

ZONING BOARD OF APPEALS

City of Beacon, New York

APPLICATION FOR APPEAL

OWNER: 475 MAIN STREET BEACON, LLC

ADDRESS: 101 Castleton Street

Pleasantville, NY 10570

TELEPHONE: (914) 484-2606

E-MAIL: jeffmear@themeargroup.com

APPLICANT (if not owner):

605 N. MACQUESTEN PARKWAY, L.L.C. as a single member for
475 MAIN STREET BEACON, LLC

ADDRESS: 605 North MacQuesten Parkway

Mount Vernon, NY 10552

TELEPHONE: (914) 484-2606

E-MAIL: jeffmear@themeargroup.com

REPRESENTED BY: Taylor M. Palmer, Esq.
Cuddy & Feder LLP

ADDRESS: 445 Hamilton Avenue, 14th Floor

White Plains, NY 10601

TELEPHONE: (914) 761-1300

E-MAIL: tpalmer@cuddyfeder.com

PROPERTY LOCATION: 475 Main Street

ZONING DISTRICT: CB (Central Business)

TAX MAP DESIGNATION: SECTION 6054

BLOCK 37 LOT 076730

Section of Zoning Code appealed from or Interpretation desired: for a building addition

Section 223-26(F) to expand existing office use with existing Main Street retail
with zero (0) parking spaces (14 required)

Reason supporting request:

Please See Attached Narrative

Supporting documents submitted herewith: Site Plan, Survey, etc. as required:

Please See Attached Narrative, including Revised Site Plan, Shadow Study and Financial Analysis

Date: 8-29-17

475 MAIN STREET BEACON, LLC

By: 

Owner's Signature

605 N. MACQUESTEN PARKWAY, L.L.C., as a single
member for 475 MAIN STREET BEACON, LLC

By: 

Applicant's Signature

Fee Schedule

AREA VARIANCE	\$ 250
USE VARIANCE	\$ 500
INTERPRETATION:	\$ 250

****escrow fees may apply if required by Chairman****



Taylor M. Palmer
tpalmer@cuddyfeder.com

August 29, 2017

BY HAND DELIVERY
AND E-MAIL

Hon. John Dunne
and Members of the Zoning Board of Appeals
City of Beacon
1 Municipal Plaza
Beacon, New York 12508

Re: Amended Area Variance Application for Required Number of Off-Street Parking Spaces
Premises: 475 Main Street, Beacon, New York (Tax ID: 6054-37-076730)

Dear Chairman Dunne and Members of the Zoning Board of Appeals:

On behalf of 605 N. Macquesten Parkway, L.L.C., as a single member for 475 Main Street Beacon LLC, (the "Applicant"), the owner of the above-referenced Premises, we respectfully submit this request for an area variance for the required number of off-street parking spaces, in connection with a proposed expansion to the existing mixed-use building.¹

The Premises is classified in the CB – Central Business Zoning District and has two (2) street frontages, with an existing (3)-story building frontage located on the south side of Main Street, west of the intersection with Tioronda Avenue, on which the 'L'-shaped Premises also fronts. The Premises is comprised of 5,362+/- sq. ft. of land, which is currently improved by a mixed-use building, with office space on the second and third floors and a retail/gallery space on the Main Street frontage.² See **Exhibit B** – Google Map Images. The existing building is adjacent to similar mixed-use buildings located along Main Street, and no changes are proposed to the footprint of the existing building.

The Applicant submitted an Amended Site Plan Application to the Planning Board proposing to expand the existing office space and maintain the retail space on the Main Street frontage. Previously, the Applicant sought a variance for residential density that is no longer required in light of the Applicant's Amended Site Plan Application, which was developed in response to public discussion and comment, including comments from the

¹ See **Exhibit A** – Amended ZBA Application Form.

² Note: In 1992, the Beacon Zoning Board of Appeals granted a density variance to construct seven (7) apartments on the Premises.



