

**CITY OF DELAWARE  
BOARD OF ZONING APPEALS  
AGENDA**

**CITY COUNCIL CHAMBERS  
1 S. SANDUSKY ST.  
7:00 P.M.**

REGULAR MEETING

November 14, 2018

1. ROLL CALL
2. APPROVAL of the Motion Summary of the Board of Zoning Appeals meeting held on October 10, 2018, as recorded and transcribed.
3. ELECTION OF OFFICERS
  - A. Chairperson
  - B. Vice-Chairperson
4. REGULAR BUSINESS
  - A. 2018-2857: A request by Fahey Bank for approval of front yard setback variances for a proposed new building at 75 West William Street on approximately 0.814 acres and zoned B-3 (Community Business District).
5. BOARD MEMBER COMMENTS AND DISCUSSION
6. NEXT REGULAR MEETING: December 12, 2018
7. ADJOURNMENT

**BOARD OF ZONING APPEALS  
MOTION SUMMARY  
October 10, 2018**

ITEM 1. Roll Call

Chairman Dick called the meeting to order at 7:00 p.m.

Members Present: Beth Fisher, Adam Vaughn, Todd Daughenbauh, Robert Whitmore, Councilman George Hellinger, Vice-Chairman Paul Junk, and Chairman Matt Dick.

Staff Present: Lance Schultz, Zoning Administrator, Jordan Selmek, Zoning Officer

ITEM 2. Approval of the Motion Summary of the Board of Zoning Appeals meeting held on June 13, 2018, as recorded and transcribed.

**Motion:** Vice-Chairman Junk moved to approve the Motion Summary for the Board of Zoning Appeals held on June 13, 2018 meeting, seconded by Mr. Vaughn. Motion approved by a 6-0-1 vote. (Hellinger).

ITEM 3. REGULAR BUSINESS

A. 2018-2381: A request by Heather Stake for approval of a Conditional Use Permit for a Major Home Occupation at 344 Rockmill St. on approximately 0.17 acre and zoned R-3 (One-Family Residential District).

PUBLIC COMMENTS:

Heather Stake  
344 Rockmill St.  
Delaware, OH 43015

Jason Stake  
344 Rockmill St.  
Delaware, OH 43015

Mr. Schultz provided a staff report that included the property location and plan. Mr. Schultz reviewed the staff recommendations and discussed that staff received an email from the neighbor directly to the right of the subject house concerned about an ADA ramp that may be required. Staff evaluated 25 criteria and applicants have met vast majority of criteria warranting recommendation for approval.

**Motion:** Vice-Chairman Junk moved to approve 2018-2381, finding beyond a reasonable doubt that the decision factor necessary for approval of a variance

according to chapter 1128 of the Planning and Zoning Commission are met, with the staff conditions as noted. Seconded by Mr. Whitmore. Motion approved by a 7-0 vote. Conditions are as follows:

1. No on-site signage or advertising for the hair salon shall be permitted.
2. There shall be no additional exterior lighting for the hair salon in excess of the building code and ADA requirements.
3. The subject home occupation shall be limited to a hair salon only - no other home occupation use shall be permitted.
4. The number of hair salon customers shall not exceed 8 per day.
5. The proposed sidewalk on the east side of the house to the side entrance door shall achieve compliance with ADA standards per the Chief Building Official.
6. Any portion of the proposed sidewalk and/or porch stoop that is located within the 10 foot wide utility easement for a water line along the eastern property line (5 feet on each side of the property line) shall require approval from both the engineering and utility department.
7. The homeowner's association (if any) shall approve the home occupation request.
8. If an ADA ramp is needed, administrative approval by staff shall be granted when the subject property owner and the owner to the east (340 Rockmill Street) agree on ramp design aesthetics or the ramp design aesthetics would need to be approved by the BZA a public hearing.

ITEM 4. BOARD MEMBER COMMENTS AND DISCUSSION

ITEM 5. NEXT REGULAR MEETING: November 14, 2018.

