



Department of Planning, Housing, & Community Development

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

Staff Report Use Variance

Zoning Board of Appeals Date: October 7, 2014
Address: 91 Broad Avenue
Tax ID#: 145.61-1-16
Case Number: 2014-27
Zoning: One and Two Unit Dwelling District (R-2)

REVIEW REQUESTED

This application would establish a convenience store within an existing non-residential building at 91 Broad Avenue. The project would include the demotion of 780 square feet of the building to provide for a total 2,400 square feet of commercial space. The existing industrial façade and flat roof would be modified to provide for a commercial type store front with a new pitched roof and canopied entrance. Site improvements include striped customer parking and the removal of approximately 450 square feet of asphalt along the side property lines to create two landscaped buffer areas.

The property is zoned R-2 One and Two Unit Dwelling District. Retail sales activities are not permitted in the R-2 District; therefore a use variance is required from the Zoning Board of Appeals.

STAFF FINDINGS AND RECOMMENDATIONS

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.

Please see property owner's financial statement included with the application.

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

Please see property owner's financial statement included with the application.

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

The establishment of a commercial use at this site would not be inconsistent with the historic character of the area. The subject site has historically been utilized for non-residential purposes and is improved with a nonresidential building. Other non-residential uses are within close proximity to the site, including a gasoline station and convenience store visible from the subject site and a barber shop located two lots to the south of the site. The site is also adjacent to single-family dwellings.

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

Please see property owner's financial statement included with the application.

RECOMMENDED CONDITIONS OF APPROVAL

If the Zoning Board approves the proposed variance the following conditions are recommended:

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.

STANDARDS FOR APPROVAL OF A USE VARIANCE

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.

SITE REVIEW

The property known as 91 Broad Avenue is located midblock between East Frederick and Grant Streets. The site is improved with a one story non-residential building. The site is occupied by a retail windshield glass company.

Land use in the vicinity of 91 Broad Avenue consists of a mixture of residential and commercial uses. The site is adjoined by single-family dwellings to the north, south and east. The Southern Tier Independence Center is located to the west, a barber shop is located two lots to the south, and a gasoline station/convenience store is located at the north east corner of Broad Avenue and Grant Street.

PREVIOUS ZONING BOARD & PLANNING COMMISSION ACTIVITY

94 Broad Avenue: A use variance request to operate a small ice cream and sandwich shop was submitted to the Zoning Board of Appeals in 1982, but a decision on the case could not be found.

99 Broad Avenue: The Zoning Board of Appeals granted a use variance request by Jerry Kirkman in 1985 to convert the first floor tavern into a hardware store.

98-102 Broad Avenue and 31 Grant Street:

- The Zoning Board of Appeals granted use and area variances to Manley's Mighty Mart to construct a gasoline convenience market in 2005.
- In 1992, an area variance was granted to Broad Avenue Enterprises to allow the installation of three new signs on an existing gasoline filling station and convenience store.
- Use and area variance requests by To-Bo Enterprises in 1989 to allow the use of 100-102 Broad Avenue as a parking area and to access the gasoline filling station at 98 Broad Avenue were denied.
- To-Bo Enterprises received a use variance in 1988 to use 98 Broad Avenue as a gasoline filling station.
- The Zoning Board of Appeals denied a use variance request by Lounsberry Partnership in 1988 to use the property as a self-service gasoline station and convenience store.
- A use variance request by W. J. Norton's Service Inc. to allow the repair and sale of lawn mowers and the electronic testing and tuning of automobile engines was granted in 1979.
- In 1978, a use variance request by Ray Miller to sell used cars was approved.

106 Broad Avenue:

- A use variance was granted to Izet Cekic in 1996 to operate a meat market.
- In 1997, a study was conducted by the Planning Department to determine if 106 Broad Avenue and several of the surrounding properties should be rezoned to allow commercial use.

124 Broad Avenue: 06/22/90 – Zoning Board of Appeals denied use and area variance requests by the Fraternal Order of Eagles to use the first floor of the building as a banquet facility.

124 Broad Avenue: 03/18/08 – Planning Commission approved Series B Site Plan to operate a martial arts studio on the first floor in an existing building.

124 Broad Avenue: 12/10/12 – A Series A Site Plan / SUP Exception was approved for the operation of a Restaurant Take-Out/Carry-Out (fish fry establishment) on the first floor of the existing building.

144 Broad Avenue: 07/25/86 – Zoning Board of Appeals approved use variance allowing construction of a two car garage with a second floor apartment.

144 Broad Avenue: 01/20/89 – Zoning Board of Appeals approved area variances for the construction of a 22' x 22' garage.

145 Broad Avenue: 12/10/73 – Map/Diagram of a proposed new building for inventory storage.

145 Broad Avenue: 06/25/96 – Planning Commission approved Series B Site Plan for the construction of a lumber storage building.

158 Broad Avenue: 06/10/88 – Zoning Board of Appeals approved a use variance to allow the conversion of the first floor for a business.

162 Broad Avenue: 10/29/84 – Zoning Board of Appeals granted two area variances (minimum lot size and rear yard setback) to allow an automobile repair and used car sales business.

162 Broad Avenue: 08/13/02 – Zoning Board of Appeals approves expansion of a non-conforming use to increase the roof height of an auto repair shop.

43 Grant Street: The Zoning Board of Appeals granted a request by Glen Wood in 1985 for area variances to construct an addition above an existing one-story garage.

COMPREHENSIVE PLAN CONSISTENCY

The future land use map in the City’s 2014 Comprehensive Plan identifies this site as “single and two family”. While this project is inconsistent with that land use classification, the proposed project would be in line with recommendation 6.1 in the economic development chapter which states that the preservation of neighborhood commercial development should be preserved to give residents the option to shop and eat in their neighborhoods.

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 variance.

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?		
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.

ENCLOSURES

Enclosed are copies of the site plan, site photographs, the application, and a letter of opposition from Joe Sullivan.