

Minutes of a regular meeting of the Johnson City Zoning Board of Appeals held on April 11, 2022 at 7:30pm at Village Hall, 243 Main Street, Johnson City, New York.

Present: Edward Mazanek, Chairman  
Leonard Sas, Vice Chairman  
Donald Slota  
Chris Brown

Also Present: Keegan Coughlin, Village Attorney  
Stephanie Yezzi, Director of Planning  
Kim Cunningham, Zoning Board Clerk

Absent: Dr. Steve Holowinski

A work session was held at 7:00pm.

Attorney Coughlin, Stephanie Yezzi and the Board discussed the projects on the agenda.

Chairman Mazanek called the meeting to order at 7:30pm.

### **MINUTES**

A motion to approve the minutes of the March 14, 2022 regular meeting was made by Mr. Sas and seconded by Mr. Slota. The motion carried with all present voting in the affirmative.

### **PRIVILEGE OF THE FLOOR**

Chairman Mazanek opened the privilege of the floor. There being no one who wished to speak, Chairman Mazanek closed the privilege of the floor.

**COMMUNICATIONS** - None

**CONTINGENCIES** – None

### **OLD BUSINESS**

#### **601-629 Harry L Drive - Oakdale Commons:**

Continue Public Hearing for Parking Lot Landscaping Area Variance

Hold Public Hearings for Landscape Buffer Area Variance and Fence Height Area Variance

Review Three (3) Area Variances

Chairman Mazanek continued the public hearing.

Paul Woodward of Keystone Associates explained the area variances.

Chairman Mazanek closed the public hearing.

Chairman Mazanek read the Variance Requests, Environmental Summary, 239-m and Department Head



Comments and Planning Staff Recommendations.

**Variance Requests:**

It is understood, Spark JC, LLC has submitted an application for a multi-use project at 601-629 Harry L Drive. The project involves the redevelopment of the Oakdale Mall. The redevelopment will include the addition of four (4) outparcel buildings, demolition of portions of the existing mall, reconstruction of portions of the existing mall, construction of new buildings within the footprint of the existing mall, and parking lot, internal traffic route, lighting and utility improvements. The redevelopment will also include a gas station and a propane tank filling station.

As part of the application, Spark JC, LLC is seeking a variance from Sections 300-53.15. G, 300-54.3. B. 1 and 300-54.3. B.3 of the Zoning Law as follows:

- Section 300-54.3. B. 3: Internal landscape islands impede snow removal, only portions of the mall would require the islands creating a different appearance throughout the property. As part of the redevelopment, an additional 0.24 acres of green area and landscaping are being created.
- Section 300-53. 15. G: The applicant is seeking relief from this code section to allow for the construction of a fence around an outdoor recreation use area that is greater than 10 feet in height. The fence height would be up to a height of 50 feet. The added fence height is for increased safety concerning the proposed outdoor recreation area and will be of a similar height to the adjacent building.
- Section 300-54.3. B. 1: Based upon consultation with NYSDOT and BMTS, the double right turn into the mall is being eliminated and a dedicated right turn lane is being added to the lighted intersection. These changes, while a significant improvement for the traffic will not allow for meeting the requirements of this code section along the Harry L. Drive portion of the project.

**Environmental Summary:**

The applicant’s proposal is considered a Type I Action under the New York State Environmental Quality Review Act (SEQRA). A Full Environmental Assessment Form (EAF) has been required for the review of the multi-use facility as well as a Traffic Impact Study and Stormwater Pollution Prevention Plan (SWPPP). The Planning Board has declared themselves Lead Agency under SEQRA, and completed Parts II and III, declaring a *negative/positive* declaration of environmental significance.

