

CITY OF BEACON  
ZONING BOARD OF APPEALS

**RESOLUTION**

**WHEREAS**, an application has been made to the City of Beacon Zoning Board of Appeals (“Board of Appeals” or “Zoning Board”) by **23-28 Creek Drive, LLC** (the “Applicant”) for (1) a variance of 20 parking spaces, where 113 parking spaces are required for a mixed-used building consisting of 20,000 square feet of commercial space and eight (8) residential units pursuant to City Code § 223-26.F and 93 parking spaces are proposed; (2) a 750 square foot variance for two apartment units, where the maximum permitted dwelling unit size is 2,000 square feet pursuant to City Code § 223-41.14.C and two apartment units are proposed to be 2,750 square feet; (3) a one story height variance, where the maximum permitted building height is three stories pursuant to City Code § 223-41.14.F and the proposed building height is four stories; and (4) a 13 foot 4 inch building height variance where the maximum permitted building height is 40 feet pursuant to City Code § 41.14.F and the proposed building height is 53 feet-4 inches, in connection with the Applicant’s proposal to construct a mixed use development with eight (8) apartments and 20,000 square feet of commercial space (the “Proposed Action” or “Project”), on property located at 23-28 Creek Drive in the Fishkill Creek Development (“FCD”) Zoning District, said premises being known and designated on the tax map of the City of Beacon as **Parcel ID# 6054-37-037625** (the “Property”); and

**WHEREAS**, the Project is located on the former City of Beacon Department of Public Works (“DPW”) property which consists of approximately 2.582 acres of land and a 0.228 acre portion of land owned by Weber Projects III, LLC located at 7-15 Creek Drive, as designated on the City tax map as Parcel ID# 6054-37-066670, which said 0.228 acres is the subject of a resubdivision application before the Planning Board and which is not part of this variance application; and

**WHEREAS**, the Applicant submitted its application to the Zoning Board of Appeals in conjunction with its application to the City Council for Concept Plan approval and its application to the City Planning Board for Site Plan and Subdivision (lot line adjustment) approval; and

**WHEREAS**, the Proposed Action is an Unlisted Action pursuant to the New York State Environmental Quality Review Act; and

**WHEREAS**, on December 3, 2019, the City Council referred the application for Concept Plan approval to the City Planning Board for report and recommendation and asked the Planning Board to be lead agency for the coordinated environmental review of the Project; and

**WHEREAS**, the City Planning Board considered the Proposed Action at its March 12, 2019, April 9, 2019, May 14, 2019, June 11, 2019 and July 9, 2019 meetings; and

**WHEREAS**, the City Planning Board held a duly advertised SEQRA public hearing on April 9, 2019 and continued the SEQRA public to May 14, 2019 and June 11, 2019, at which time all those wishing to raise SEQRA concerns were given such opportunity; and

**WHEREAS**, the City Planning Board closed the SEQRA public hearing on June 11, 2019; and

**WHEREAS**, on July 9, 2019 after taking a “hard look” at each of the relevant areas of environmental concern through review of the Environmental Assessment Form and all associated materials prepared in connection with the Proposed Action, the City Planning Board, as part of a coordinated review, hereby adopted a Negative Declaration; and

**WHEREAS**, a duly advertised public hearing on the application for area variances was held on July 16, 2019, and continued to August 20, 2019, at which time all those wishing to be heard on the application were given such opportunity; and

**WHEREAS**, the Board closed the public hearing on August 20, 2019; and

**WHEREAS**, pursuant to New York State General City Law Section 81-b(4) and City Code Section 223.55.C(2)(b), when deciding the request for an area variance:

The Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such a determination, the Board shall also consider:

- [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;
- [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;
- [3] Whether the requested area variance is substantial;
- [4] Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- [5] Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance; and

**WHEREAS**, the Board of Appeals, in granting variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the Applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community; and

**NOW, THEREFORE, BE IT RESOLVED**, based upon the Record before it and after viewing the premises and neighborhood concerned and upon considering each of the factors set forth in Section 223.55(C)(2)(b)[1]-[5] of the City Code, the Zoning Board hereby finds with respect to the requested area variances as follows:

### **1. Overview of the Project**

The Property which is the subject of this variance application was previously used for decades as the City's Highway Garage. The Proposed Project involves demolition of the existing buildings on the site and construction of a new four story mixed use building containing 20,000 square feet for commercial use and eight (8) residential dwelling units. The Applicant has an ownership interest in the adjacent property at 7-15 Creek Drive (owned by Weber Projects III, LLC), which has been redeveloped from a junk yard into a multi-family residential development with a new building, and includes expansion of the Fishkill Creek Greenway & Heritage Trail. The Applicant submitted the Proposed Project for 23-28 Creek Drive in response to the City's Request for Qualifications and Proposals to renovate and develop the Property. The City Council selected the Applicant's proposal and on May 11, 2018, the Applicant entered into a Contract of Sale with the City of Beacon. The Applicant's Contract with the City requires the Applicant to construct a park

and expand the Fishkill Creek Greenway & Heritage Trail, to connect with the Trail at 7-15 Creek Drive.

On March 17, 2015, the Applicant's related entity at 7-15 Creek Drive (Weber Projects III, LLC) received area variances from the Zoning Board of Appeals to allow construction of two new four-story multi-family residential buildings on 9-11 Creek Drive. One of those buildings was constructed. As part of the Proposed Project at 23-28 Creek Drive the height variance for the second building will not be used and the second approved four story building at 9-11 Creek Drive will not be constructed. Instead such building is being proposed to be constructed on this Property.

**2. The variances will not produce an undesirable change in the character of the neighborhood and there will not be a detriment to nearby properties created by the granting of the area variances.**

*A. Minimum Number of Parking Spaces*

The Applicant requests a variance of twenty (20) parking spaces. The total number of parking spaces required is 113 as thirteen (13) spaces are required for the residential dwelling units and 100 spaces are required for the commercial space. The Project will provide a total of 93 parking spaces located in several lots on the site, as well as beneath the building. The parking will be screened by landscaping to mitigate views from the street and neighboring properties. The Applicant's parking and traffic consultant prepared a Traffic Impact Study that stated in relevant part that: "... in connection to the nearby CMS District and Linkage District[s] the City Code would only require 48 and 58 spaces respectively, which is a reasonable comparison due to the Project's proximity to Main Street and these districts."

The Applicant will install a combination of fencing and plant material to create a visual buffer between the street and parking areas. In addition, the residential use and commercial use on the site allows for shared parking such that the thirteen (13) residential spaces can be used for commercial space parking.

It should also be noted that the Planning Board discussed the variance for parking and considered the following factors. The Planning Board found that the Fishkill Creek Development zone relies on general parking standards, while similar mixed uses in the adjacent Linkage and CMS Zoning

Districts would require far fewer parking spaces. In addition, a shared parking situation will exist on the Property because some of the employees will live and work on site, and the commercial operation will not be operating when some residents are at home. Lastly fewer parking spaces would cut down the amount of impervious surfaces and add more accessible green space. After careful consideration, the members of the Planning Board unanimously supported a positive recommendation with regard to the parking variance.

Based on the traffic study, trip analysis, review of the City's parking requirements in adjacent zoning districts that mirror the proposed use, shared parking and availability of parking in the vicinity of the site, the variance of 20 parking spaces for this Project, where 113 parking spaces are required for a mixed-used building consisting of 20,000 square feet of commercial space and eight (8) residential units, and will not produce an undesirable change in the character of the neighborhood and will not create a detriment to nearby properties.

*B. Maximum Dwelling Unit Size*

The Applicant requests a variance to permit two (2) 2,750 square foot residential dwelling units, where the maximum permitted dwelling unit size is 2,000 square feet. The Project includes eight total apartment units comprising 13,515 square feet, which includes three 1,380 square foot two-bedroom units, two 1,325 square foot two-bedroom units, one 1,225 square foot two-bedroom units and two 2,750 square foot three-bedroom units located on the third and fourth floors of the building. The average size of the eight units in the proposed building, including the two 2,750 square foot units, is approximately 1,689 square feet, which is 311 square feet below the maximum permitted unit size. The makeup of the units creates a diversity of unit sizes in the building, without changing the exterior look of the building. In addition the variance requested applies to only two dwelling units.

In 2010 the City Council of the City of Beacon adopted the FCD Zoning District, which established the maximum dwelling unit size restriction of 2,000 square feet of gross floor area. After reviewing the available legislative history and available minutes, memorandums and correspondence pertaining to the adoption of the FCD Zoning District, the Zoning Board is unable to determine the City Council's original intent and justification for this bulk regulation.

