



Department of Planning, Housing, & Community Development

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

STAFF REPORT

TO: Zoning Board of Appeals Members
FROM: Planning Housing and Community Development
DATE: March 24, 2015
SUBJECT: 81 Mill Street; Use Variance and Area Variance
TAX ID #: 160.82-2-2
CASE: 2015-03

A. REVIEW REQUESTED

The applicant has submitted an application for a use variance to establish an insurance office in the applicant's own single-family residence at 81 Mill Street. A personal service business conducted by the occupant of a dwelling which is clearly incidental and secondary to the use of the residence is considered a Major Home Occupation. The property is zoned R-1 Residential One Unit Dwelling District. The establishment of a Major Home Occupation is not permitted in this district, and therefore necessitates a use variance from the Zoning Board of Appeals.

The applicant has proposed a ~250ft² insurance office, oriented toward the North West side of the house on Mill Street. The insurance office will operate five days a week, from Monday to Friday, between the hours of 10:00am-5:30pm. Deliveries will occur less than once per month, via a standard parcel delivery service. There will be a total of one employee serving a projected one customer per day. No interior modifications have been proposed.

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

If the conditions of a Major Home Occupation are met, there should be no adverse effect on the neighborhood character or its physical and environmental conditions. The applicable conditions are listed in section I of this staff report.

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.**
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.**

See finding #2.

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

The hardship was self-created.

C. ADDITIONAL REVIEWS

Series A Site Plan Approval and a Special Use Permit is required from the Planning Commission.

D. SITE REVIEW

The property known as 81 Mill Street is located on the north east side of Mill Street between James Street and Phinn Avenue. The 4,800ft² lot is occupied by a 1.5-story, 1,136ft² residential building and a 240ft² garage.

Land use in the vicinity of the site is primarily single-family residential, with a less substantial mix of two- and multi-family structures. Brown Park is located to the northeast. There is no commercial land usage in the immediate vicinity.

E. PREVIOUS ZONING BOARD & PLANNING COMMISSION ACTIVITY

None

F. ENVIRONMENTAL IMPACT

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?”

	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 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.

G. REQUIRED FINDINGS

The Zoning Board of Appeals must address how the requested variances meet the following findings. The Board may consider and incorporate the findings provided by the applicant (see attached Planning and Zoning Application).

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.

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

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

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

I. SUGGESTED CONDITIONS

If the Zoning Board of Appeals approves this use variance, Staff recommends that the following condition of approval be included:

- 1. That there be no external alteration of the dwelling that changes the character and appearance thereof as a dwelling**
- 2. That deliveries shall not be made before 7:00am or after 9:00pm**
- 3. That no more than one person who does not reside in the household be employed by the proposed home occupation**
- 4. That no more than two customers be served at one time**
- 5. That signage be limited to one non-illuminated wall sign not exceeding two square feet, to be approved by the Planning Department.**

J. ENCLOSURES

Enclosed is a copy of the site plan, site photographs and application.