An Aquifer Development Application and review by the Wellhead Advisory Committee is required for the storage of chemicals on the property. The Committee met on Thursday, March 10 and recommended approval of the Aquifer Permit to the Planning Board. ***The Planning Board granted approval of the aquifer permit on April 11, 2022.***

**239-m and Department Head Comments:**

- **B. C. Planning:** The Planning Department has reviewed the above-cited case. We do not anticipate any significant countywide or inter-community impacts pending a final site plan and supporting documentation that meets all other applicable agency requirements. The following comments were made:
  - The applicant and Village should ensure that all documentation is consistent and reflects the most up to date information and continue to consult with outside agencies as needed.
  - Broad consideration of aesthetics, circulation and sense of place for the full site design is highly recommended for this major gateway to the Village. The Village and applicant should take this



opportunity to ensure that the master plan for the site addresses all users and phases of development to enhance this major site as a community asset, including the following:

- A complete circulation plan for all phases is recommended. This includes transit access, capacity, and ridership; pedestrian connections; and the missing sidewalk link (see DOT comments). In addition to the comments from BCT attached, the Unified Comprehensive Plan Economic Development Goals and Objectives includes: Enhance the mall as a hub for public transportation.
  - A complete landscaping plan for all phases is recommended that includes the second phase and entire site as practicable. It appears that the landscaping reduces the overall impervious area, however, the details of the landscape area variance should be clarified. Is the variance intended to apply to Phase 1 only, or for all phases?
  - Integration of amenities to enhance the site and user experience is recommended, including pedestrian furniture, decorative lighting fixtures, and transit stops.
  - It appears that the project will include stormwater improvements to address drainage issues at the site. This is a good step in alleviating known issues at the site as identified in the NY Rising Community Reconstruction Plan. In addition, the NY Rising Plan presented a vision for integration of green infrastructure and other stormwater best practices into the site. This should be taken into consideration for the long-term vision.
  - The site plan shows two phases while the SEQR EAF states no multiple phases. This should be clarified. The SEQR review should include impacts of all phases of the project to avoid segmentation under SEQR.
  - Information in the SEQR EAF should be verified for completeness for the full environmental review. While the following may or may not affect the environmental impact of the project, the items below should be verified and/or updated:
    - Plans: The Village is included in the Susquehanna Heritage Area Management Plan Amendment.
    - Phases: The site plan shows two phases while the SEQR EAF states no multiple phases. This should be clarified.
    - Parks and Scenic or Aesthetic Resources / local park: The Unified Comprehensive Plan identifies Northside Park as a major recreational facility in the Oakdale/Reynolds Neighborhood. The historic CFJ Park/Carousel is an aesthetic resource / local park located within 5 miles of the project site.
  - The site plan documents should show the following as applicable, and to the extent practicable:
    - Complete Circulation Plan for all phases including components listed in the comment above.
    - Complete Landscape Plan for all phases.
    - Zoning Notes should include the landscape area variance and proposed landscape improvements.
    - Verify consistency between site plan and supporting documents.
    - Transit stops, pedestrian furniture, and exterior lighting fixtures
    - Site and building renderings if available/applicable.
  - We provide the following additional comments pertaining only to the added outdoor recreation area/50 FT high fence: Considering the significant height variance, the plans should address the aesthetics for this proposed fence including any signage, materials, lighting or other features. Opportunities for visual enhancements such as attractive art or other visually appealing materials should be considered.
- **BMTS:** BMTS has reviewed the materials for the Oakdale Commons proposal and concur with the comments made by NYSDOT on February 15, 2022 (See below).



- **NYSDOT:**

- NYSDOT has received the project's Traffic Impact Study (TIS) and provided the attached letter requiring no additional studies/data.
- NYSDOT recommends that the applicant develop a comprehensive network of pedestrian connections within the entire site. This network should connect the site with the surrounding sidewalk network in addition to connecting the outparcel buildings with the main buildings. We also recommend that the applicant construct the missing sidewalk link along the site's frontage, connecting the Reynolds Road sidewalk to the Harry L. Drive sidewalk.
- NYSDOT supports the comments made by the Broome County Commissioner of Public Transportation regarding transit vehicle access, capacity, and rider accommodations. Additionally, the pedestrian network within the site should include proper connections with the transit stops.
- Nothing may be placed within the State right-of-way, including signage, and traffic generation at the site may not create a condition where vehicles queue into any public right-of-way.
- Additionally, as reconfiguration of the Harry L. Drive frontage is proposed in the revised plans, the applicant will be required to modify the westbound overhead signage accordingly. Please direct the applicant to contact the NYSDOT Region 9 Office of Traffic & Safety at 607-721-8080 regarding this matter.

