

3ZONING BOARD OF APPEALS AGENDA

Public Hearing Application #2

Application # 21Z-0004
1838 Empire Blvd
Matt Lester – Northwood Real Estate Ventures, LLC

See Pages to Follow



January 12, 2021

Zoning Board of Appeals
Town of Penfield
3100 Atlantic Avenue
Penfield, NY 14526

**Re: 1838 Empire Boulevard
T.A. #093.15-1-58
Area Variance Application**

2635A

Dear Board Members:

On behalf of the applicant, Northwood Real Estate Ventures LLC, we submit this application for area variance approval for a proposed restaurant to be located at 1838 Empire Boulevard. We request to appear at the Board's February 18, 2021 meeting to present the application. For your use and review, we include the following application materials:

- Letter of Intent
- Site Plan (BME Dwg. #2635A-02)
- Architectural Elevations
- Zoning Board of Appeals, Area Variance Application Form
- Environmental Assessment Form (EAF) Short Form Part I
- Owner's Authorization Letter
- Application Fees (to be delivered) – \$110.00 total:
 - \$100 Commercial Advertising Fee
 - \$10 Sign Posting Fee

An electronic copy of all application materials will be emailed to the Building Department.

The proposal is to construct a ±2,350 SF fast casual restaurant at 1838 Empire Boulevard. The property is ±0.73 acres in size and is zoned GB-General Business. The variances being requested are:

1. 250-7.7.D Off-Street Parking. The applicant is seeking a variance to allow less parking than required.
2. 250-7.5.D(2) Lot Coverage. The applicant is seeking a variance to allow lot coverage greater than allowed by Code.
3. 250-7.5.D(3) Setbacks. The applicant is seeking relief from the front setback requirement to both Empire Boulevard and Creek Street.

The property is bounded by Empire Boulevard to the west, Creek Street to the east, and General Business zoned uses to the north and south. This project is a re-development of the existing property, which is currently home to a ±3,800 SF vacant bank with 24 parking spaces and three drive-thru teller lanes. The former bank building will be demolished for construction of the new restaurant building.

The proposed new construction will be within the setbacks of the existing building on site; no expansion to the development footprint will result with the re-development of this property. The project will include minor modifications to the existing parking lot and will utilize the existing two highway curb cuts.

The parking variance being sought is for a reduction in parking provided on site. Parking will be provided for 35 vehicles, including two accessible spaces. This parking is based upon the practical need of the operator to serve the 2,350 SF, 45-seat fast casual restaurant. In addition to the 45 interior seats, an outdoor patio will be provided with a seating capacity of 12 customers.

Per Town Code, the 57 total seats, plus a maximum employee shift of five employees, results in a parking requirement of 48 spaces. This is based upon 1.5 space/2 seats, plus one space/employee. The applicant is seeking an area variance from the Zoning Board of Appeals for a reduction in the required parking. The variance is being sought as the operator has experience with other sites and has determined the practical need of parking for the property. The demand for parking will also be reduced given the introduction of the contactless pick-up service that will be offered via the drive-thru pick-up window, which is a new concept for this franchise.

The lot coverage variance is requested to allow the re-development of the property to occur while maintaining much of the existing development footprint. The property has a current lot coverage of 78 percent, which is generally consistent with the Town Planning Board Resolution dated April 12, 1990, approving the existing site development for the former M&T Bank, which exceeds the Code maximum of 65 percent. The proposed plan proposes a smaller building and thus will slightly decrease the lot coverage to ± 76.8 percent, as the re-development will work within the existing developed area of the property. The applicant requests an area variance from the Zoning Board of Appeals for the lot coverage to exceed the 65 percent Code maximum per Article V, 250-5.7-D (2) - Lot Coverage.

The property currently has two variances in place, which were granted by resolution by the Town Zoning Board of Appeals on January 18, 1990. These were for a 60' setback to Empire Boulevard and a 32' setback to Creek Street. The new construction adheres to these setbacks; however, the Town has indicated that new setback variances will be required as the existing building is proposed to be demolished. The new building location will include a 60-foot minimum front setback from Empire Boulevard and a 34-foot minimum front setback from Creek Street where an 80-foot front setback is required by Town Code Article V, 250-5.7-D (3). Thus, the proposed setback relief is the same as was granted for the existing building that has occupied the property for the last 30 years.

