

RESOLUTION

**PLANNING BOARD
BEACON, NEW YORK**

**GRANTING PRELIMINARY & FINAL SUBDIVISION
PLAT APPROVALS AND SITE PLAN APPROVAL
FOR 23-28 CREEK DRIVE**

Parcel ID#6054-37-037625

WHEREAS, the Beacon Planning Board received applications for Preliminary and Final Subdivision Plat Approvals (lot line realignment) and Site Plan Approval from 23-28 Creek Drive, LLC (the “Applicant”), to construct a mixed-use development on the former City of Beacon (“DPW”) site with a total of eight (8) residential units and 20,000 square feet of commercial space, (the “Proposed Action” or “Project”), on a total of 3.144 acres, 2.807 acres of property located at 23-28 Creek Drive and designated on the Tax Map of the City of Beacon as **Parcel ID# 6054-37-037625** and 0.337 acres from the adjacent parcel which consists of land owned by Weber Projects III, LLC located at 7-15 Creek Drive and designated on the Tax Map of the City of Beacon as **Parcel ID# 6054-37-066670** in the Fishkill Creek Development (“FCD”) Zoning District (the “Property”); and

WHEREAS, the Planning Board is the approval authority for the Subdivision and Site Plan pursuant to City of Beacon Code §§195-2 and 223-41.13.G; and

WHEREAS, development within the Fishkill Creek Development District is governed by Chapter 223, Article IVC of the Code of the City of Beacon (the “City Code”), which requires all Creek development projects to obtain (a) Concept Plan approval by the City Council and (b) Site Plan approval by the Planning Board; and

WHEREAS, the application consists of application forms, correspondence, the Full Environmental Assessment Form (“Full EAF”) and professional studies and reports submitted to the Planning Board; and

WHEREAS, the Subdivision is shown on the drawing, entitled, “Lot Line Alteration Prepared for 23-28 Creek Drive” Sheet 1 of 1 dated October 28, 2019, prepared by TEC Land Surveying; and

WHEREAS, the Site Plan is shown on the drawings, entitled “Site Plan Application 23-28 Creek Drive” Sheets 1-12, last revised December 31, 2019, as prepared by Aryeh Siegel, Architect, Hudson Land Design; TEC Land Surveying, P.C. and Landscape Restorations:

Sheet
1 of 12

Title
Site Plan

2 of 12	<i>Existing Conditions & Demolition Plan</i>
3 of 12	<i>Site Section Diagram</i>
4 of 12	<i>Landscape Plan & Planting Schedule</i>
5 of 12	<i>Building Plans</i>
6 of 12	<i>Renderings</i>
7 of 12	<i>Grading & Utility Plan</i>
8 of 12	<i>Erosion and Sediment Control Plan</i>
9 of 12	<i>Profiles</i>
10 of 12	<i>Site & Erosion Sediment Control Details</i>
11 of 12	<i>Stormwater Details</i>
12 of 12	<i>Water and Sewer Details; and</i>

WHEREAS, the Applicant also submitted a Parking and Traffic Impact Study prepared by Maser Consulting P.A., dated March 25, 2019; and

WHEREAS, the Project incorporates public linkages to the Greenway Trail and includes the construction of a half-acre public park along the Fishkill Creek; and

WHEREAS, the Proposed Action is an Unlisted Action pursuant to the New York State Environmental Quality Review Act (SEQRA) and the Planning Board served as Lead Agency in a coordinated environmental review and held a duly noticed SEQRA public hearing on April 9, 2019, continued the public hearing to May 14, 2019 and June 11, 2019, and closed the public hearing on June 11, 2019, at which all times those wishing to provide comment were given the opportunity to do so; and

WHEREAS, WHEREAS, on July 9, 2019 after hearing public comment and taking a “hard look” at the Full EAF and all of the associated materials prepared in connection with the Proposed Action, the Planning Board adopted a Negative Declaration, finding the Proposed Action will not result in any significant adverse environmental impacts; and

WHEREAS, the Planning Board issued a report to the City Council dated July 11, 2019 issuing a positive recommendation to the Council on the Concept Plan, subject to the Applicant returning to the Planning Board where the Planning Board will review more specific architectural, landscaping, lighting, parking and engineering details as required to complete Site Plan review; and