- **NYSDEC:**

- Although none of these plants are prohibited or regulated by the NYS DEC, there are agencies and invasive species groups which have raised concerns related to these, as follows.
  - Boxwood (*Buxus 'Green Velvet'*) - a new invasive insect pest called the Box Tree Moth (*Cydalima perspectalis*) has been confirmed in several places in Western New York and is likely to spread further in the state. This insect can significantly damage and kill all types of boxwood plants.
    - (<https://blogs.cornell.edu/nysipm/2021/07/14/box-tree-moth-major-new-pest-threat-to-boxwood/>) If the applicant wishes to use this species, be aware that APHIS has instituted an emergency rule and quarantine which includes regulations regarding the movement of *Buxus* plant material (attachment available at the Planning Department).
  - Bradford Pear (*Pyrus calleryana*) - Broome County is within the Finger Lakes PRISM (Partnerships for Regional Invasive Species Management). The Finger Lakes PRISM has noted that this plant escapes cultivation and has become invasive in New York State. The Finger Lakes PRISM does not recommend its use. ([http://fingerlakesinvasives.org/invasive\\_species/callery-pear/](http://fingerlakesinvasives.org/invasive_species/callery-pear/))
  - English Ivy (*Hedera helix*) and Vinca (*Vinca minor*) - Although these have not been ranked into the Finger Lakes PRISM's "Tier" system, they are considered invasive species in New York State, with the New York Invasive Species webpage ([nyis.info](http://nyis.info)) listing invasiveness potential for both as "moderate." They are not regulated, and cultural practices can prevent their spread to less managed locations.
    - [http://fingerlakesinvasives.org/wp-content/uploads/2021/03/FL\\_tier\\_list\\_2\\_04\\_21.pdf](http://fingerlakesinvasives.org/wp-content/uploads/2021/03/FL_tier_list_2_04_21.pdf)
    - [http://nyis.info/wp-content/uploads/2018/01/14a3b\\_Hedera.helix\\_NYS.pdf](http://nyis.info/wp-content/uploads/2018/01/14a3b_Hedera.helix_NYS.pdf)
    - [http://nyis.info/wp-content/uploads/2018/01/6b9da\\_Vinca-minor.NYS.pdf](http://nyis.info/wp-content/uploads/2018/01/6b9da_Vinca-minor.NYS.pdf)

- **B. C. Transit:** I have reviewed the plans and have a few comments; The Oakdale Mall, as it exists, is secondary Transfer Point for BC Transit's Fixed Route urban core system that sees numerous riders and connects several routes on a daily basis.
  - The project as presented will likely affect ridership due to the addition of fast-food restaurants as well as wellness and rehabilitation facilities. I anticipate added demand for transit services



which may require added capacity and possibly new stops, shelters and rider accommodations. The completion of the project will be phased over time which would allow transit to add capacity to meet increasing demand. We encourage project planners to discuss integrating Transit Development into their Master Plan for Oakdale Commons.

- My next comment relates to lanes of travel which are somewhat altered under this proposal. The primary concern is that roadways and travel lanes factor-in the turning radius and "swing out" overhangs of a 40ft transit bus. We are happy to work with designers in this process and have no objections to the project should they accommodate.
  - My final comment relates to the disruption of travel paths that will result from the construct and material phasing that will occur as the project progresses. The Northern end (Sears) project was poorly communicated and planned from a Transit perspective. Given the amount of Transit traffic that occurs at the Oakdale Mall, it is essential that well thought out phasing and detour traffic flows be well planned in advance and communicated with our organization.
  - With those comments made, I have no objections to the project as submitted as long as the concerns listed above are taken into consideration. Furthermore, I encourage discussion about enhancing public transportation as part of the larger plan to better serve retail workers, wellness and rehabilitation users and retail customers as part of a cohesive design.
- **Code Enforcement:**
    - Construction will require a building permit to be issued by the code enforcement office. All plumbing and electrical work will require tradesmen licensed within the village to obtain the proper permits.
    - All signage must be permitted and in accordance with the Village Law.
  - **Public Works/Water Dept:** The plans show much of what we already require, but in review:
    - We are requiring two water meter/backflow device vaults on both the 10" main line off of Harry L Dr and the 8" main line off of Reynolds Rd. Each vault shall be outfitted with an appropriately sized Mach 10 Ultrasonic Meter, which must be purchased through the Johnson City Water Dept. Each vault shall also have a testable backflow device.
    - We are also requiring a testable backflow device on each outparcel building.
    - All new installations of backflows must go through the application process with the Broome County Health Department.
    - Contact the Water Department at (607) 797-2523 with any questions.
    - The Department requests that any approval includes the following conditions:
      - Conditional Approval based on SWPPP Acceptance
      - Conditional Approval based on ROW agreement for new configuration of entrances off of Harry L Dr.
  - **Fire Dept:**
    - Alterations to fire protection devices, i.e., sprinklers, standpipes, alarm systems, must be done in accordance with Fire Code of New York State. Contact Fire Marshal's office to for a fire safety inspection prior to opening.
    - Installation of Knox Boxes, including outparcel buildings, is required.
  - **Police Department:** Overall, I would consider the changes on the Harry L Drive side to be a great improvement. I have a few comments below after considering potential issues with vehicles parking/standing along curbs in front of businesses within the property which we experience in other plazas, and also some potential pedestrian safety concerns:



- In regards to the primary perimeter road, specifically the east side where the road is along the sidewalk, a fire lane should be considered and be marked by suitable signs or other markings. Absent of such fire lane, we would not be able to enforce any vehicles that stand or park along the curb. If the property owner does establish a fire lane and would like it to be enforceable by police or parking enforcement pursuant to Section 264-35, a resolution will be required to add it to Schedule XXVII under 264-102.
- Also in regards to the perimeter road on the east side, it would be recommended to establish crosswalks and related signage in areas where heavier pedestrian traffic is expected to cross the perimeter road such as near entrances to the interior corridors and stores/businesses.
- Are there pedestrian entrances/sidewalks onto the property from the Harry L Drive side? Currently there is a sidewalk along the north side of Harry L Drive and a crosswalk at the Wegmans signal. How will pedestrians access the out-parcel buildings or the main building? I am looking to mediate any potential issues caused by pedestrian walking in traffic/driveways.
- How will pedestrian traffic from the Reynolds Rd signalized entrance be handled or routed onto the property? Currently, there are stairs from the Reynold Rd crosswalk down into the parking lot (obviously not ADA compliant). Will there be ADA compliant sidewalks and crosswalks at appropriate driveway crossings leading down towards the main building from Reynolds Rd? If not, I would be concerned that any pedestrians crossing Reynolds to the property may be forced to walk in the entrance driveway creating obvious risks.

### **Planning Staff Recommendations**

At the February 22 regular Planning Board meeting, the Board made a motion to approve the proposed parking landscape variance. At the March 22 regular Planning Board meeting, the Board made a motion to approve the additional landscaping variance along the new traffic configuration as well as the variance for fence height up to 50 feet.

At this time, the Planning Department recommends approval of the three (3) proposed **area variances** as follows:

- **Section 300-54.3. B. 3: Parking Lot Landscaped Islands**
  - The variance does not change the neighborhood character as this is an existing shopping center/mall where the internal landscaped islands do not already exist.
  - The proposal is not self-created and there are no alternatives that do not require a variance as the need to plow the parking lot exceeds the need for additional landscaping.
  - The variance does not affect the physical or environmental conditions as the project proposes an overall increase in landscaped area from what currently exists. End island landscaping will be incorporated as well as a 0.24-acre increase in overall landscaping.
  - Stipulations
    - The applicant shall submit a zoning application for any future changes in parking lot landscaping as well as any new additions or substantial alterations to the parking lot itself.
    - The applicant shall be required to acknowledge the above condition, in writing. The applicant shall agree to follow stipulations of approval in strict accordance with the site plan approved by the Planning Board.
- **Section 300-53.15. G: Fence height variance of an additional 40 feet to meet building height.**
  - The variance does not change the neighborhood character as this is an existing shopping center with multiple uses incorporated historically.
  - The variance is not a substantial request as it would not impact required parking, traffic or setbacks and meets the existing 50-foot building height.
  - Stipulations