The previous Zoning Board of Appeals application also granted a Special Permit for signage. The proposed signage is intended to adhere to the original Special Permit resolution. The new building will utilize the existing pylon sign at the Empire Boulevard entrance. No change to the dimension or location of this sign is proposed. Building mounted signage will be submitted to the building department for review to determine if any additional special permits are required. The Building Department determined the January 18, 1990 Zoning Board of Appeals Special Permit Resolution remains applicable for the site signage.

Under New York State Town Law §267-b, the Zoning Board of Appeals' consideration of an area variance shall take into consideration the benefit if the variance is granted, as weighed against the detriment to health, safety, and welfare of the neighborhood or community by such grant. In reaching that determination, the statute requires the Board to consider the following:

1. Whether an undesirable change 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;

Response: The proposed development will not affect adjoining land uses as the property is currently developed and the proposed re-development project is designed within the existing development footprint of the property and in accordance with the GB district uses and guidelines. The proposed site development will slightly increase the green space area and will allow for additional landscaped areas along the north and south property lines. The building front setbacks to Empire Boulevard and Creek Street will be maintained to

the setbacks of the current building. The reduction to the code-required parking spaces is not anticipated to create an undesirable change to the neighborhood or adjoining properties as sufficient parking for the use is being provided on-site.

2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;

Response: The layout for the proposed restaurant has been developed to efficiently accommodate the proposed building, the drive-thru lane, and access for the restaurant, while maintaining the existing overall access to Empire Boulevard and Creek Street under existing conditions. Parking has been provided in proximity to the building's entry points and the number spaces provided is based upon the operator's experience for a restaurant of this size.

The site includes frontage on two roadways and does not include any rear yard areas. Conformance to the required front setbacks would render the site almost undevelopable as found by the ZBA in their Findings of Fact in their 1990 resolution granting the original setback relief for the property. The January 18, 1990 - Town Zoning Board of Appeals resolution acknowledged that, due to the "unique configuration of the lot, no practical structure could be constructed on the site without the need for either a front or rear setback variance."

To meet the required parking space requirements, the site design would require either an increase in lot coverage, or omission of site features integral to the proposed site operation including the proposed drive-thru and access drive aisles, the site dumpster pad, and the patio area. As the referenced site features are essential for the proposed site operations, and an increase in paved parking area would further increase the nonconforming lot coverage, there are no other feasible methods of development for the applicant to pursue that would not require area variances for the proposed use.

The proposed lot coverage is the result of the proposal being the re-development of the existing property and working within the current development footprint. Conforming with the lot coverage standard would result in the reduction of both parking and building size which would render the property unusable, which was again was identified by the ZBA in 1990.

3. Whether the requested area variance is substantial;

Responses:

Front Setbacks – While a reduction of the required front setback from 80 feet to 60 and 34 feet may be considered substantial, the proposed development will not reduce the existing site setback on Empire Boulevard and will increase the front setback on Creek Street by approximately 2 feet. By nature of the previously granted setback relief, the proposed site does not substantially increase the variance to the Code.

Parking – The proposed parking spaces represent an approximate reduction of 27% from the minimum Code requirement. The requested reduction may be considered minor considering the specific user's requirement for parking spaces.

Lot Coverage – The proposed lot coverage represents an approximate 18% increase to the maximum allowable lot coverage for the zoning district however the lot coverage is proposed to be reduced from existing conditions. The variance from the Code may be

considered minor as the proposed development represents a reduction of lot coverage from the previously permitted site development.

4. Whether the proposed area variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;

Response: The proposed project is a re-development of an existing commercial property. The re-development will occur within the existing development footprint of the current bank site and thus will not alter the current physical or environmental setting of the property. The new restaurant is consistent with uses within the area. It will not be detrimental to the health, safety, or general welfare of the community.

5. Whether the alleged difficulty was self-created.

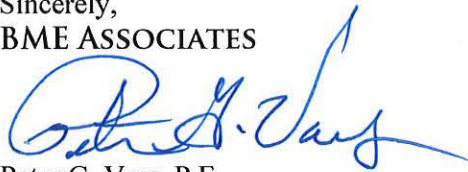
Response: The project includes the applicant's self-created change in use from a bank to a restaurant and, as a function of use change, requires an increased quantity of site parking spaces, and includes the construction of a new building. However, the previously permitted non-code compliant building location, impervious area and irregular parcel configuration are existing conditions that were not self-created by the applicant.

