

FAX

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To: Ms. Heather Lamendola/File

Fax: 1-315-448-8621

Date: 7/16/09

Re: Application for Walgreens Project Wall Sign Waivers

From: [Your name]

Fax: N/A

Phone: 585-610-7588

Cc: Walkable Eastwood

Comments: Hi Heather. I am sending you the attached for consideration by the City of Syracuse Planning Commission. I am also going to send a hard copy through the regular City Zoning Office Email address because I have a photo that may not be visible through the fax. If you do not get all of the pages or these are difficult to read, please call me at the number above. Thanks.

Pages: 10
including
Cover

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Thursday, July 16, 2009

Ms. Heather Lamendola/File
201 E. Washington St., Rm 211
Syracuse, NY 13202

Re: Application No. AS-09-17, Sign Exception at 2327 James Street, Five Point Development

Dear Ms. Lamendola:

I am sending you the attached rebuttal concerning the Attorney/Developer application for the requested sign waiver application stated above for consideration by the City of Syracuse Planning Commission.

Related Code, Statute and Findings: The James Street Overlay District (JSOD) provides for relief from the strict application of the zoning ordinance through the mechanism of Exceptions with the following test:

The Design Review Board [**read City Planning Commission**] shall have the authority to grant Exceptions for properties within the James Street Overlay District. In approving any Exception the Board must find that practical difficulties would occur with respect to the economic and functional utilization of the property under consideration and that reasonable alternatives otherwise permitted do not exist. Practical difficulties affecting the property under consideration must be weighed against the impact the Exception would have on the character of the Overlay District. All Exception requests shall be subject to duly noticed public hearings.¹

The City Planning Commission is given authority to grant waivers and exceptions as stated in General City Law:

5. Waiver of requirements. The legislative body may further empower the authorized board to, when reasonable, waive any requirements for the approval, approval with modifications or disapproval of site plans submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in the local law adopted pursuant to this section, may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety and general welfare or inappropriate to a particular site plan.²

The Planning Commission's resolution of December 2005 outlines the following findings of fact:

3. The proposed structural coverage is still less than 50% of the total site area and is roughly half the size of the existing structures, but the existing structures are considerably less than 50% in coverage due to the size and depth of the subject property;
4. The existing and proposed parking coverage both exceed 50%, but like the structural coverage, the reason for this is due to the size and depth of the subject property;³

¹ Syracuse City Zoning Ordinance, Part C, Section X, Article I, James Street Overlay District.

² General City Law, Section 27a.

³ Resolution Approving a Project under Project Site Review for Property at 2309-2339 James Street & 113 & 121-125 North Avenue., December 19, 2005.

Thereby, the Planning Commission resolved:

WHEREAS, the City Planning Commission finds that the size, configuration, and depth of the subject property presents a development circumstance atypical of other James Street properties and warrants a favorable consideration of the practical difficulties justifying the remaining Exceptions needed for the current project revision;⁴

Once again for clarity, the purpose and intent of the JSOD Guidelines (*Part C, Section X, Article 1* of the City of Syracuse Zoning Code) is: The regulations set forth in this Article establish a specialized district for the Eastwood portion of James Street and are intended to protect and enhance the traditional neighborhood main street character of the area. A principal aim of the regulations is to maintain and stimulate a pedestrian friendly environment while encouraging business and civic growth. The applicant is requesting exception to the following standards within the JSOD:

- Location of signs
- Number of signs;
- Type of sign as stated in the sign code and defined under definitions of the Syracuse City Zoning Code; and
- (Size, Bulk and Mass) or allowable square footage in area; and therefore, a physical dimensional waiver of sign requirements under the Overlay District Guidelines.

Part C., Section X, Article 1. James Street Overlay District 3. Basic Standards, g. Signs: (1) Each business shall be permitted to have one wall or projecting sign on each façade facing a street. The maximum area of each sign (including both faces of a projecting sign) shall be one (1) square foot for each linear foot of the façade width. No signs shall be permitted on facades not facing a street. Projecting signs shall have a minimum clearance above finished grade of at least seven (7) feet and shall project no more than six (6) feet beyond the face of the building. Ground signs and signs above the first floor shall not be permitted. Animated signs and roof signs shall be prohibited and shall not be subject to review as Exceptions. All illuminated signs shall be turned off when the businesses being identified are closed.