At the Planning Board's June 11, 2019 meeting, the Planning Board discussed what "basis" there is for the maximum dwelling unit size restriction in the FCD Zoning District. The City Planner, John Clarke, explained that such a provision was adopted before he was the Planner for the City of Beacon, therefore he did not participate in the drafting of the 2010 legislation. At the Planning Board meeting John Clarke was unable to supply the Planning Board with a reason as to why the 2,000 square foot restriction was adopted. Mr. Clarke explained to the Planning Board that such a provision is not typically found in zoning laws; sometimes a minimum unit size is adopted to prevent developers from constructing dwelling units that are too small, however, in his experience he has not seen a maximum dwelling unit size restriction.

Therefore, the 750 square foot variance per unit for two units, where the maximum permitted dwelling unit size is 2,000 square feet will not result in any adverse impacts to the neighborhood character or nearby properties.

*C. Maximum Building Height and Number of Stories*

The Applicant requests a one story height and a thirteen foot four inches (13'4") variance to construct a four story building, 53 feet 4 inches in height, where the maximum permitted building height in the FCD Zoning District is three stories and 40 feet. The four story building is set at a low elevation relative to the street. The elevation of the property helps mitigate any potential visual impacts of the building from Tioronda Avenue. Plantings will also be designed to soften the building and enhance views of Fishkill Creek and Mount Beacon. In addition, the height of building will not produce an undesirable change to the character of the neighborhood because the building sits at a lower elevation than the street. The existing topography of the site minimizes the impact of the fourth story from Tioronda Avenue. Furthermore, the proposed landscaping, in conjunction with the existing elevation, will limit views of the roof and mechanical equipment on the roof of the building from the street. The building will be visible from Fishkill Creek; however, the aesthetics of the site will be enhanced when compared to the existing conditions of the DPW facility.

As noted above, the Applicant will not be building the originally approved four-story building, for which the Applicant received a height variance, located on the Applicant's adjacent 7-15 Creek

Drive property. As a result, a significant viewshed towards Mount Beacon from Tioronda Avenue will be maintained. Therefore, this variance will not produce an undesirable change in the character of the neighborhood and will not be a detriment to nearby properties.

**3. The benefit sought by the Applicant cannot be achieved by some method feasible for the Applicant to pursue, other than the requested area variances.**

*A. Minimum Number of Parking Spaces*

The Project uses a garage underneath the building to house 34 parking spaces. The development is situated and designed to allow for meaningful development that conforms with the 2017 Comprehensive Plan Update, which encourages mixed use developments, and is consistent with recent zoning changes which rezoned the property from the LI- Light Industrial Zoning District to the FCD Zoning District. The Project is also consistent with surrounding uses and structures in the neighborhood. By utilizing a parking garage under the building, the Applicant minimizes the surface parking footprint and amount of impervious coverage while maintaining the proposed amount of commercial and residential space. The requested variance allows the Applicant to enhance the layout and functionality of the site and preserves a significant amount of open space. The Applicant cannot achieve these benefits by any feasible alternatives. While the additional 20 parking spaces could be constructed on site, such construction would intrude into open spaces and as detailed herein such additional spaces are not necessary, and could necessitate additional area variances.

*B. Maximum Dwelling Unit Size*

The Applicant's goal is to develop a mixed use commercial and residential development building with a diversity of unit sizes in the building. While the Applicant can achieve its goal and stay within the 2,000 square foot requirement, the variance only applies to two units and the rest of the building contains residential units under 2,000 square feet. As a result the average size of all eight units combined (when factoring in the assumption of granting the requested area variance for the two units) is well below the maximum dwelling unit requirement in the FCD Zoning District.

*C. Maximum Building Height and Number of Stories*

The building consists of 20,000 square feet of commercial space and eight residential rental apartment units. The Project was designed to limit the building footprint. To construct the buildings as permitted on the Property by the City's Zoning Code, without a variance, would result in more impervious surface, encroachment into green space and increase massing of the building. The amount of commercial space, the number of residential units, the preserved open space, the design and flow of the site are all benefits the Applicant can only achieve by developing a fourth story.