The above information supports the position that the benefit being sought by the applicant is not at the detriment of the neighborhood, and the character of the neighborhood will not be adversely affected as a result of granting the variance.

We have prepared Part I of the Short Form Environmental Assessment Form (EAF) pursuant to NY SEQRA regulations and have included the EAF with the project site plan application to the Town Planning Board. We have also prepared and submitted an Engineer's Narrative in support of the EAF to the Town Planning Board. The narrative, plans, and Part I EAF support that a negative declaration can be issued as the re-development project will not have a potential significant impact upon the environment. The project is an Unlisted Action per Section 617.4 and 617.5.

We will be in attendance at the Board's February 18, 2021 meeting to present this application. If you require any additional information prior to then, please contact our office.

Sincerely,
BME ASSOCIATES



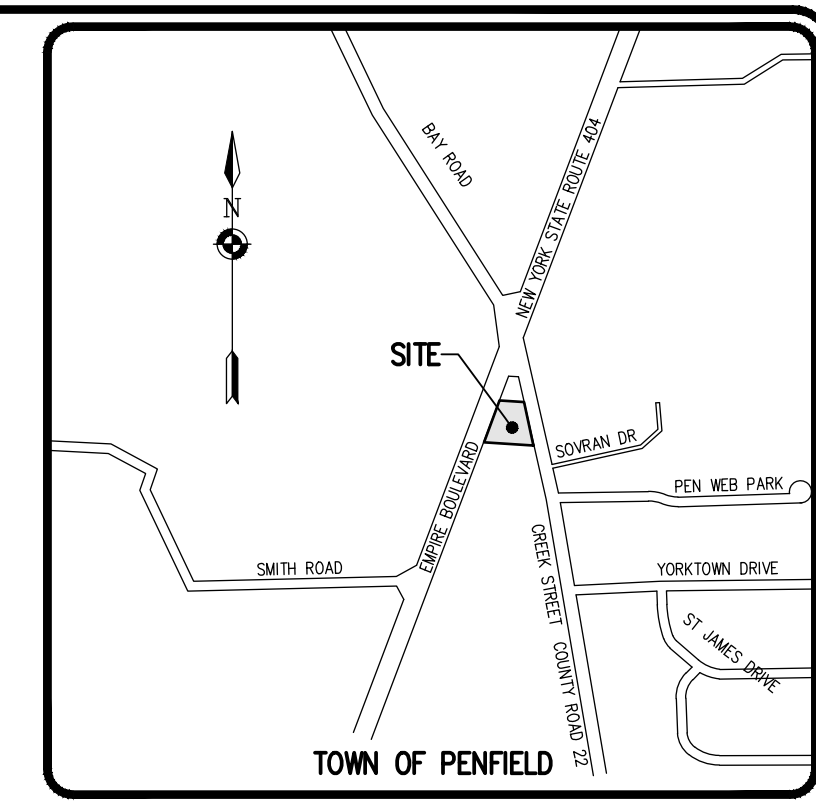
Peter G. Vars, P.E.