For clarification, the standard that must be met with regard to approving the requested waiver and granting of relief from the JSOD Design Guidelines:

“In approving any Exception the Board must find that practical difficulties would occur with respect to the economic and functional utilization of the property under consideration and that reasonable alternatives otherwise permitted do not exist. Practical difficulties affecting the property under consideration must be weighed against the impact the Exception would have on the character of the Overlay District.” The specific standards at issue are established by the following provisions in *Part C., Section X, Article 1. James Street Overlay District* and *Part C, Section VI. Signs* of the City of Syracuse Zoning Code:

Part C., Section X, Article 1. James Street Overlay District 3. Basic Standards, g. Signs: (1) Each business shall be permitted to have one wall or projecting sign on each façade facing a street. The maximum area of each sign (including both faces of a projecting sign) shall be one (1) square foot for each linear foot of the façade width. No signs shall be permitted on facades not facing a street. Projecting signs shall have a minimum clearance above finished grade of at least seven (7) feet and shall project no more than six (6) feet beyond the face of the building. Ground signs and signs above the first floor shall not be permitted. Animated signs and roof signs shall be prohibited and shall not be subject to review as Exceptions. All illuminated signs shall be turned off when the businesses being identified are closed.

⁴ Ibid.

Part C, Section VI. Signs Article 2. Interpretation:

A. Where the provisions relating to a sign are inconsistent or conflicting, the more restrictive provisions shall apply.

Part C, Section VI. Signs Article 3. A. Sign Types, Definitions:

1. Sign: An emblematic design, including those which are composed of light rays only, calculated to attract public attention to a product, service or undertaking encompassing activities both on and off the property where such designs are situated, including what are commonly termed billboards, posters, symbols, and similar devices, of whatever composition, size, location or color.

Part C, Section VI. Signs Article 3. C. Structural characteristics

1. Area: The entire area within a single continuous perimeter enclosing the extreme limits of writing, representation, emblem, or any figure of similar character, as included within the definition of a sign, together with any frame or other material or color forming an integral part of the display or used to differentiate such sign from the background against which it is placed, excluding the necessary supports or uprights on which such sign is placed. The total area of all faces of signs designed to be viewed from more than one (1) direction shall be computed and considered as one (1) area, such as on double-faced, 'V' and sandwich type signs.

Part C, Section VI. Signs Article 3, D. Miscellaneous Terms

2. Animated Sign: A sign or any portion thereof having movement effected by mechanical or natural means, including by way of illustration and not limitation, rotating signs, wind signs and signs where movement is simulated by illumination devices. This term shall include the use of blinking, flashing and general intermittent light, as opposed to light of a constant intensity and value. All time and/or temperature devices as defined therein shall not be considered animated, whether or not they contain or are incorporated into a sign.

Part C, Section VI. Signs, Article 5. General Prohibitions, E. Hazards to Public Safety: Signs which by their use or simulation of colors, design or placement, tend to confuse, detract from or in any other way obstruct the utilization of traffic regulatory devices are prohibited. All determinations of this type shall be made by the building official who shall consider, but not be limited to the following:

1. The use of words such as "stop, go, look, caution, danger, warning" and similar nomenclature.
2. The use of colors and lights in the spectrum of colors utilized by traffic regulatory devices.
3. The use of blinking, intermittent flashing, or other animated forms of illumination or light, and all sources of illumination which through direct or indirect means create glare.

Part C. Section VI. Signs, Article 6. Administration, F. Findings, Number 1.c and 1.e

(c) The proposed sign will not adversely affect the character of districts in close proximity within which such signs would be prohibited.

(e) The proposed sign is otherwise compatible within the context of its visual and physical environment within the district in which the sign is proposed; in making this determination, consideration shall be given to existing and allowable land use activities within the subject district and also to the scale of structures located within close proximity.

Applicants Requested Waiver: The applicant is proposing an on-premise projecting wall mounted sign installed along the James Street frontage 20'-8" above grade, projecting approximately 5'-11" from the building over the James Street sidewalk. The sign consists of a "small internally illuminated Walgreens Identification sign panel (2'-0 3/8" x 5'9", 11.7 sf) and an LED electronic reader board 91'-10" 5/8" X 5'-9", 10.8sf)...The total sign area will be 46sf (23sf for each side)."

The applicant's architect Mr. David Colegrove describes the projecting wall sign as having a LED electronic reader board consisting of two single faced displays with LED red pixels to permit 2 lines of high resolution copy with shading. He further states that the display will be text only, will not scroll or flash, color will be red,

and the copy will change at 8 second intervals, display content will alternate between time/temperature/Walgreens promotions, and community messages.