- The applicant shall submit a zoning application for any future changes in parking lot landscaping as well as any new additions or substantial alterations to the parking lot itself.
  - The applicant shall be required to acknowledge the above condition, in writing. The applicant shall agree to follow stipulations of approval in strict accordance with the site plan approved by the Planning Board.
- Section 300-54.3. B. 1: Landscape variance for the required 10-foot buffer between parking lots and public rights-of-way.
  - The variance does not change the neighborhood character as this is an existing shopping center/mall with existing traffic concerns.
  - The variance is not a substantial request as it is proposed based on new traffic mitigation factors.
  - The variance does not affect the physical or environmental conditions as the project proposes an overall increase in landscaped area from what currently exists.
  - The request is caused by traffic mitigation measures for an area that has existing traffic concerns.
  - Stipulations
    - The applicant shall submit a zoning application for any future changes in parking lot landscaping as well as any new additions or substantial alterations to the parking lot itself.
    - The applicant shall be required to acknowledge the above condition, in writing. The applicant shall agree to follow stipulations of approval in strict accordance with the site plan approved by the Planning Board.

Attorney Coughlin stated the comments from the 239 and relating to SEQRA were already addressed by the Planning Board and a lot of the comments are related to site plan, so not specifically for the Zoning Board's review tonight.

Attorney Coughlin asked if anyone had any questions for the applicant relating to the parking lot landscaping variance as it relates to the islands.

Chairman Mazanek reviewed the balancing test:

- Whether or not there is an undesirable change in the character of the neighborhood or a detriment to nearby properties by the granting of this variance.

The Board is in agreement no.

- Whether the benefit sought by the applicant can be achieved by some method which would be feasible for the applicant to pursue but would not require a variance.

Chairman Mazanek said no.

- Whether the area variance is substantial.

Attorney Coughlin stated this is arguable because the section they are seeking a variance from, they are looking for 100% variance, but given the other mitigating factors and the other landscaping improvements to the project, it would be reasonable to say no.

- Whether the proposed variance will have an adverse effect on the physical or environmental characteristics in the neighborhood.

Attorney Coughlin advised they could say no here because the reason they are seeking it is to allow for



better plowing and traffic flow, so it may improve the characteristics of the neighborhood or shopping center. The Board agreed.

- Whether the alleged difficulty is self-created.

Attorney Coughlin said normally this is yes, but given it is an existing parking lot structure and the fact that snow if the primary driver of this, you could say no.

A motion to approve the parking lot landscaping area variance from Section 300-54.3.B.3 of the Zoning Law for 601-629 Harry L Drive including 239-m and Department Head Comments and Planning Staff Recommendations was made by Mr. Slota and seconded by Mr. Brown.

Motion Carried— Vote:

Yes – 4 (Slota, Brown, Sas, Mazanek) No – 0 Absent – 1 (Holowinski)

Chairman Mazanek opened the public hearing for the landscape buffer area variance.

Attorney Coughlin explained it is along the Harry L Drive side of the property. The applicant is seeking a variance to have less than the required amount of landscape buffer between the road and the edge of the parking lot.

Paul Woodward stated they could meet the variance, however, with the configuration they are showing, it allows the future addition of turn lanes at the light for the mitigation of traffic concerns in the area.

Attorney Coughlin asked if anyone from the public had any questions on the area variance.

Vice Chairman Sas closed the public hearing.

Attorney Coughlin reviewed the balancing test:

- Whether or not there is an undesirable change in the character of the neighborhood or a detriment to nearby properties by the granting of this variance.

Attorney Coughlin said it is safe to say no, since the variance is being sought to assist with traffic mitigation concerns. The Board agreed.

- Whether the benefit sought by the applicant can be achieved by some method which would be feasible for the applicant to pursue but would not require a variance.

Attorney Coughlin stated as Mr. Woodward said it could, but it would ruin the traffic mitigation improvements that are being sought. It is fair to say no because the traffic concern is more applicable than the landscaping. The Board agreed.

- Whether the area variance is substantial.

Attorney Coughlin stated no it is not substantial. The Board agreed.

- Whether the proposed variance will have an adverse effect or impact on the physical or environmental characteristics in the neighborhood.



Attorney Coughlin advised they could say no here because they are hoping to improve them by allowing for greater traffic mitigation. The Board agreed.

- Whether the alleged difficulty is self-created.

Attorney Coughlin said normally this is yes, but here being that it related to traffic, you could say no. The Board agreed.

A motion to approve the landscape buffer area variance from Section 300-54.3.B.1 of the Zoning Law for 601-629 Harry L Drive including 239-m and Department Head Comments and Planning Staff Recommendations was made by Mr. Slota and seconded by Mr. Sas.