PGV:fas

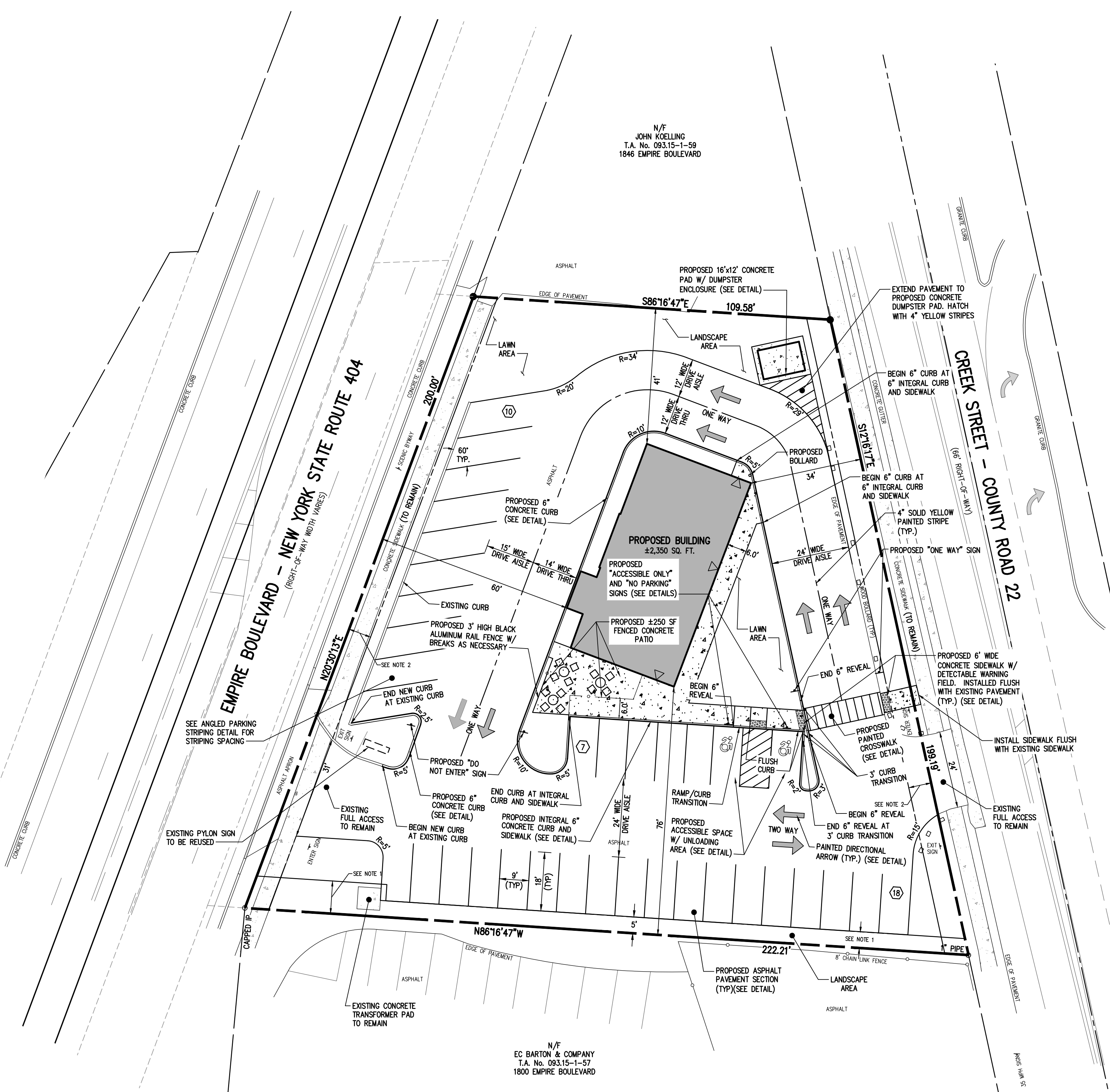
Encl.

c: M. Lester; Northwood Real Estate Ventures LLC

Drawing Alteration
The following is an excerpt from the New York State Education Law Article 145 Section 7209 and applies to this drawing:
"It is a violation of this law for any person, unless he is acting under the direction of a licensed professional engineer or land surveyor to alter any item in any way. If an item bearing the seal of an engineer or land surveyor is altered, the altering engineer or land surveyor shall file with the item his seal and the notation "altered by" followed by his signature and the date of each alteration, and a specific description of the alteration."



LOCATION MAP



SITE NOTES:

- EXISTING ZONING: GB (GENERAL BUSINESS)
- TOTAL PROJECT AREA = ±0.73 ACRES
- PROPOSED USE: RESTAURANT (CONDITIONAL USE PER SECTION 250-5.7c(1)(a) OF THE TOWN CODE.)
- APPLICABLE DEVELOPMENT STANDARDS ARE AS FOLLOWS:

LOT STANDARDS:	REQUIRED	EXISTING	PROPOSED
FRONT SETBACK	80' **	32' (CREEK ST)	34' (CREEK ST)
REAR SETBACK	30'	60' (EMPIRE BOULEVARD)	60' (EMPIRE BOULEVARD)
SIDE SETBACK	20'	53'	41'
REAR SETBACK	30'	N/A	N/A
MAX LOT COVERAGE	65%	±78.0%	±76.8%*
MIN OPEN SPACE	35%	±22.0%	±23.2%*
MAX BUILDING HEIGHT	3 STORIES OR 40 FT	2 STORY BUILDING	N/A