WHEREAS, pursuant to a letter dated June 19, 2019, the MTA expressed their acceptance for the Applicant’s proposed grading plans to smooth out the transition between the subject parcel and the MTA property including grading and clean-up work and informed the Applicant that an Entry Permit is required to perform the cleanup and grading, which the Applicant should request upon approval and signing of the Site Plans; and

WHEREAS, on May 9, 2019 the Applicant submitted a request to the New York District of the U.S. Army Corps of Engineers for authorization to discharge fill materials into waters of the United States associated with the installation of two (2) new stormwater

outfall structures and the removal of three (3) existing stormwater outfall structures located in Fishkill Creek; and

WHEREAS, on September 16, 2019, the Applicant received approval from the New York District of the U.S. Army Corps of Engineers for authorization to discharge fill materials into waters of the United States associated with the installation of two (2) new stormwater outfall structures and the removal of three (3) existing stormwater outfall structures located in Fishkill Creek subject to special conditions to protect the endangered species of the Indiana and Northern Long-Eared bats while clearing trees; and

WHEREAS, on September 17, 2019 the City of Beacon Zoning Board of Appeals granted the Applicant's variance requests including: (i) a variance of 20 parking spaces, where 113 parking spaces are required for a mixed-use building consisting of 20,000 square feet of commercial space and eight residential units pursuant to City Code §223-26.F and 93 parking spaces are proposed; (ii) 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.O and two apartment units are proposed to be 2,750 square feet; (iii) a one store 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 (4) stories; and (iv) a 13 foot 4 inch building height variance where the maximum permitted building height is 40 feet pursuant to City Code §41.14.17 and the proposed building height is 53 feet 4 inches; and

WHEREAS, the City Council granted Concept Plan Approval for the Project by resolution dated November 18, 2019; and

WHEREAS, on December 10, 2019, the Planning Board opened a duly noticed public hearing on the application for Subdivision (lot line realignment) and Site Plan approval at which time all those interested were given an opportunity to be heard and the public hearing was closed on January 14, 2019; and

WHEREAS, with respect to the proposed Greenway Trail on the Property the City of Beacon Greenway Trail Committee was consulted and provided input on the design of the trail; and

WHEREAS, the Planning Board is fully familiar with the Project and has reviewed the Project relative to all applicable provisions of the City of Beacon Code including but not limited to City Code Chapter 195 and Sections 223-41.13.G(2) and 223-41.13.I of the City of Beacon Zoning Code.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Board hereby grants Preliminary Subdivision Plat Approval for the Project, submitted by 23-28 Creek Drive, LLC, as shown on the application materials referenced above.

BE IT FURTHER RESOLVED, that the Planning Board hereby finds that the Final Subdivision Plat will not be substantively changed from the Preliminary Subdivision Plat and hereby determines that a public hearing on the Final Plat is not required.

BE IT FURTHER RESOLVED, that the Planning Board hereby grants Final Subdivision Plat Approval, as shown on the application materials referenced above, subject to the conditions and modifications set forth herein.

BE IT FURTHER RESOLVED, that the Planning Board hereby finds that the Site Plan meets the standards and criteria set forth at Sections 223-41.13.G(2) and 223-41.13.I of the City of Beacon Zoning Code.

BE IT FURTHER RESOLVED, that the Planning Board hereby grants the Site Plan application submitted by 23-28 Creek Drive, LLC to construct a mixed-use development with a total of eight (8) residential units and 20,000 square feet of commercial space, as shown on the plans referenced herein and submitted to the Planning Board, upon the following conditions:

A. The following conditions shall be fulfilled prior to the signing of the Final Subdivision Plat by the Chairman of the Planning Board:

1. All application review fees shall be paid in full.
2. The Applicant shall seek and obtain all required permits and/or approvals from the appropriate agencies for the Project, including but not necessarily limited to approval from the Dutchess County Department of Health for the proposed sewer relocation and the proposed water main extension, and shall meet all conditions contained in such approvals, as required therein.
3. The comments contained in the City Engineer's letter to the Planning Board dated January 8, 2020, and all comments in any subsequent letter(s) issued, pertaining to the Subdivision Plat shall be fulfilled to the satisfaction of the City Engineer.
4. The comments contained in the City Planner's letter to the Planning Board dated January 10, 2020, and all comments in any subsequent letter(s) issued, pertaining to the Subdivision Plat shall be fulfilled to the satisfaction of the City Planner.
5. All easements shall be shown on the Final Subdivision Plat to the satisfaction of the City Engineer and City Attorney.
6. Easement agreements, declarations of restrictive covenants or other appropriate documents corresponding with the easements shown on the Final Subdivision Plat shall be prepared and submitted to the City Attorney for

review as to form and shall be recorded in the Dutchess County Clerk's Office simultaneously with the Subdivision Plat, with a copy of the recorded documents submitted to the City Clerk for filing. Such easements, declarations of restrictive covenants or other documents shall include but not be limited to: (i) Stormwater Easement and Maintenance Agreement; (ii) Greenway Trail Easement.

7. The Applicant shall post a performance bond with the City of Beacon for all public improvements in an amount acceptable to the City Engineer. The Applicant's engineer shall prepare a cost estimate for the work and provide to the City Engineer for review.

When the conditions above have been satisfied, four (4) sets of the above referenced plans revised as per the conditions above shall be submitted for endorsement by the Planning Board Chairman. One set of the endorsed plans will be returned to the Applicant, one set will be retained by the City Clerk, one set will be provided to the Planning Board, and one set each will be forwarded to the Building Inspector, City Engineer and City Planner.

B. Prior to the signing of the Site Plan Drawings by the Planning Board Chairman, the following conditions shall be fulfilled:

1. All application review fees shall be paid in full.
2. The Applicant shall seek and obtain all required permits and/or approvals from the appropriate agencies for the Project, including but not necessarily limited to approval from the Dutchess County Department of Health, and shall meet all conditions contained in such approvals, as required therein.
3. The comments contained in the City Engineer's letter to the Planning Board dated January 8, 2020, and all comments in any subsequent letter(s) issued, shall be fulfilled to the satisfaction of the City Engineer.
4. The comments contained in the City Planner's letter to the Planning Board dated January 10, 2020, and all comments in any subsequent letter(s) issued, shall be fulfilled to the satisfaction of the City Planner.

When the conditions above have been satisfied, six (6) sets of the above referenced plans revised as per the conditions above shall be submitted for endorsement by the Planning Board Chairman. One set of the endorsed plans will be returned to the Applicant, one set will be retained by the City Clerk, one set will be provided to the Planning Board, and one set each will be forwarded to the Building Inspector, City Engineer and City Planner.

C. Prior to the issuance of a Building Permit, the following conditions shall be fulfilled:

1. The Applicant shall submit documentation from NYSDEC demonstrating that the site remediation has been performed and has been closed out to the satisfaction of NYSDEC pursuant to the remediation work plan prepared for the Site. A copy of the remediation work plan as approved by NYSDEC for the required remediation work based upon review of the Phase II Environmental report, which identified petroleum contamination, shall be provided to the City of Beacon. Any additional contamination discovered during construction which requires remediation shall be remediated in accordance with all State and local laws, rules and regulations.
2. Prior to commencement of any site work for the Project, the Applicant shall fund an escrow account with the City of Beacon for the construction observation and monthly stormwater inspections of the proposed utilities and site improvements in an amount as determined by the City Engineer. The Applicant's engineer shall prepare a cost estimate for the work and provide to the City Engineer for review.
3. The Applicant shall obtain an MTA Entry Permit for temporary access to perform grading and cleanup work as proposed to smooth the transition between the subject parcel and the MTA property.

D. Prior to the issuance of a Certificate of Occupancy, the following condition shall be fulfilled to the satisfaction of the Building Inspector

1. Based on the current and anticipated future need for park and recreational opportunities in the City of Beacon, as set forth in the analysis provided by BFJ Planning, and the demands of the future population of the Project, the Planning Board hereby finds that additional recreation/parkland should be created as a condition of approval. However, the Planning Board hereby determines that recreation/parkland of adequate size and location cannot be provided on the Project Site. Therefore, that Applicant shall pay a Recreation Fee for the 8 new apartments approved herein as prescribed under Sections 223-25.H(4) and 223-61.A(7) of the Zoning Law, as per the City's Fee Schedule in effect at the time of payment.