**4. The requested variances are mathematically substantial; however, this does not outweigh the other factors meriting the granting of the variances.**

The Applicant's requested area variances for this Project (1) a variance of 20 parking spaces, where 113 parking spaces are required for a mixed-used building consisting of 20,000 square feet of commercial space and eight (8) residential units pursuant to City Code § 223-26.F and 93 parking spaces are proposed; (2) a 750 square foot variance for two apartment units, where the maximum permitted dwelling unit size is 2,000 square feet pursuant to City Code § 223-41.14.C and two apartment units are proposed to be 2,750 square feet; (3) a one story height variance, where the maximum permitted building height is three stories pursuant to City Code § 223-41.14.F and the proposed building height is four stories; and (4) a 13 foot 4 inch building height variance where the maximum permitted building height is 40 feet pursuant to City Code § 41.14 are mathematically substantial. However, in considering whether a variance is substantial, the Board must examine the totality of the circumstances within the application and the overall effect of granting the requested relief. Here, the requested variances are not substantial in their effect.

The landscaping of the project site and the large creek-side park will form a cohesive extension to the recent landscaping planted at 7-15 Creek Drive. The Applicant will demolish the existing three (3) bay garages with attached office, main garage, tire shed, tool shed, salt shed and carpenter's shed. The Applicant will construct a new building that is compatible with the neighborhood. The new building will provide a desired mixed used development with substantial commercial space while preserving open space. Additionally, the granting of the requested variances will result in



the second building proposed at 9-11 Creek Drive in not being constructed which will maintain views of Fishkill Creek and Mount Beacon.

**5. The proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.**

The proposed variances will not have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district. There will be no adverse effects of noise, vibrations, odor, traffic, or impact on public services caused by the development associated with the granting of this variance. As part of the Coordinated SEQRA review conducted by the Planning Board as Lead Agency, the Planning Board determined that the Proposed Action will have no potential significant adverse environmental impacts. The Proposed Project includes a one-acre public park and extension of the Greenway Trail along the Creek. Therefore, the Zoning Board finds that the proposed variances will not have a significant adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

*A. Minimum Number of Parking Spaces*

As discussed above, a variance from the City's minimum required number of parking spaces in the FCD Zoning District will not result in any adverse effects or impacts on the physical or environmental conditions in the neighborhood or district. The Property is located one block from Main Street, and is adjacent to residential properties and a brewery. Such uses will not be impacted by approval of the requested parking variance.

The construction of additional parking would not only create more impervious surface, but it would eliminate a significant stormwater management area, which would then need to be relocated underground or pushed to the south of the site. In addition, developing the required 20 parking spaces would result in increased impervious surface area development, which would require further stormwater management.

*B. Maximum Dwelling Unit Size*

This variance addresses the size of the residential dwelling units; such a variance concerns the inside of the building and will not impact the physical or environmental conditions in the

surrounding neighborhood or district. The outside of the building will look the same whether the units are 2,000 square feet or 2,750 square feet. Therefore, the requested variance to permit two residential dwelling units at 2,750 square feet out of the total eight units, where the maximum dwelling unit size in the FCD Zoning District is 2,000 square feet will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

*C. Maximum Building Height and Number of Stories*

The Project is designed to reduce the footprint of the building and facilitate an efficient design and flow of the site. The Proposed Action will not result in the obstruction, elimination or significant screening of one or more officially designated scenic views. Further, public viewing of Fishkill Creek from the Site will be enhanced by providing a Greenway Trail segment and a public park at the south end of the site.

The applicable zoning specifically permits higher residential density on the Property. However, the Applicant is not proposing to construct any additional density. Furthermore, the Applicant will not be building the second approved four-story building located on the Applicant's property (9-11 Creek Drive) north of the subject Property, thereby maintaining the significant viewshed towards Mount Beacon from Tioronda Avenue.

Therefore, the proposed building height variance will not have an adverse effect on the physical or environmental conditions in the neighborhood or district.

**6. The alleged difficulty is self-created.**

The need for the variances is self-created since it is presumed the Applicant selected the Property as the location for its proposed development knowing the zoning requirements pertaining to the required number of parking spaces, maximum dwelling unit size and maximum building height permitted.

**7. The variances requested are the minimum necessary and adequate to address the unnecessary hardship proven by the Applicant and at the same time shall preserve and protect the character of the neighborhood and the health, safety and welfare of the community.**

**BE IT FURTHER RESOLVED**, that for the reasons set forth above, the application of 23-28 Creek Drive, LLC for a variance of 20 parking spaces, where 113 parking spaces are required for a mixed-used building consisting of 20,000 square feet of commercial space and eight (8) residential units are required pursuant to City Code § 223-26.F and 93 parking spaces are proposed, is hereby GRANTED based on the Board's specific findings herein regarding the Project as proposed with 20,000 square feet commercial space and eight (8) residential units, subject to the following conditions:

1. The Applicant shall provide bicycle parking on the site for residents and office workers.
2. The Applicant is encouraged to consider allowing shared weekend parking to the general public on at least a portion of the Property, as a majority of the sites off-street parking spaces are not otherwise anticipated to be used during the weekend.