PARKING REQUIREMENTS:
RESTAURANT: 1.5 SPACES/2 CUSTOMERS, 43 REQUIRED (57 SEATS TOTAL: 45 INTERIOR/12 PATIO)
EMPLOYEE: 1 PER EMPLOYEE, 5 REQUIRED (5 EMPLOYEES)
48 SPACES REQUIRED**
35 SPACES PROPOSED, INCLUDING 2 ACCESSIBLE SPACES

*APPLICANT WILL REQUEST VARIANCE FROM TOWN ZONING BOARD OF APPEALS FOR REDUCTION TO PARKING REQUIREMENTS AND FOR MAXIMUM LOT COVERAGE

**VARIANCES GRANTED BY THE PENFIELD ZONING BOARD OF APPEALS ON JANUARY 18, 1990 INCLUDE A 60 FOOT FRONT SETBACK FROM EMPIRE BLVD & A 30 FOOT FRONT SETBACK FROM CREEK STREET. A SPECIAL PERMIT WAS ALSO GRANTED FOR SIGNAGE.

ALL IMPROVEMENTS SHALL BE IN ACCORDANCE WITH THE MOST RECENT STANDARDS AND SPECIFICATIONS OF THE TOWN OF PENFIELD AND THE APPROPRIATE MONROE COUNTY AND NEW YORK STATE AGENCIES, UNLESS OTHERWISE NOTED.

THE CONTRACTOR SHALL LOCATE, MARK, SAFEGUARD AND PRESERVE ALL SURVEY CONTROL MONUMENTS. FOR DESCRIPTIVE AND SURVEY DATA ON THE CONTROL MONUMENTS, CALL THE MONROE COUNTY SURVEY OFFICE.

THE DEVELOPER'S AND CONTRACTOR'S ATTENTION IS DIRECTED TO LOCAL LAW NO. 6 OF 1971 REGARDING LIABILITY INCURRED THROUGH DISTURBANCES OR DESTRUCTION OF GEODETIC SURVEY MONUMENTS.

HIGHWAY DRAINAGE ALONG NYS ROUTE 404 AND COUNTY ROAD 22 TO BE MAINTAINED.

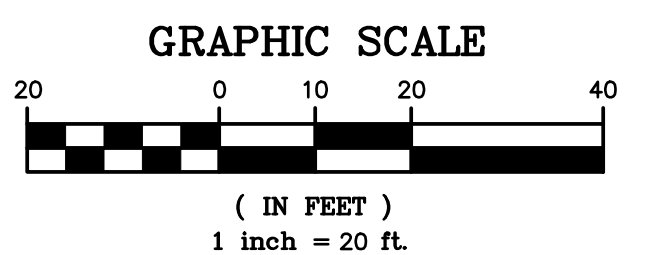
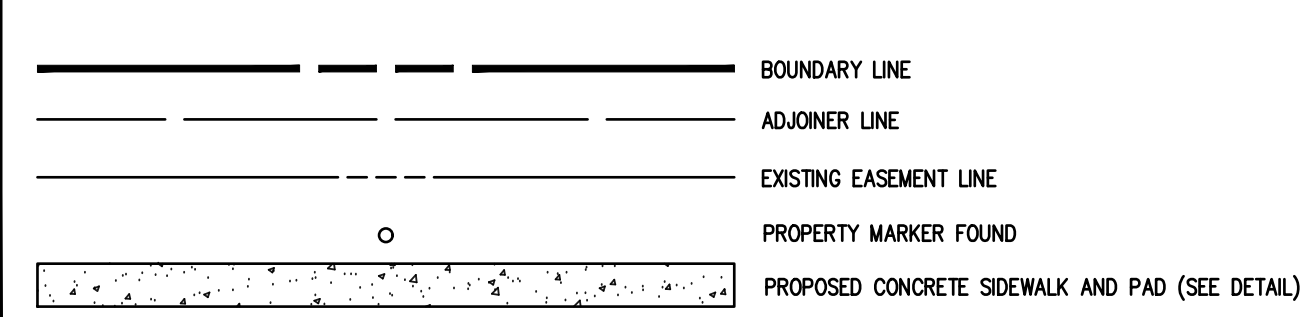
REFERENCES:

- A PLAN ENTITLED "CITIBANK - EMPIRE BLVD, SITE PLAN," PREPARED BY CORNWALL CONSULTANTS PC, HAVING DRAWING NO. 221-01, DATED MAY 15, 1990.
- LIBER 7188 OF DEEDS, PAGE 149.
- FLOOD INSURANCE RATE MAP NO. 36055C0209G, PANEL 209 OF 528, PREPARED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, EFFECTIVE DATE AUGUST 28, 2008.
- AN ABSTRACT OF TITLE WAS NOT PROVIDED FOR THE COMPLETION OF THIS SURVEY.

SURVEY NOTES:

- PARCEL SUBJECT TO AN EASEMENT TO FRONTIER TELEPHONE OF ROCHESTER, INC. & ROCHESTER GAS AND ELECTRIC CORPORATION PER LIBER 9148 OF DEEDS, PAGE 489. EASEMENT LIES ALONG THE SOUTHERLY BOUNDARY LINE AS SHOWN HEREON.
- PARCEL MAY BE SUBJECT TO SIDEWALK EASEMENTS TO THE TOWN OF PENFIELD PER REFERENCE 1. EASEMENTS ARE 7 FEET IN WIDTH ALONG THE WESTERLY RIGHT-OF-WAY LINE OF CREEK STREET AND THE EASTERLY RIGHT-OF-WAY LINE OF EMPIRE BOULEVARD AS SHOWN HEREON.
- PARCEL LIES WITHIN ZONE X PER FLOOD INSURANCE RATE MAP NO. 36055C0209G, PANEL 209 OF 528, PREPARED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, EFFECTIVE DATE AUGUST 28, 2008.
- UTILITIES SHOWN HEREON ARE PLOTTED FROM A COMBINATION OF FIELD LOCATION & RECORD MAPS OBTAINED BY THE UTILITY COMPANIES NOTED HEREON.
- THE BEARING BASE SHOWN HEREON IS REFERENCED TO THE NEW YORK STATE PLANE COORDINATE SYSTEM (NAD '83), WESTERN ZONE.

LEGEND



NOT APPROVED
This plan has not received final approval of all reviewing agencies. This plan is subject to revisions until all approvals are obtained and should not be used for construction purposes.

APPROVALS

BY: _____ DATE: _____
ENGINEERING AND PLANNING

BY: _____ DATE: _____
DIRECTOR OF PUBLIC WORKS

BY: _____ DATE: _____
TOWN CLERK

BY: _____ DATE: _____
FIRE MARSHAL

BY: _____ DATE: _____
PLANNING BOARD CHAIRPERSON

NO.	REVISIONS	DATE	BY
7			
6			
5			
4			
3			
2			
1			

BME ASSOCIATES
ENGINEERS • SURVEYORS • LANDSCAPE ARCHITECTS
10 LIFT BRIDGE LANE EAST
ROCHESTER, NY 14610
PHONE: 585-577-7260
FAX: 585-577-7269
WWW.BMEPC.COM



1838 EMPIRE BOULEVARD
TOWN OF PENFIELD, MONROE COUNTY, NEW YORK STATE
NORTHWOOD REAL ESTATE SERVICES, LLC
1857 EAST AVENUE
ROCHESTER, NY 14610