ITEM 6. ADJOURNMENT

**Motion:** Mr. Daughenbaugh moved to adjourn the Board of Zoning Appeals meeting, seconded by Mr. Vaughn. Motion was approved by a 7-0 vote. The Board of Zoning Appeals meeting adjourned at 7:22 p.m.

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Matt Dick, Chairman

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Elaine McCloskey, Clerk



## BOARD OF ZONING APPEALS / STAFF REPORT

CASE NUMBERS: 2018-2857

REQUEST: Variance

PROJECT: Fahey Bank

MEETING DATE: November 14, 2018

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### APPLICANT/OWNER

Fahey Bank  
127 North Main Street  
Marion, Ohio 43302

### REQUEST

2018-2857: A request by Fahey Bank for approval of front yard setback variances for a proposed new building at 75 West William Street on approximately 0.814 acres and zoned B-3 (Community Business District).

### PROPERTY LOCATION & DESCRIPTION

The property is located on the south side of East William Street just east of Washington Street. The zoning of the property is B-3 (Community Business District) as are the properties to the north, east and west. The property to the south is zoned R-6 (Multi-Family Residential District).

### BACKGROUND

The applicant is proposing to demolish the existing building (funeral home) and construct a new approximate 5,300 square foot retail bank branch building with a three bay drive thru and a 31 space parking lot. There would be two curb cuts on Washington Street and one on West William Street to access the development. The southernmost curb cut on Washington Street would be full movement while the northernmost curb cut would be right-in/right-out only. The curb cut on West William Street would be right-out only. Also, there would be a plaza located on the northwestern portion of the site to mimic the Willis Education Center plaza across the street.

The applicant is requesting a 20 foot front yard setback along West William Street and a 40 foot front yard setback along Washington Street while the zoning code in a B-3 District requires a 50 foot front yard setback. Therefore an approximate 30 foot variance is required along West William Street and a 10 foot variance is required along Washington Street. The primary reason for the variance request is to move the building closer to West William Street because the 100 year floodplain is located in the rear half of the lot. If the setback variances are approved by the Board of Zoning Appeals, the subject development would require Combined Preliminary and Final Development Plan approval by the Planning Commission and City Council.

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### STAFF ANALYSIS

- **FRONT YARD VARIANCE:** The B-3 zoning district requires a 50 foot front yard setback along West William Street and Washington Street (Chapter 1143.04 Building Setback Requirements) while the applicant is proposing a setback of 20 feet along West William Street (30 foot variance required) and 40 feet along Washington Street (10 foot variance required).
  - Setbacks of the Existing Funeral Home and Adjacent Buildings.
    - The existing funeral home is setback approximately 25 feet from West William Street and approximately 71 feet from Washington Street.
    - Tim Horton's located just west of the site across Washington Street is setback approximately 20 feet from West William Street and approximately 12 feet from Washington Street.
    - Willis Education Center located just north of the site across West William Street is setback approximately 5 feet from West William Street and approximately 3 feet from Washington Street.
    - Domino's located just northwest of the site across West William Street and Washington Street is setback approximately 31 feet from West William Street and approximately 5 feet from Washington Street.
    - The office building located just east of the site is setback approximately 25 feet from West William Street.
    - The four single family houses located south of the site across the Delaware Run are setback between 0 to 9 feet from Washington Street.

- **VARIANCE REVIEW:** In considering whether or not a Variance shall be granted, the Board of Zoning Appeals is required to consider certain factors to determine if a practical difficulty exists. As listed below, Section 1128.09(c)(1) of the Planning & Zoning Code sets forth these factors. Following each factor in italics is a brief Staff analysis.

1. Whether the granting of the Variance would be in accord with the general purpose and intent of the regulations imposed by this Ordinance and the district in which it is located, and shall not be injurious to the area or otherwise detrimental to the public welfare.