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Howland Cultural Center.³ Accordingly, the current plan was developed after the Applicant determined the economic feasibility of expanding the existing office use and maintaining the Main Street retail. Therefore, the plans have been revised to reflect an addition of 2,664+/- sq. ft. of office space to the existing mixed-use office/commercial building. See Enclosed Revised Site Plan Prepared by Aryeh Siegel, Architect, Last Revised August 29, 2017.

As this Board is aware, the City of Beacon Zoning Code and the City's Comprehensive Plan Update recognize the unique hardship faced by Main Street building owners – in particular with respect to off-street parking. Indeed, Zoning Code Section 223-26(B) provides a “grandfather” provision for buildings like 475 Main Street, which existed on April 20, 1964.⁴ In this instant matter, because of the current CB Zoning District classification, the proposed addition “would result in a requirement for additional parking” based on the *current* parking schedule. Therefore, the Applicant seeks a parking variance for 13.32 off-street parking spaces for the office and commercial use, for the proposed addition, which is only seven (7) more spaces than would otherwise be permitted under the grandfather provision without variance.⁵

AREA VARIANCE RELIEF REQUESTED

The Applicant is requesting that the Zoning Board of Appeals (“ZBA”) grant area variance relief from Zoning Code § 223-26(F), which requires one (1) off-street parking space to be provided per 200 sq. f.t of commercial or office use, to permit zero (0) parking spaces where 13.32 spaces are required.

Pursuant to Zoning Code § 223-26(B), uses in existence prior to 1964 are not required to provide the amount of parking facilities that would be required under the existing Code, unless the intensification or expansion of the existing use, or the addition of a new use, exceeds twenty-five percent (25%) of the original parking facilities that would have been required pursuant to the 1964 version of the Code. The existing 6,303 SF mixed-use office/commercial building has been in existence as an office use prior to 1964; therefore, the original portion of the building is grandfathered under the Code and no new parking must be provided. However, the 2,664+/- SF addition to the Premises, pursuant to the

³ In a letter dated July 13, 2017, the Howland Cultural Center identified in relevant part that it believes that the “... highest and best use of this property, at least from the community's point of view, would be for retail, office and studios, which are historic uses and ones that appear to be in demand.”

⁴ According to research from the Beacon Historical Society, including the 1964 Beacon Directory, the existing use of the first floor in 1964 was for a retail (hardware store), with professional legal offices on the 2nd and 3rd floors.

⁵ **Note:** under the City's proposed rezoning to extend the CMS District to the lower sections of Main Street, as currently drafted, the existing improved Premises *would not* be required to obtain area variance relief for parking – as only 23 total spaces would be required (2.5 spaces per 1,000 sq. ft.), which includes the proposed addition.



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current zoning requirement of 1 space per 200 SF of office/retail area, will require approximately 13.32 parking spaces. As this exceeds the 25% threshold of the amount of parking spaces that would have been required in 1964, the Applicant is thus obligated by the Code to provide 13.32 new parking spaces, requiring an area variance from this Board.

AREA VARIANCE STANDARDS

In considering the granting of the requested area variance, N.Y. GENERAL CITY LAW §81-b and Zoning Code § 223-55(C)(2) provide that a ZBA shall consider 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. For the following reasons, we respectfully submit that upon balancing the area variance criteria, the granting of the requested area variance is warranted:

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.

The granting of the requested area variance for the proposed building addition will not produce an undesirable change in the character of the neighborhood, nor will it be a detriment to nearby properties. The existing street parking, coupled with the nearby public parking lots, are sufficient to meet the parking needs for the proposed use, and therefore no change in character to the neighborhood or detriment to nearby properties will be caused by the parking needs of the proposed Project.