Therefore, the signage area will be in addition to the 111' frontage requirement already met by the Walgreens Wall sign on James Street by approximately 50% and the request is in exception to the number of signs as per **Part C., Section X, Article I.** of the City Zoning Code requirements. The following findings will also demonstrate that the applicant is in exception to the prohibition of animated signs requirement of the above noted section and basic standards as well.

FINDINGS AND CONCLUSIONS OF LAW

1. **Waiver Standard of Review.** First, the Planning Commission's resolution of December 2005 found that the proposed structural coverage is below the minimum requirement of 50% and then finds that the parking lot coverage is above the maximum requirement of 50% meaning that there is more parking area than there is structural coverage. However, the applicant was able to construct the building within the permitted as-of-right building envelope. This is in relationship to the stated justification by the applicant's attorney Mr. Steven Primo:

With respect to the practical difficulties standard, although Courts have never clearly defined what "practical difficulties" are, as the Planning Commission determined with respect to the subject application, courts have recognized the existence of practical difficulties where the topography of the subject parcel affected or interfered with the construction of a building, and where variances were required to build a house on an amply sized but oddly shaped parcel that did not meet frontage and side yard requirements." (Mr. Primo cites Matter of Wilcox v Zoning Bd of Appeals and Matter of Fulling v Palumbo).

Since the applicant was able to construct the building as matter of right, the applicant was able to meet the front, side and rear setback requirements within an "amply sized but oddly shaped parcel". In fact, the size, depth and configuration of the subject parcel and relative zoning requirements does not present the applicant a *substandard lot condition* to which the cases refer.

Furthermore, Professor Anderson (New York Zoning Law and Practice, 3rd Ed.) states, "It is error for a board of zoning appeals to apply the same standards to an application for a special permit as are applicable to an application for a variance."⁵ In fact, Professor Anderson demonstrates the distinction between variances and special exceptions (sometimes referred to as special permits or conditional uses).

He further states:

Under some zoning ordinances, a landowner may be able to achieve his desired end through an exception or special permit authorized by the board of zoning appeals, the planning board, or the legislative body of the municipality. This is a type of administrative relief which is similar to the variance. But the differences between the two administrative remedies is of practical significance. The distinction between a variance and a special permit or exception was articulated by the courts in early cases which involved decisions of the board of standards and appeals, under the building zone resolution of the city of New York. The New York ordinance not only authorized the granting of variances where practical difficulties or unnecessary hardships were involved, but allowed the board to grant special exceptions and to issue special permits without proof of hardship. Construing the New York resolution, the courts distinguished between a variance which authorizes a use prohibited by the regulations and an exception or

⁵ See *Rich v Zoning Bd. of Appeals*, 33 AD2d 672, 384 NYS2d 862 (1976, 2d Dept).

special permit which validates a use which is permitted by the regulations, subject to prior approval of the board of zoning appeals.⁶

The Court of Appeals interpretation of General City Law §§81-b(3) and 81-b(4) as having the same function is problematic since there are different tests associated with these sections of law. First, while a zoning board uses the statutory balancing test contained in General City Law §81-b(4) for area variances, the General City Law §27-a waiver test simply states that the authorized board may grant such waivers and "...shall be subject to appropriate conditions set forth in the local law adopted pursuant to this section, may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety and general welfare or inappropriate to a particular site plan." Thus, an authorized board granting variances through the waiver standard of review could presumably be using the waiver test while a zoning board considering an identical variance request would be using the statutory balancing test.

However, the recent case *Lockport Smart Growth, Inc. v. Town of Lockport*, 2009 WL 1565197 (N.Y.A.D. 4 Dept. 6/5/2009) is currently on appeal and examines whether the "extreme difficulty" standard which is similar to the variance statutory test and whether it is beyond the authority of the planning board.

Functional Utilization. It is common practice for the application of sign regulations to result in requests for an area variance due to the *irregularity* of the property involved. In such circumstances, compliance with the sign regulation would fatally compromise the visibility of the sign and thus potentially harm the economic viability of the business. This is normally a situation where there is a significant grade difference between the property and an adjacent street or highway from which the business expects to capture significant vehicular traffic. Additionally in such a circumstance, the sign is limited in height, type, or location due to the regulations. Even though permitted by the ordinance, such a sign in this scenario would not be visible or conspicuous from that street or highway.

Thus, in the currently requested waiver for the LED reader board, such is not the case.... no "material impairment of visibility" of the display of the other granted signs or the building is present. In fact, the vertical and horizontal alignment of the street is straight, true and level.