*The purpose and intent of the B-3 Ordinance is outlined in Section 1143.01 states:*

*Business Districts (B-1, B-2, B-3, B-4, B-5, and B-6) and their regulations are established in order to achieve, among others, the following purposes:*

- (a) To provide in appropriate and convenient locations, sufficient areas for business activities, and the exchange of goods and services.*
- (b) To protect residential neighborhoods adjacent to business uses by restricting the types of establishments, particularly at the common boundaries, that would create congestion, noise or other objectionable influences.*
- (c) To protect and stabilize both residential and nonresidential developments from congestion by requiring off-street parking facilities.*
- (d) To carry out the following specific purposes:*
  - (1) To provide Limited Business Districts (B-1) that accommodate a variety of retail and service establishments in a shopping center environment, and where only limited outdoor sales and automotive uses are permitted.*
  - (2) To provide a Central Business District (B-2) that maintains and encourages the preservation of the core as a pedestrian-oriented business and commercial center by permitting buildings close to the street and to one another.*
  - (3) To provide Community Business Districts (B-3) that accommodate a wide range of commercial uses including automotive uses and outdoor activities as conditional uses in a manner that does not intrude upon residential areas.*
  - (4) To provide General Business Districts (B-4) that accommodate uses in addition to those specified for the B-3 District, and to thereby provide service and sales in support of primary business activities in advantageous locations at specified points on major thoroughfares and at outlying locations in the community.*
  - (5) To provide Commercial Recreation Districts (B-5) that accommodates both indoor and outdoor recreational facilities while limiting standard commercial development in order to minimize adverse impact on local streets and residential neighborhoods.*
  - (6) To provide Motorist Services Districts (B-6) that accommodate a limited range of uses (i.e., motels, restaurants, gas stations and car dealers) which are traditionally attracted to highway interchanges or other major intersections.*

*Approval of the Variance is not in accordance with purpose and intent of the Ordinance and would be considered significant but would not likely be detrimental to the public welfare for the following reasons. This area of town is essentially the extension of the downtown and could be construed as a transition from the downtown area from a zoning setback perspective with the adjacent existing buildings being setback significantly less than than the B-3 required setback of 50 foot from West William Street and Washington Street respectively (see above adjacent setback analysis). The B-2 zoning of downtown allows the buildings to be built up to the front property line (no setback) while B-3 requires a 50 front yard setback. With this being an extension of downtown, staff believes the proposed front yard setbacks of 20 feet along West William Street and 40 along Washington Street is appropriate mostly considering the setbacks of the adjacent existing buildings and is an appropriate transition between the B-2 and B-3 zoning setback requirements. Therefore, the actual impact of the proposed reduced setbacks of 20 feet along West William Street and 40 feet along Washington Street would likely not be detrimental to the public welfare of the neighborhood.*

2. Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district. Examples of such special conditions or circumstances are exceptional irregularity, narrowness, shallowness or steepness of the lot, or adjacency to non-conforming and inharmonious uses, structures or conditions.

*The 100 year floodplain essentially bisects the site in a north/south orientation with the southern portion of the site within the floodplain which encompasses most of the rear parking lot (existing and proposed parking lot). The applicant moved the proposed building closer to West William Street to be located outside the 100 year flood plain which requires the need for a variance. The zoning code prohibits new fill (without balancing cut and fill) in the 100 year floodplain and the proposed building would not likely be constructed without these variances. Without the variance, the lot(s) would be rendered extremely difficult to use for new construction as a result which itself results in a practical difficulty to this applicant and land owner.*

3. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the Variance. Mere loss in value or financial disadvantage to the property owner does not constitute conclusive proof of practical difficulty; there shall be deprivation of beneficial use of land.

*The building was constructed in 1860 per the Delaware County Auditor and could be occupied with the previous use (funeral home) or other uses allowed in the B-3 zoning district without approval of this Variance. Additionally, both this lot and the adjacent lot are subject to this condition. Again, without the variance, the lot(s) would be rendered extremely difficult to use for new construction as a result which itself results in a practical difficulty to this applicant and land owner*

4. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the Variance.

*Although the request is not compliant with the front yard setback requirements in the B-3 zoning district, the character of the neighborhood would not likely be "substantially altered" because the adjacent buildings are setback less or similar to the proposed variance request along West William Street and Washington Street respectively. Also, almost all of the existing commercial buildings in this area of town are setback significantly less than 50 feet from West William Street. The proposed architecture of the building would fit in with the adjacent buildings and would likely be a seamless transition from an aesthetic perspective.*

5. Whether the Variance would adversely affect the delivery of governmental services such as water, sewer, or trash pickup.

