced-in area constitutes approximately 69% of the square footage of the tavern. This is well above the 25% maximum. If the expansion were granted only for the rear deck, and not the entire fenced in yard, the expansion would constitute 8% of the square footage of the building.

F. RECOMMENDED CONDITIONS OF APPROVAL

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

- 1. That the hours of operations be limited to 8:00pm.**
- 2. That the business operate as takeout only**

If the Zoning Board approves the proposed expansion of non-conforming use, Staff recommends the

following conditions of approval:

- 1. That any outdoor tavern activity be limited to the 87ft² deck attached to the rear of the building**
- 2. That no music or other unreasonable noise be permitted in the outdoor area**
- 3. That the hours of usage of the outdoor space be prohibited between 8:00pm and 8:00am**
- 4. That no service from tavern staff be provided to patrons outdoors**

F. ENCLOSURES

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

Prepared by:

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Planner