**BE IT FURTHER RESOLVED**, that for the reasons set forth above, the application of 23-28 Creek Drive, LLC for a 750 square foot variance for two apartment units; where the maximum permitted dwelling unit size is 2,000 square feet pursuant to City Code § 223-41.14, is hereby GRANTED.

**BE IT FURTHER RESOLVED**, that for the reasons set forth above, the application 23-28 Creek Drive, LLC for a one story height variance, where the maximum permitted building height is three stories pursuant to City Code § 223-41.14.F and the proposed building height is four stories, is hereby GRANTED.

**BE IT FURTHER RESOLVED**, that for the reasons set forth above, the application of 23-28 Creek Drive, LLC for a 13 foot 4 inch building height variance where the maximum permitted building height is 40 feet pursuant to City Code § 41.14.F and the proposed building height is 53 feet-4 inches, is hereby GRANTED, subject to the following conditions:

1. All variances issued by the Zoning Board of Appeals on March 17, 2015 to Weber Projects III, LLC pertaining to a second four story building approved on property located at 9-11 Creek Drive and not yet constructed, are rescinded and deemed null and void and a statement to that affect by the Applicant's related entity, Weber Projects III, LLC shall be

filed within thirty (30) days after the Planning Board's Site Plan approval and made a part of the records for both this Property and the 7-15 Creek Drive property files.

**BE IT FURTHER RESOLVED**, that all the variances granted herein are subject to the following conditions:

1. No permit or Certificate of Occupancy shall be issued until the Applicant has paid in full all application and consultant fees incurred by the City of Beacon in connection with the review of this application.
2. These variances shall be void if the Applicant fails to (i) obtain a building permit within six months from the date of the Planning Board's Site Plan approval; (ii) commence construction within six months following the date of issuance of the building permit; and (iii) fails to complete construction and obtain a certificate of occupancy within 24 months after the date of issuance of said building permit..
3. The Zoning Board of Appeals may grant six month extensions of this variance approval provided that a written request for an extension is submitted before the variance expires. Such extensions shall only be granted upon a showing by the Applicant that the circumstances and conditions upon which the variances were originally granted have not substantially change

Dated: September 17, 2019



**Mr. Robert Lanier, Chairman**

**A VARIANCE OF 20 PARKING SPACES**

**Chairman Lanier called the roll:**

<b>Motion</b>	<b>Second</b>	<b>Zoning Board Member</b>	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Excused</b>	<b>Absent</b>
		Robert Lanier	X				
X		Garrett Duquesne	X				
	X	Jordan Haug	X				
		Judy Smith	X				
		David Jensen	X				
<b>Motion Carried</b>			<b>5</b>	<b>0</b>			

**A 750 SQUARE FOOT VARIANCE FOR TWO APARTMENT UNITS**

**Chairman Lanier called the roll:**

<b>Motion</b>	<b>Second</b>	<b>Zoning Board Member</b>	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Excused</b>	<b>Absent</b>
		Robert Lanier	X				
		Garrett Duquesne	X				
X		Jordan Haug	X				
	X	Judy Smith	X				
		David Jensen	X				
<b>Motion Carried</b>			<b>5</b>	<b>0</b>			

**A ONE STORY VARIANCE**

**Chairman Lanier called the roll:**

Motion	Second	Zoning Board Member	Aye	Nay	Abstain	Excused	Absent
		Robert Lanier	X				
	X	Garrett Duquesne	X				
		Jordan Haug		X			
X		Judy Smith	X				
		David Jensen		X			
<b>Motion Carried</b>			<b>3</b>	<b>2</b>			

**A 13 FOOT 3 INCH BUILDING HEIGHT VARIANCE**

**Chairman Lanier called the roll:**

Motion	Second	Zoning Board Member	Aye	Nay	Abstain	Excused	Absent
		Robert Lanier	X				
X		Garrett Duquesne	X				
		Jordan Haug		X			
	X	Judy Smith	X				
		David Jensen		X			
<b>Motion Carried</b>			<b>3</b>	<b>2</b>			