Moreover, the demand for office parking generally occurs at different hours than residential or commercial/retail parking. Unlike residential parking, which requires spaces for evenings and overnight, or commercial parking, which is at its heaviest on the weekends, office parking is generally in highest demand Monday through Friday, 9:00AM to 5:00PM. Therefore, the proposed office space is complementary to the surrounding existing and proposed residential and retail/commercial uses, and will not increase parking demand or produce any detriment to the surrounding neighborhood or properties. Thus, there will be no undesirable change and no adverse impacts to the character of the Main Street mixed-use neighborhood by the granting of the parking variance, which is consistent with the character of the neighborhood.

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

Zoning Code §223-55(C)(2)(b)(2) requires the ZBA to consider “whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to



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pursue, other than an area variance.” The range of appropriate alternatives is limited by two (2) standards: First, the alternative must still provide the benefit sought by the applicant and, second, it must be feasible for the applicant to pursue. A ZBA may not deny a variance and attempt to relegate an applicant to an alternative design that is a “profound departure” from, or substantially more costly than, the design proposed in the variance. Corporation of Presiding Bishop of Church of Jesus Christ of Latter Day Saints v. ZBA of Town/Village of Harrison, 296 A.D.2d 460 (2d Dept. 2002). See also, Baker v. Brownlie, 248 A.D.2d 527 (2d Dept. 1998) and Salkin, New York Zoning Law & Practice § 29:36 Administrative Relief from Zoning Regulations: Variances.

Here, there are no other viable means for the Applicant to achieve the benefit sought by the area variance. Provided the building’s proximity to the Howland Cultural Center the Applicant has taken into account the comments from the Planning Board and the adjacent property owner to create quality office space on the heart of Main Street that is economically viable. As shown in the enclosed Financial Analysis, prepared by an experienced licensed real estate broker, Mr. Daniel Aubry, of Daniel Aubry Realty,⁶ the proposed addition is necessary to provide a reasonable return on the Premises (especially, because the Application no longer includes a residential component as requested by the Howland Cultural Center). In order to build the proposed addition, an additional stair tower is required, occupying approximately 450 sq. ft. of the addition. Therefore, nearly 2.5 new spaces are required for floor area that is used to access occupiable space. No changes are proposed to the existing building footprint, which has existing since prior to 1964. There is insufficient space on the ‘L-shaped’ lot to construct any off-street parking, while maintaining the integrity of the existing building footprint. The requested variance is also unique, because it seeks relief for office and retail use, rather than residential use in the CB District.

Whether the requested area variance is substantial.

It is respectfully submitted that upon the consideration of the facts and circumstances in the instant Application, the requested area variance is not substantial. “Substantiality” is not solely a matter of the mathematical proportion of the permitted minimum that the Applicant is seeking to vary. Rather, the important test is always whether the variance will actually have a detrimental effect on the neighborhood.⁷

⁶ Enclosed as **Exhibit C**, is a copy of a Financial Analysis of the proposed development on the Premises, prepared by Daniel Aubry, of Daniel Aubry Realty, who is very familiar with the marketing of residential properties in the City of Beacon.

⁷ See Aydelott v. Town of Bedford Zoning Bd. of Appeals, N.Y.L.J. June 25, 2003, p. 21, col. 4 (Sup. Ct. Westchester Co. 2003) (“consideration of the percentage [of lot coverage] alone, taken in a vacuum, is not an adequate indicator of the substantiality....[A] large deviation can have little or no impact depending on



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The requested variance is not substantial in its effect, because granting the variance will not have a substantial impact on the availability of parking in the surrounding area, given the proximity of two (2) public parking lots, the existing street parking, and the complementary nature of office parking to residential and retail/commercial parking needs (as discussed above under Criteria 1).

Moreover, even if a variance is deemed “substantial,” this does not preclude the granting of a variance where the applicant meets the overall balancing test, i.e. the benefit of the applicant outweighs any adverse effect on the neighborhood.⁸ We submit there is no such adverse effect in this matter.