Economic Utilization. In the American Planning Association's PAS concerning context sensitive signage, the report states, "Allowing businesses to maximize the utility of their signage is not a call for a laissez-faire approach in which each business is allowed to have as much signage as it deems necessary. Instead, it calls for a common sense approach that recognizes the consumer's need for information, the business's need to identify itself and to advertise its goods and services, and the community's demand for aesthetically pleasing commercial districts that enhance or at least do not detract from the desired character of the community."⁷

Therein lays the balance. Circumvention of the code clearly is not the intent of the waiver standard. The applicant provides no compelling evidence or sufficient proof of facts in the record that economic injury will result from denying the applicant relief under the JSOD Guidelines. In the letter to the Planning Commission/Zoning Administrator of June 29, 2009, the attorney for the applicant fails to cite specific costs (dollar and cents as usually is required in the relevant case law), empirical data or relevant *unbiased* sources of scientific inquiry to substantiate the claim of economic injury. The applicant does not have the presumption of being truthful on hearsay. Moreover, the applicant has failed to establish a causal connection to that injury and that this injury can be mitigated by the requested relief.

⁶ See Anderson, *New York Zoning Law and Practice*, 3rd Ed. (§23.03 Special Permit and exception distinguished)

⁷ See Morris, Marya, Hinshaw, Mark L., Mace, Douglas, Weinstein, Alan. *Context-Sensitive Signage Design*. American Planning Association Planning Advisory Service, June 2001.

As evidenced repeatedly throughout case law, the economic injury claim is related to whether or not the applicant can make *reasonable* use of the land in question. The waiver standard requires a showing of economic injury and weighing this benefit to that of the public interest. It does not require a showing that the applicant can make a better profit by a granting of the waiver. Clearly, the applicant can make reasonable use of the land *without* the Projecting Wall Sign/LED messaging board. The Walgreens located on Denison Parkway in Corning, NY and on Main Street in Williamsville, NY both do not have a projecting Wall sign or LED messaging reader board at either location.

Signs are not the only means that a business has of attracting customers. Advertising in the local media is effective and the expense of advertising through broadcast media is not out of the reach of a national corporate retail chain such as Walgreens. Therefore, I object to the attorney’s declaration that there is no other alternative to this sign, as there are several channels of communication available to the applicant through the internet and the media.

Therefore, Five Point Development **cannot carry its burden** to establish that there is any *functional utilization* or *economic utilization* constraints related to the sign at issue in its application, and therefore, fails the practical difficulty test.

The Public Interest:

2. The proposed LED reader board is not sensitive to the character of the traditional main street; and therefore, it is not compatible as per **Part C, Section VI. Signs, Article 6. Administration, F. Findings, Number 1.c and 1.e**. It would in fact, should the waiver be granted, establish a precedent as there are presently “zero” LED reader messaging boards within the JSOD and the sign is located adjacent residential uses. Nor should there be any LED messaging reader board on-premise signs to be in accord with the traditional character of the business street environment.

Councilor Larson commented at the June 8th Planning Commission meeting that the PC has granted approval to “off-premise” digital LED signs in the past. However, the distinction between off-premise and on-premise is significant in that each is regulated differently. The PC will therefore, be setting a precedent not only for Eastwood, but potentially the rest of the City in granting waivers of this type of on-premise sign within Eastwood.

3. With regard to **Part C, Section VI. Signs, Article 5. General Prohibitions, E. Hazards to Public Safety**, the LED reader board will by the “use or simulation of colors, design or placement, tend to confuse, detract from or in any other way obstruct the utilization of traffic regulatory devices” and is therefore, prohibited. The color of the LED is red, and is an animated form of illumination “which through direct or indirect means” likely will create glare. See photo below:



The recent study conducted by Wachtel, Jerry. *Safety Impacts of the Emerging Digital Display Technology for Outdoor Advertising Signs: FINAL REPORT*, Submitted Under NCHRP Project 20-7 (256), April 2009 contains the data and reviews other studies that led the researchers to conclude that there were, indeed, adverse safety consequences of roadside digital advertising signs. “But those who think that their job is to do what they can to enhance safety for the traveling public based upon the best available information, now have, in our opinion, access to a strong and growing body of evidence, including evidence from industry supported research, that roadside digital advertising, attract drivers’ eyes away from the road for extended, demonstrably unsafe periods of time.”