E. The following are general conditions which shall be fulfilled:

1. *[The Planning Board should consider whether any conditions should be imposed regarding the phasing of construction. For example, when during the construction timeline will the Greenway Trail be built, when will the commercial space be built and when will the residential space be built? Does the Planning Board want to consider a condition which would require the Greenway Trail and the commercial space to be completed prior to the issuance of the first residential certificate of occupancy?]*

2. Pursuant to the Army Corp. of Engineers special conditions of approval for the grading and fill work along Fishkill Creek, removal of trees greater than four (4) inches in diameter at the Project Site will take place between November 1 and March 31 during the bat hibernation period to avoid the removal of trees which may be utilized by Indiana Bats and Northern Long-Eared Bats as roosting trees, orange construction fencing shall be used to separate areas to be graded from areas not to be disturbed and no artificial dyes, coloring, insecticide or algacide such as copper sulfate shall be used in stormwater control structures.
3. Any increase to the total number of units above eight or bedrooms above 18 on the Property shall require an application to the City Council and the Planning Board to amend the Concept Plan and Site Plan, respectively.
4. The Building Inspector and the City Engineer shall have the right to direct the Applicant to cause the placement, cleaning and/or repair of sedimentation and erosion control devices wherever and whenever deemed necessary during construction.
5. This approval is conditioned upon compliance with all of the mitigation measures specified in the Applicant's Full EAF and related application documents, including the SEQRA Negative Declaration. The Applicant shall be responsible for the funding and/or implementation of all such identified mitigation measures. Where the terms of this resolution may be inconsistent with the Full EAF, the terms of this resolution shall be controlling.
6. The Applicant shall be responsible for the payment of all application review costs incurred by the City in its review and approval of this Project. Such fees shall be paid by the Applicants within thirty (30) days of each notification by the City that such fees are due. If such fees are not paid within the thirty (30) day period, and an extension therefor has not been granted by the City, this resolution shall be rendered null and void.
7. As used herein, the term "Applicant" shall include 23-28 Creek Drive LLC, and its heirs, successors and assigns.
8. If any of the conditions enumerated in this resolution upon which this approval is granted are found to be invalid or unenforceable, then the integrity of this resolution and the remaining conditions shall remain valid and intact.
9. The approvals granted by this resolution do not supersede the authority of any other entity.
10. Conditional approval of the Final Subdivision Plat shall expire one hundred eighty (180) days from the date of the adoption of this resolution unless all

items in Condition A above have been certified as completed and the Final Plat has been submitted for endorsement by the Planning Board Chairman, or unless a written request for an extension of Final Subdivision Plat Approval is granted. The Planning Board may grant ninety (90) day extensions to said time period.

- 11. Once the Final Subdivision Plat has been endorsed by the Planning Board Chairman, said plat must be filed in the Dutchess County Clerk’s Office within sixty-two (62) days. After said filing, two (2) copies of the Final Plat certified by Dutchess County shall be submitted to the Planning Board Secretary. One (1) certified copy of the Final Plat shall be retained by the Planning Board and the other certified copy shall be transmitted to the City Clerk along with a signed copy of this resolution and proof of recording of the easement documents described above.
- 12. The Applicant must return for approval from the Planning Board if any changes to the endorsed plans and/or this resolution of approval are subsequently desired other than changes determined to be field changes by the Building Inspector or City Engineer.
- 13. *[Section 223-25.] of the Zoning Code authorizes the Planning Board to set forth the time period in which construction is to begin and be completed. Thereafter, the Board may extend that time period from time to time. The Board should consider setting a time period by which construction is to begin and be completed. The City Council’s Concept Plan Resolution dated November 2019 provides that the Concept Plan approval expires at the time the Site Plan approval expires. The Planning Board should consider setting a time period by which a bona fide building permit application shall be submitted.]*

Resolution Adopted: January 14, 2020
Beacon, New York

John Gunn, Chairman
City of Beacon Planning Board

_____, 2020
Dated

Motion by _____, seconded by _____:

Kevin Byrne	Voting:	Leonard Warner	Voting:
Rick Muscat	Voting:	J. Randall Williams	Voting:
Karen Quiana	Voting:	John Gunn, Chairman	Voting:
Jill Reynolds	Voting:		

Resolution: Approved ___
Denied ___