Motion Carried— Vote:

Yes – 4 (Slota, Brown, Sas, Mazanek) No – 0 Absent – 1 (Holowinski)

Chairman Mazanek opened the public hearing for the fence height variance for an additional 40 feet to meet the building height.

Mr. Woodward explained the variance and handed out a fence photo to Attorney Coughlin and the Board the fence.

Chairman Mazanek asked if anyone had any questions regarding the fence height variance.

Chairman Mazanek closed the public hearing.

Chairman Mazanek reviewed the balancing test:

- Whether or not there is an undesirable change in the character of the neighborhood or a detriment to nearby properties by the granting of this variance.

Attorney Coughlin said since the Board has seen the photo and it is not taller than the building, you could say no it is not impacting any site lines or visibility to any roads. The Board agreed.

- Whether the benefit sought by the applicant can be achieved by some method which would be feasible for the applicant to pursue but would not require a variance.

Attorney Coughlin stated as the applicant said, it is primarily for the safety of the surrounding area in light of the outdoor recreation use and that is why they are seeking that height for the fence. The Board agreed.

- Whether the area variance is substantial.

Attorney Coughlin advised it is significantly higher, not overly substantial because it is not going to be higher than the building. The Board agreed.

- Whether the proposed variance will have an adverse effect or impact on the physical or environmental characteristics in the neighborhood.

The Board agreed the answer is no.



- Whether the alleged difficulty is self-created.

Attorney Coughlin said here you would have to say yes. The Board agreed.

A motion to approve the fence height variance from Section 300-53.15.G of the Zoning Law for 601-629 Harry L Drive including 239-m and Department Head Comments and Planning Staff Recommendations was made by Mr. Slota and seconded by Mr. Sas.

Motion Carried— Vote:

Yes – 4 (Slota, Brown, Sas, Mazanek) No – 0 Absent – 1 (Holowinski)

### **76 N Broad Street – John Lobevero**

Public Hearing

Attorney Coughlin advised this is a public hearing for a use variance for the old Zopps II for an event space.

Chairman Mazanek opened the public hearing.

No one was present for the 76 N. Broad Street application.

Attorney Coughlin stated there is some more information the Village is seeing from the applicant regarding the application itself that may impact the use variance. Attorney Coughlin advised it is in the best interest of the Zoning Board to leave the public hearing open.

Motion to leave the public hearing open for 76 N. Broad Street was made by Mr. Sas and seconded by Mr. Slota. The motion carried with all present voting in the affirmative.

### **240 Main Street – Broome County Mural Project at Jupiter Games**

SEQR, Public Hearing & Area Variance Review

Attorney Coughlin reviewed Part 2 of the short form of SEQRA.

Attorney Coughlin read Part 3 of SEQRA.

Broome County submitted an application for a mural as a wall sign that would cover the entire side of the building at 240 Main Street, Jupiter Games. The mural is 650 square-feet and covers 100 percent of the wall area. Therefore, they requested an area variance of 602 square-feet for a wall sign of 650 square feet, and an area variance of 200 percent to have 100 percent wall coverage.

The proposed action will not result in any adverse effects to existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic pattern, solid waste production or disposal, potential for erosion, drainage or flooding problems.

The proposed action will not result in any adverse effects to aesthetic, agricultural, historic or other natural or cultural resources; There will be a slight impact to neighborhood character.



The proposed action will not result in any adverse effects on vegetation or fauna, fish shellfish or wildlife species, significant habitats, or threatened or endangered species.

The proposed action will not result in any adverse effects on a community's existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources.

The proposed action will not result in any adverse effects on growth, subsequent development, or related activities likely to be induced by the proposed action.

The proposed action will not result in any adverse effects not previously identified.

The proposed action will not result in any adverse effects in either quantity or type of energy.

A motion to issue a negative declaration for the purposes of SEQRA for 240 Main Street was made by Mr. Sas and seconded by Mr. Slota.

Motion Carried— Vote:

Yes – 4 (Slota, Brown, Sas, Mazanek) No – 0 Absent – 1 (Holowinski)

Chairman Mazanek opened the public hearing.

Stephanie Brewer gave a brief overview of the project and explained the art program.

Chairman Mazanek asked the public and the Board if they had any questions.