Mr. Wachtel notes that the use of telephone numbers, internet addresses, text message instructions, etc., is potentially harmful to traffic safety because drivers may slow to read, record, or even copy such information while in traffic. In fact, Mr. Wachtel references a study conducted by Dudek, et al. (2007) which demonstrates evidence of traffic slowing down to read AMBER ALERT messages on official changeable message signs.

Clearly, there are many variables associated with root causes of crashes. However, driving is the principal task and anything that competes with that task is a compromise of public safety. The recent call for regulation of cell phone use, and now, the pervasive proposals of banning text messaging plainly demonstrates the basis for this argument.

4. The provisions of the Jamestreet Overlay District Guidelines are clear. “***Animated signs*** and roof signs shall be prohibited and ***shall not be subject to review as Exceptions.***” Furthermore, Mr. Wachtel adds the following analysis regarding the definition of “Animated Sign” as defined in ***Part C, Section VI. Signs Article 3, D. Miscellaneous Terms*** of the JSOD code:

For more than 25 years, a debate has raged between the outdoor advertising industry and the road and traffic safety community over the issue of whether changeable message billboards present “flashing” messages. Most regulatory documents, throughout the U.S. and abroad, specifically prohibit signs that use flashing lights or messages. And the billboard industry has routinely defended DBB technology by stating that such signs do not flash. The (Manual of Uniform Traffic Control Devices) MUTCD defines “flashing” as “an operation in which a signal indication is turned on and off repetitively” (p. 1A-11). The U.S. Coast Guard publishes a “Light List” (USCG, 2006) in which it describes different “characteristics of lights” used in lighthouses and lighted buoys. Two of these light characteristics could be used to define the operation of most DBBs. An “alternating” light is one which shows different colors alternately; an “occulting” light is one “in which the total duration of light in a period is longer than the total duration of darkness and the intervals of darkness (eclipses) are usually of equal duration.” Note that the duration of a displayed image and the duration of any dark or blank display between successive images, is not considered in any of these three definitions. Accordingly, if one were to apply any of these technical definitions rather than a more common dictionary definition DBBs would likely be classified as flashing signs.

Even though the above analysis is about Digital Billboards, Mr. Wachtel states early in the study, “Strictly from the perspective of driver safety, agencies might want to consider restrictions for on-premise sign operations at least as rigorous as those for billboards, as well as restrictions on size, height, proximity to the right-of-way, and angular placement with regard to the oncoming driver’s line of sight.”

The study reports that FHWA clarifies the intent of the MUTCD with regard to signs within a roadway right of way, “At any site where the acknowledgement sign would obscure the ability of a driver to detect and understand existing traffic control devices.”

Finally, regarding the proposed intervals of spacing for change of copy on the LED reader board, Mr. Wachtel states:

We are not aware of any research that has been conducted on the effects on distraction of the duration of time that a message on a DBB remains visible before changing to the next message. The OAAA (Undated a) has, periodically, issued guidance to its members on minimum display duration. It recommends 4 s. The FHWA (Shepherd, 2007) has recommended a minimum 8 s duration, and the OAAA (Undated b) reports that 41 States have enacted message display minima, ranging from 4 to 10 s.” To their knowledge, there is no empirical basis for any of these recommended or required display intervals.

In the recent court case, *Naser Jewelers, Inc. v. City of Concord*, 513 F.3d 27 (1st Cir. 2008), the City of Concord’s sign ordinance prohibits all EMCs (or Electronic Message Center signs) or signs that "appear animated or projected" or "are intermittently or intensely illuminated or of a traveling, tracing, scrolling, or sequential light type" or "contain or are illuminated by animated or flashing light."

Naser Jewelers, Inc. sought permission to construct and operate an EMC on the premises of its retail store in Concord. The proposed sign measured 2.7 feet by 5.3 feet. They proposed that the sign copy to change every four seconds. Concord’s code enforcement officer denied the permit for the sign because it violated the city’s sign ordinance. Naser Jewelers, Inc. sought declaratory and injunctive relief and damages in federal district court claiming First Amendment violations. However, the district court upheld the ordinance under the rule that content-neutral regulations are constitutional provided that they are narrowly tailored to serve a significant governmental interest and allow for reasonable alternative channels of communication.

Even though this is a First Amendment case, note that the definition for an animated sign is similar to that contained within the City of Syracuse Sign Code. The court notes that all EMCs (as it falls within the definition) communicate messages. However, all EMCs are prohibited in the Concord ordinance; and therefore, the ordinance is content neutral.

As in the Concord case, all animated signs are prohibited within the JSOD and are not subject to exceptions. Both traffic safety and community aesthetics are long recognized to constitute significant governmental interests.