*The delivery of governmental services, particularly emergency services, would not be impacted with approval of this Variance and new site plan.*

6. Whether the property owner purchased the property with knowledge of the zoning restrictions. Purchase without knowledge of restrictions in itself is not sufficient proof of practical difficulty.

*The owner apparently has an option to purchase the subject properties based on if the variance is approved and all other required zoning approvals. The applicant through discussions with City Staff during the pre-development meeting process became aware front yard setback variances would be required.*

7. Whether special conditions or circumstances exist as a result of actions of the owner.

*It is not likely any special conditions or circumstances occurred because of the actions of the owner. The floodplain is determined by the Federal government and not something the property owner can control.*

8. Whether the property owner's predicament feasibly can be obviated through some method other than a Variance.

*With the location of the 100 year floodplain in the rear half of the lot, the applicant had to move the building closer to West William Street to fit their needed size of the building on the subject lot. Therefore, a variance is likely the only feasible alternative to construct the proposed building on the subject site.*

9. Whether there is evidence of Variances granted under similar circumstances.

*Staff cannot recall approving a front yard setback variance for a new building in this part of the City.*

10. Whether the granting of the Variance is necessary for the reasonable use of the land or building, and the Variance as granted is the minimum Variance that will accomplish that purpose.

*The property is currently zoned B-3 and the existing funeral home or other similar uses allowed in the B-3 zoning district could continue to be used as such with or without approval of this Variance. As a result, a Variance is not necessary for the reasonable use of the land. However, virtually any new construction would likely require a similar variance due to the existence of the floodplain and practical difficulties associate with providing access and a usable structure thereof.*

11. Whether the proposed Variance would impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety or substantially diminish or impair property values of the adjacent area.

*The variance would not likely have a negative impact on any of the above items since there has been a building on the site since 1860 with a 25 foot front yard setback from West William Street.*

12. Whether the granting of the Variance requested would confer on the applicant any special privilege that is denied by this regulation to other lands, structures or buildings in the same district.

*If the Board finds that the standards for approval of a Variance are met then no special privilege is granted.*

#### CONCLUSION

The proposed variances do appear to constitute a hardship because of the 100 year flood plain and complies with the majority of the practical difficulties to justify a variance request. Therefore staff can support the proposed variance request from a practical perspective if the adjacent neighbors do not have a significant opposition to the proposal for the following reasons: 1.) The existing funeral home is setback approximately 25 feet from West William Street and an additional 5 feet would be minimal and would not have a major impact on the adjacent buildings; 2.) The majority of the buildings adjacent to the proposed bank have a front yard setback equal to or less than the proposed 20 feet from West William Street and 40 feet from Washington Street; 3.) The rear portion of the site is within the 100 year floodplain and the building is moved closer to West William Street as not to protrude into the flood plain.

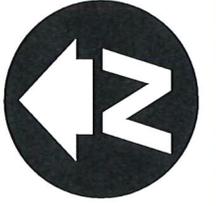
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#### STAFF RECOMMENDATION – VARIANCE (2016-2857)