Chairman Mazanek closed the public hearing.

Chairman Mazanek read the Variance Request, 239 Review and Department Head Comments and Planning Board Recommendations.

**Variance Request:**

In 2019, Broome County was awarded a grant through the Greater Binghamton Fund to install public art in the Binghamton, Johnson City and Endicott iDistricts. Since then, they have worked closely with local officials to establish a public art program and identify properties of interest for such murals within the iDistrict. The proposed location at 240 Main Street is at Jupiter Games and requests an area variance for the 650 square foot mural.

Broome County submitted the application for the mural as a sign authorized without permit as it is a “work of art not displaying a commercial message”. The parcel is in the Central Business zoning district and a wall sign is limited to 50% of the wall area, not to exceed 48 square-feet. The proposed mural (sign) is 650 square-feet and covers 100% of the wall area. Therefore, the applicant requests the following area variances for the mural:

1. An area variance of 602 square-feet for a wall sign of 650 square feet, and
2. An area variance of 200-percent to have 100-percent wall coverage.



**239-R and Department Head Comments:**

- **Broome County Planning:** No significant countywide impacts.
- **NYSDOT & BCHD:** No comment.
- **Dept. of Public Works and Water:** No compelling interest.
- **J.C. Police:** No compelling interest.
- **J.C Fire:** No compelling interest.
- **Code Enforcement Dept.:** The mural shall be maintained in good condition.

**Planning Board Recommendation**

On March 22, the Planning Board made a motion to recommend that the ZBA approves the variance(s) as this is part of the ongoing Broome County public art initiative and meets the goals of the health and cultural district. Granting the requested variance will not have negative impacts on the surrounding uses, including the historic district per the NYS Office of Parks, Recreation, and Historic Preservation.

It is recommended the ZBA approve the area variance(s) with the following stipulation:

- All signs, and such signs, together with their supports, shall be kept in good repair. The display surfaces shall be kept neatly painted at all times. The Code Enforcement Officer may order the removal of any sign that is not maintained in accordance with the provisions of this Article.

Chairman Mazanek reviewed the balancing test:

- Whether or not there is an undesirable change in the character of the neighborhood or a detriment to nearby properties by the granting of this variance.

Mr. Sas responded no. The Board agreed.

Ms. Brewer explained the procedure for maintenance of the murals.

- Whether the benefit sought by the applicant can be achieved by some method which would be feasible for the applicant to pursue but would not require a variance.

Mr. Sas responded it is artwork not a sign. The Board agreed.

- Whether the area variance is substantial.

Mr. Sas responded it is artwork not a sign. The Board agreed.

- Whether the proposed variance will have an adverse effect on the physical or environmental characteristics in the neighborhood.

Chairman Mazanek responded it is artwork. The Board agreed.

- Whether the alleged difficulty is self-created.

Chairman Mazanek responded no. Attorney Coughlin said the code doesn't consider murals, just sign coverage or you could say yes because the code existed before the application. The Board agreed.



A motion to approve a variance for an area variance of 602 square-feet for a wall sign of 650 square feet, and an area variance of 200-percent to have 100-percent wall coverage for 240 Main Street made by Mr. Sas and seconded by Mr. Slota.

Motion Carried— Vote:

Yes – 4 (Brown, Slota, Sas, Mazanek) No – 0 Absent – 1 (Holowinski)

## **NEW BUSINESS**

### **333 Grand Avenue – Regan Development Corporation**

Set two public hearings for May 9 Meeting: Area Variance for Parking Lot Landscaped Islands, and Area Variance for Building Height

No one appeared on behalf of the application.

Attorney Coughlin stated we need to have a more complete application so SEQRA can be considered. Attorney Coughlin advised it is in the best interest of the Zoning Board to not set the Public Hearing for the variances they are seeking until a better timeline can be worked out for SEQRA. The Board agreed.

A motion to hold over the application for 333 Grand Avenue was made by Mr. Sas and seconded by Mr. Brown. The motion passed with all those present voting in the affirmative.

## **ADJOURNMENT**

A motion to adjourn the meeting was made by Mr. Sas and seconded by Mr. Slota. The motion passed with all those present voting in the affirmative.

The meeting was adjourned at 8:26pm.

Respectfully submitted,

Kim Cunningham  
Zoning Board Clerk