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

The proposed nonresidential expansion of the existing building constitutes an action exempt from the State Environmental Quality Review Act (“SEQRA”) because this is a Type II Action. See 6 NYCRR § 617.5(c)(7). The proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, as noted above, since the proposal for no off-street parking spaces is consistent with the existing character along Main Street. Providing no off-street parking will have no adverse effects of noise, vibrations, odor, traffic, or impact on public services. As discussed under Criteria 1, the peak parking times for the proposed office use is complementary to those of the surrounding residential and retail/commercial uses. Accordingly, the proposed expansion of the nonresidential structure for office use, which has historically been the use of the Premises, will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

the circumstances of the variance application.”; Lodge Hotel, Inc. v. Town of Erwin Zoning Bd. of Appeals, Misc.3d 1120(A), 873 N.Y.S.2d 512 (Table), 2007 WL 56495232007 N.Y. Slip. Op. 52571(U) (“Substantiality cannot be judged in the abstract; rather, the totality of relevant circumstances must be evaluated in determining whether the variance sought is, in actuality, a substantial one.”); Friends of Shawangunks, Inc. v. Zoning Bd. of Appeals of Town of Gardiner, 56 A.D.3d 883, 886, 867 N.Y.S.2d 238, 241 (3d Dept. 2008)(although variances were substantial the ZBA properly determined area variances will not have a substantial impact on the community); see also Schaller v. New Paltz Zoning Bd. of Appeals, 108 A.D.3d 821, 824, 968 N.Y.S.2d 702, 705 (3d Dept. 2013) (upholding ZBA determination that an area variance).

⁸ See Corp. of Presiding Bishop of Church of Jesus Christ of Latter Day Saints v. Zoning Bd. of Appeals of Town/Village of Harrison, 296 A.D.2d 460, 461-62, 745 N.Y.S.2d 76, 78, 2002 N.Y. Slip Op. 05773 (2d Dept. 2002) (even though a variance seeking a 77% increase over the permitted height was substantial, this “does not relieve [the ZBA] from engaging in the balancing test” and the application can still be granted.”).



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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.

The area variance requested herein is not self-created, but instead is the result of the hardship created by the 'L'-shaped lot and the existing development on the Premises. The building at 475 Main was constructed prior to the implementation of Zoning in the City of Beacon. As discussed above, the design presented herein seeks to use a portion of the existing building otherwise undeveloped with a revenue generating use, thus permitting the benefit sought herein. The proposed alterations and additions realize the use of the Premises. Therefore, it is respectfully submitted that the Applicant's request for relief here is not self-created, and to the extent that the ZBA may believe otherwise, we respectfully remind the ZBA that this factor is not dispositive pursuant to N.Y. VILLAGE LAW § 7-712-b(3)(b)(5). See Daneri, 98 A.D.3d 508 (self-created nature of difficulty is not preclusive of the ability to obtain an area variance).

CONCLUSION

The overall test for the grant of an area variance is whether the benefit to the applicant if the variance is granted, as weighed against any detriment to the health, safety and welfare of the neighborhood or community by such grant. After considering each of the 5 factors discussed above, for each of the requested variances, the Applicant respectfully submits that there is no harm to the community that weighs against the benefit to the Applicant, and that the proposed variance is the minimum variances that meets the Applicant's needs and at the same time fully protects the character of the neighborhood and the health, safety and welfare of the community.

In support of this application, please find enclosed one (1) original copy of the instant letter with the following documents:

- Exhibit A:** Amended City of Beacon ZBA Application Form for Area Variance;
- Exhibit B:** Google Maps Aerials of the Premises; and
- Exhibit C:** Financial Analysis of the proposed development on the Premises, prepared by Daniel Aubry, of Daniel Aubry Realty;



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In further support of this Application, we respectfully submit site plans entitled "Site Plan Application – 475 Main Street", prepared by Aryeh Siegel, Architect, dated March 28, 2017, last revised August 29, 2017.⁹

The Applicant looks forward to appearing at the September 19, 2017 meeting. Should the ZBA or City Staff have any questions or comments with regard to the foregoing, please do not hesitate to contact me. Thank you for your attention to and consideration of this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Taylor M. Palmer', is written over a horizontal line.