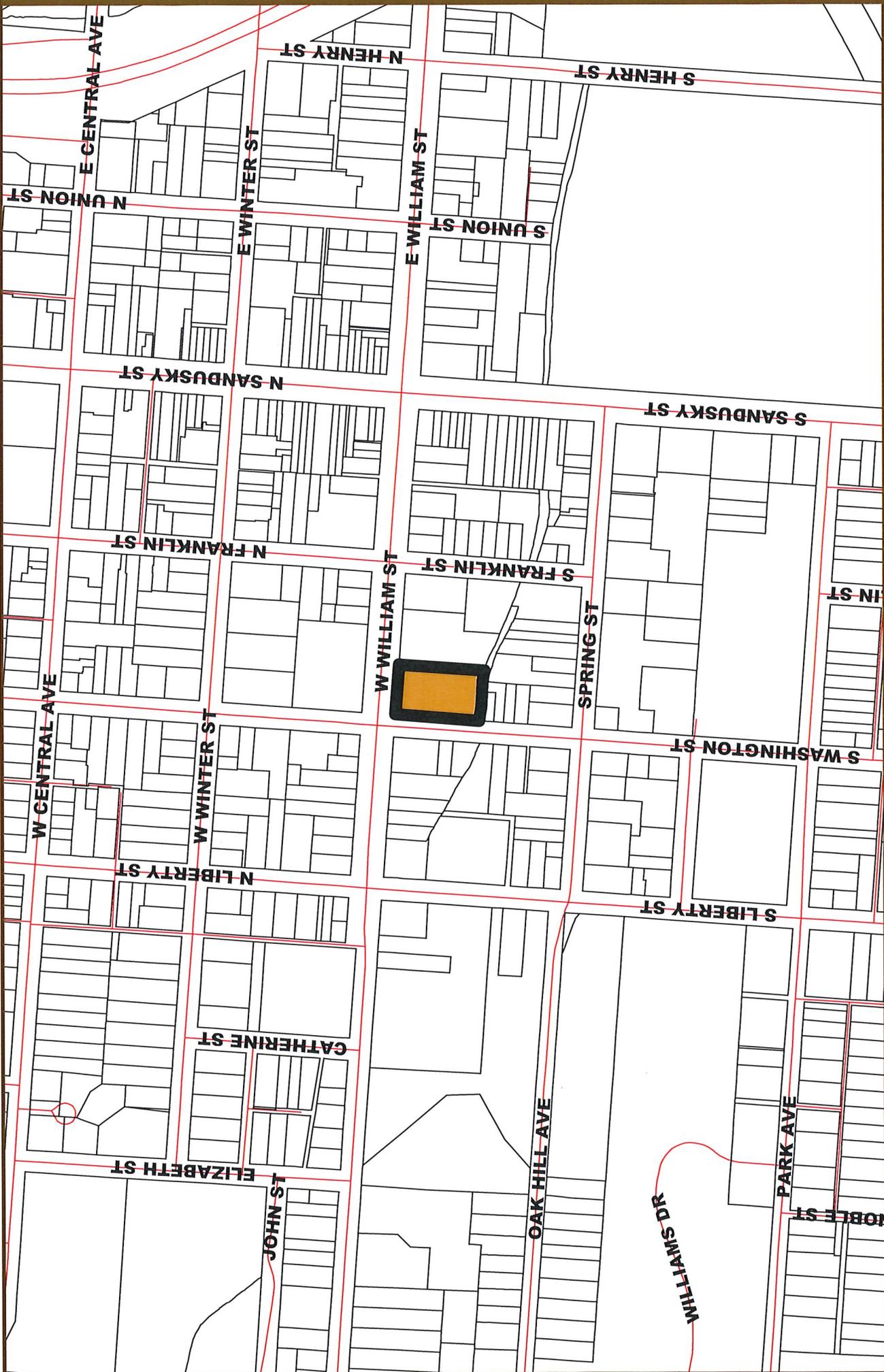
Staff recommends approval of a request by Fahey Bank for front yard setback variances for a proposed new building at 75 West William Street on approximately 0.83 acres and zoned B-3 (Community Business District), with the following conditions that:

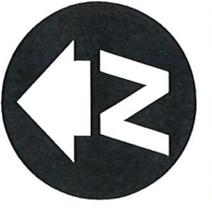
1. The building addition shall be setback a minimum 20 feet from West William Street and 40 feet from Washington Street.
2. The new building shall achieve compliance with all other City zoning and development requirements or as approved by City Council..





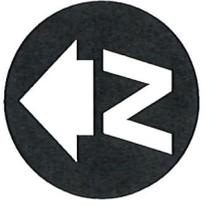
2018-2857  
Building Setback Variance  
Fahey Bank - 75 West William Street  
Location Map





2018-2857  
Building Setback Variance  
Fahey Bank - 75 West William Street  
Zoning Map





2018-2857  
Building Setback Variance  
Fahey Bank - 75 West William Street  
Zoning Map



