



# Department of Planning, Housing, & Community Development

## Staff Report for the Zoning Board of Appeals

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

<b>PROPERTY ADDRESS</b> 36 Leroy St	<b>TAX ID</b> 160.47-2-26	<b>APPLICANT</b> Josh Bishop (34 Leroy LLC)
<b>CASE NUMBER</b> 2018-03		<b>PUBLIC HEARING DATE</b> March 5, 2018

**SUMMARY OF REQUEST**

The application provides for a Use variance to allow the establishment of a 3,310 square foot Full-Service Restaurant, including the construction of a 1,1175 SF second-story addition, in the R-2 One and Two Unit Dwelling District.

The property was formerly Giuseppe’s pizza/deli. Since that business closed, the property has been remained vacant.

In addition to the requested use variance, the applicant requires a parking variance for 0 parking spaces where 12 are required and for 66 SF of signage where no signs are permitted within the R-2 district.

The proposed hours of operation are 7:00am-12:00am on weekdays and 7:00am-3:00am on weekends.

The applicant anticipates 30 customers per day and a staff of 6 people. Proposed delivery times are bi-weekly from 7:00am-12:00pm



SOURCE: GOOGLE

ZONING DISTRICT	EXISTING LAND USE	SURROUNDING ZONING & LAND USE	SITE IMPROVEMENTS	PARCEL INFO.
R-2 Residential One- and Two-Unit Dwelling District	VACANT	Land use in the vicinity of the site is primarily two-family and single-family homes. To the east, there are several multi-family properties, as well as a small deli and St. Patrick’s Church. There is also a small commercial segment on Leroy Street two blocks to the west.	Approx. 1665 square foot concrete block commercial storefront	44’ x 53’ 2332 SF  Irregular rectangular shape

USE VARIANCE CRITERIA	STAFF COMMENTS/FINDINGS
<ol style="list-style-type: none"> <li>1. The applicant cannot realize a <u>reasonable return</u>, provided that lack of return is substantial as demonstrated by competent financial evidence.</li> <li>2. That the alleged hardship relating to the property in question is <u>unique</u>, and does not apply to a substantial portion of the district or neighborhood.</li> <li>3. The requested use variance, if granted, <u>will not alter the essential character of the</u></li> </ol>	<ul style="list-style-type: none"> <li>• Based on the applicant’s testimony in the application and the submitted supplemental material, there appears to be a hardship and a lack of reasonable return.</li> <li>• The applicant has noted that the taxes and insurance exceed \$5000 with 0 profit on the building.</li> <li>• The alleged hardship appears unique. The property is the only remaining commercial structure on this block. The building was originally constructed as a commercial space and has since been rezoned to R-2 One and Two-unit residential.</li> </ul>

<p><u>neighborhood.</u></p> <p>4. <u>The hardship is not self-created</u></p> <p>NOTE: ALL CRITERIA MUST BE SATISFIED</p>	<ul style="list-style-type: none"> <li>• The character should not be altered in any detrimental way, because the property was formerly a limited-service restaurant (Giuseppe’s Pizza). Furthermore, this property is located one block away from commercial uses to the east and two blocks from a commercial block to the west.</li> <li>• The alleged hardship does not appear self-created. The property was historically commercial and the cessation of that nonconforming use has caused this hardship.</li> </ul>
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<p><b>AREA VARIANCE CRITERIA</b></p> <ol style="list-style-type: none"> <li>1. Whether an <u>undesirable change</u> 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.</li> <li>2. <u>Whether the benefit sought by the applicant can be achieved by some method</u>, feasible for the applicant to pursue, other than an area variance.</li> <li>3. Whether the requested area variance is <u>substantial</u>.</li> <li>4. Whether the proposed variance will have an <u>adverse effect or impact on the physical or environmental conditions</u> in the neighborhood or district.</li> <li>5. <u>Whether the alleged difficulty was self-created</u>, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.</li> </ol>	<p><b>STAFF COMMENTS/ FINDINGS</b></p> <p>Parking variance</p> <ul style="list-style-type: none"> <li>• There should be no noticeable change in neighborhood character. The building was formerly a limited-service restaurant.</li> <li>• In order to offer parking, the applicant must demolish a portion of the building, and even so it would not meet the required amount of parking. This would not be a reasonable alternative.</li> <li>• A reasonable alternative would be to offer bicycle parking, which the applicant has included in one of the submitted renderings.</li> <li>• There is a bus stop in front of the building, which should lessen the impact of the requested parking variance.</li> <li>• The requested variance is substantial in nature.</li> <li>• The alleged difficulty is not self-created, in that the building was constructed approximately 100 years ago with no parking provided.</li> </ul> <p>Sign variance</p> <ul style="list-style-type: none"> <li>• The proposed signage has gooseneck down lighting, which should not cause excessive light to spill onto adjacent properties or cause a negative effect to the neighborhood character.</li> <li>• The variance is substantial when considering that no signage is permitted, however the proposed size, 66 SF, is within what would be permitted in a commercial district (2 SF per 1 linear foot = 74 SF).</li> <li>• The applicant could opt for a smaller sign, however the ZBA must consider if the size will be adequate.</li> <li>• The alleged difficulty is self-created in that the applicant is proposing a commercial use in the building. Any commercial use would require some amount of signage.</li> </ul>
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<p><b>RELEVANT/ RECENT ZBA ACTIVITY</b></p> <p><u>34 Leroy St:</u> in 2014, the ZBA granted a parking variance and use variance to allow a business office in the R-2 District</p> <p><u>58 Walnut St:</u> in 2009, the ZBA granted a parking variance and use variance to allow a retail business in the R-3 District</p>	<p><b>ADDITIONAL REVIEWS REQUIRED</b></p> <ul style="list-style-type: none"> <li>▪ The proposed project requires Series A Site Plan review and a Special Use Permit from the Planning Commission. (3/12 Meeting)</li> </ul>
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**COMPATIBILITY** with the COMPREHENSIVE PLAN

Economic Development, goal 6.1: “Allow the preservation of neighborhood commercial developments to give residents the option to shop and eat in their neighborhoods”

ATTACHMENTS	SUBMITTED PLANS	APPLICATION	SEQR EAF PT. 1	PHOTOGRAPHS
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<b>SEQR EAF Part 2 - Impact Assessment.</b> The <u>Lead Agency</u> 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 reviewer should be guided by the concept "Have our responses been reasonable considering the scale and context of the proposed action?"		
<b>TYPE OF ACTION</b> Unlisted	<i>The ZBA should make a motion to (1) declare intent to act as lead agency, and to (2) define the type of action under SEQR. The Chairman should then open the public hearing or set the date for the public hearing on the case.</i>	
<b>LEAD AGENCY</b> Zoning Board of Appeals Or, motion to defer lead agency to the Planning Commission		
	<b>NO OR SMALL IMPACT MAY OCCUR</b>	<b>MODERATE TO LARGE IMPACT MAY OCCUR</b>
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?	✓	
<b>EAF Part 3 - Determination of significance.</b> 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.		
<b>BASED ON THE ABOVE, MOTION:</b>	Negative Declaration	Positive Declaration

**PHOTOGRAPHS**



*1 View from across Leroy St*



*2 View down Murray St from Leroy St*



*3 Alternate view from across Leroy St*



*4 Frontage of the property*