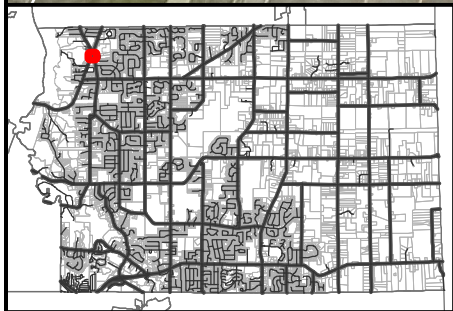
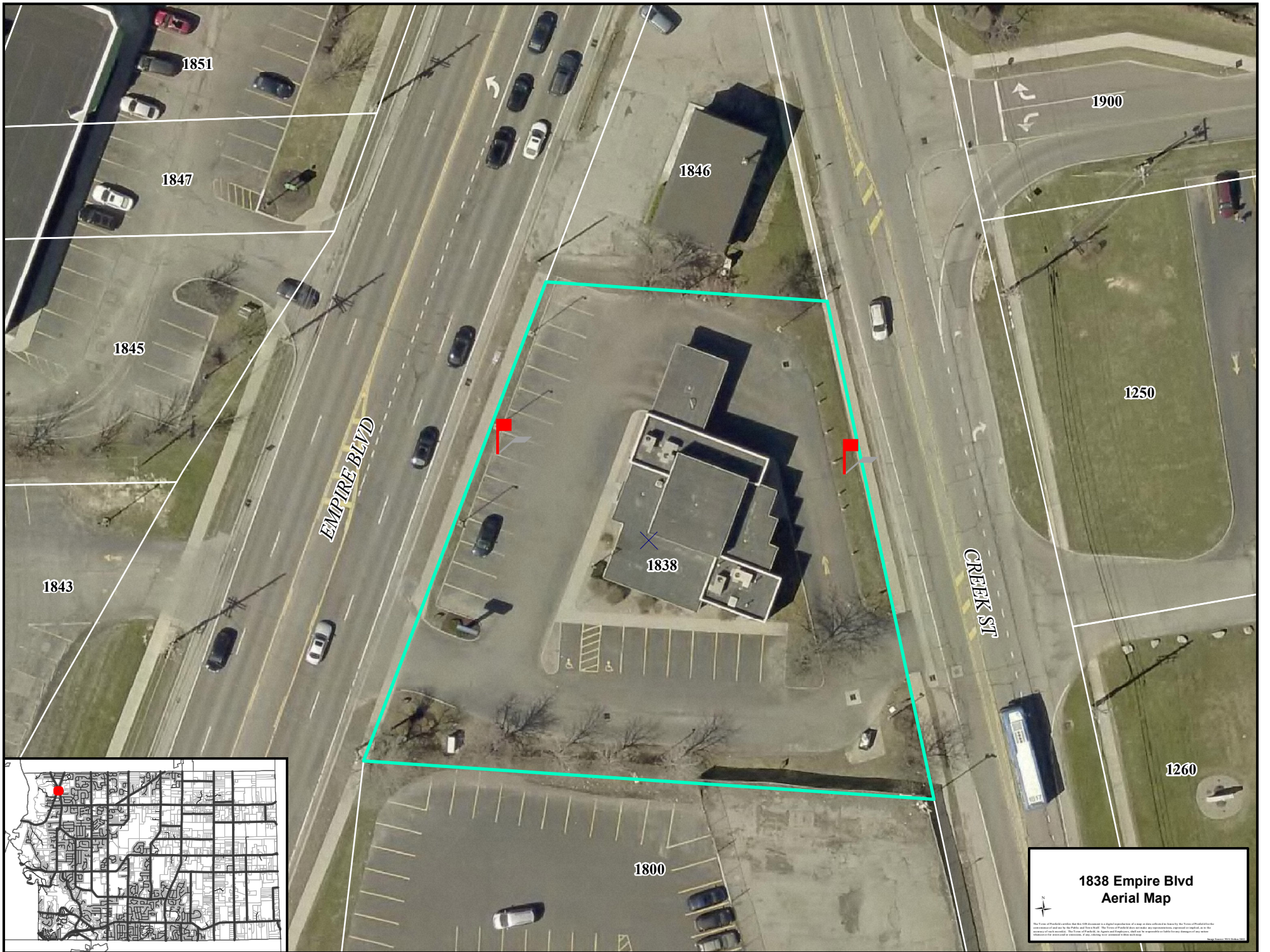
SITE PLAN

PROJECT: _____
LOCATION: _____
CLIENT: _____
DRAWING TITLE: _____

PROJECT MANAGER
P. VARS
PROJECT ENGINEER
F. SHELLEY
DRAWN BY
J. BASILE
SCALE: 1" = 20'
DATE ISSUED: JANUARY 2021
PROJECT NO.: 2635A
DRAWING NO.: 02



Chipotle Mexican Grill
WEBSTER



**1838 Empire Blvd
Aerial Map**

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