Final Summary

Practical difficulties arise out of an applicant’s inability to utilize the property due to a physical or dimensional condition of a *substandard* lot that relates to the land or in this case, the locations of a proposed and prohibited additional projecting wall sign.⁸ Practical difficulties arise when the ordinance deprives the applicant of all viable economic use of the land.⁹ Since the applicant is able to make reasonable economic use of the property, practical difficulties do not arise for the applicant with regard to the “size, configuration and depth” of the parcel or the obstructed visibility of the proposed projecting wall sign (fails to satisfy practical difficulty in both economic and functional utilization standards).

Therefore, keep in mind none of the following conditions sustains a warrant for a waiver or exception:

1. Mere inconvenience does not rise to the level of meeting the requirements of the ordinance for both the economic and functional utilization of the lot.
2. Mere financial loss or insufficient return on investment is not a “practical difficulty”. The applicant must not be able to make reasonable use of the property in order for a practical difficulty standard to apply.

⁸ Merriam-Webster Dictionary definition: Falling short of a standard or norm.

⁹ See *Fulling v Palumbo* (21 NY2d 30).

3. Size, configuration and depth of an *oversized* (setbacks do not apply to the sign waiver application) and an atypical parcel do not bear a logical relationship to the applicant's need for additional signage area and number of signs. In fact, there is no "uniqueness" standard applied to area variances in general nor is it required by statute or the James Street Overlay District standard of review for the waiver of requirements.

4. The applicant is not automatically entitled to benefits of additional waivers or exceptions as-of-right if he has previously been granted waivers or exceptions on the subject parcel.¹⁰

The Planning Commission must make a finding based on the fair preponderance of the record on each and every waiver requested.¹¹ If the Planning Commission arbitrarily grants wholesale exceptions to this single applicant, the cumulative effect will substantially derogate the underlying intent and purpose (meaning to take away a part so as to impair) of the James Street Overlay District Standards and the Zoning Ordinance.¹²

Thus far, not including the current three requested waivers, the applicant has applied for and has been granted (9) waivers. The Town of Lockport granted a series of (14) waivers and variances in total to the 185,000 square-foot Walmart supercenter proposal to date (case on appeal cited above). I would therefore, would like to add the following:

If the ordinance itself is unreasonable or because of changed conditions, it becomes unreasonable, the long recognized remedy is to change the zoning law (*Clark v. Board of Zoning Appeals of the Town of Hempstead*, 301 N.Y. 86, 91, 92 N.E.2d 903, cert. denied 340 U.S. 933, 71 S.Ct. 498, 95 L.Ed. 673).

However, each request of the zoning authority to circumvent the zoning law by issuing ad hoc variances or waivers dilutes the effectiveness of the municipality's land use authority. Legislative action is preferable to piecemeal exemptions that could ultimately defeat the purpose of the ordinance (*Otto v. Steinhilber, supra*, at 77, 24 N.E.2d 851). Therefore, the Planning Commission is duty bound to protect the district from undesirable changes in a *traditional* main street character or that are inconsistent with the spirit of the law creating the James Street Overlay District.

Finally, it is with weary resignation that I must repeat that the spirit and intent of the JSOD is pedestrian primacy, not automobile primacy. The purpose of this sign is to capture the attention of auto-traveling public. This single developer knows not what he does and this particular development is the antithesis of mixed use, pedestrian oriented, traditional main street development that can easily be achieved through simple compliance with the JSOD standards and the enforcement of those standards through the Planning Commission without granting every request for a waiver of the requirements. Good urban design derives sustainable economic benefits for all (likely into the next century). However, it is well-recognized within the professional planning community the short-term benefits derived from single-purpose, single-use developments such as Fays, Eckers, Rite Aid, etc. I hope that Walgreens will last longer.

I urge the Planning Commission on behalf of the Walkable Eastwood community to deny the application for waivers regarding the projecting wall sign at the Walgreens store at James Street and Grant Blvd.

Respectfully submitted by:
Maureen A. Harding, AICP

¹⁰ See *Matter of Josato, Inc. v Wright*, 2006 NY Slip Op 09244 [35 AD3d 470].

¹¹ See *Kaufman v. Incorporated Village of Kings Point*, 52 A.D. 3d 604, 860 N.Y.S.2d 573 (2nd Dept. 6/10/2008).

¹² See *Matter of Tetra Bldrs. v Scheyer*, 251 AD2d 589 [1998]; *Matter of Terra Homes v Rose*, 133 AD2d 764 [1987]