Taylor M. Palmer

Enclosures

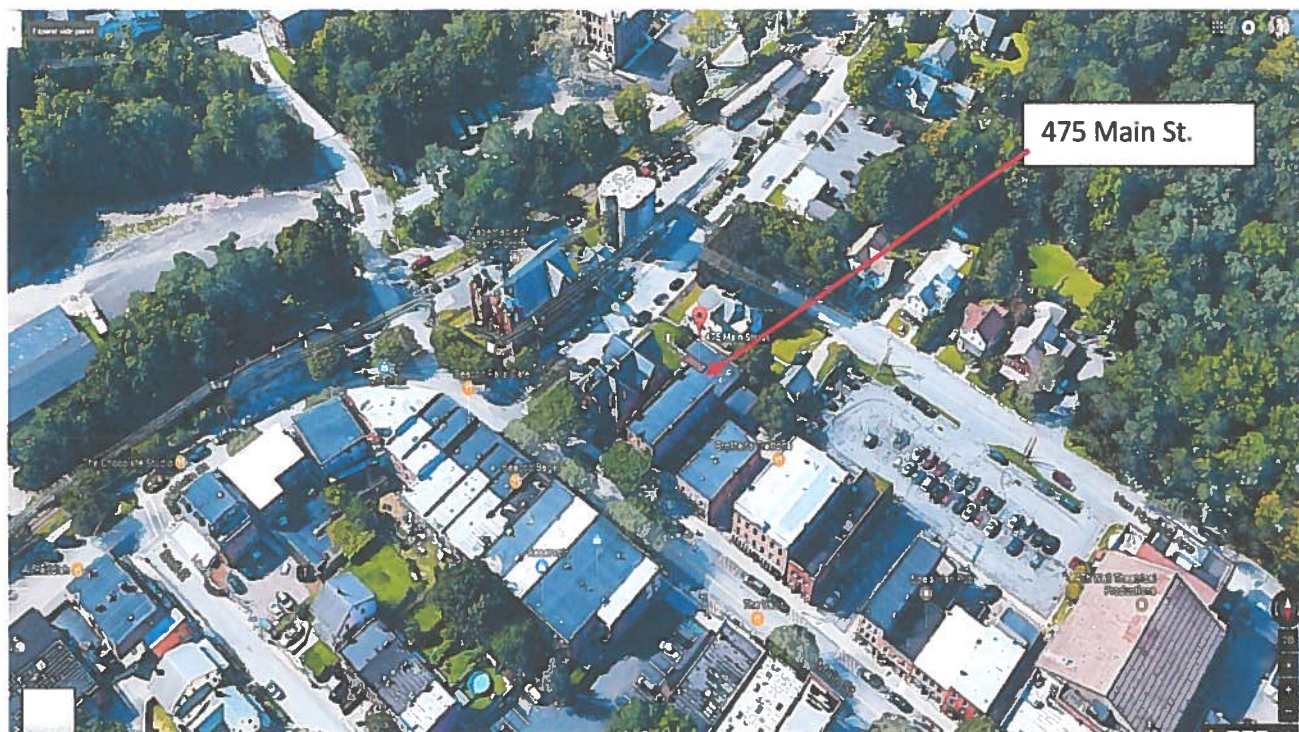
cc: Edward J. Phillips, Esq.; Jennifer L. Gray, Esq.; Aryeh J. Siegel, AIA

⁹ The Applicant previously submitted a check payable to the City of Beacon in the amount of \$250, representing the Area Variance application filing fee. The Applicant has not yet appeared at the ZBA in connection with this application.

Exhibit B

Google Map Aerials – 475 Main Street

View of Premises Facing South:

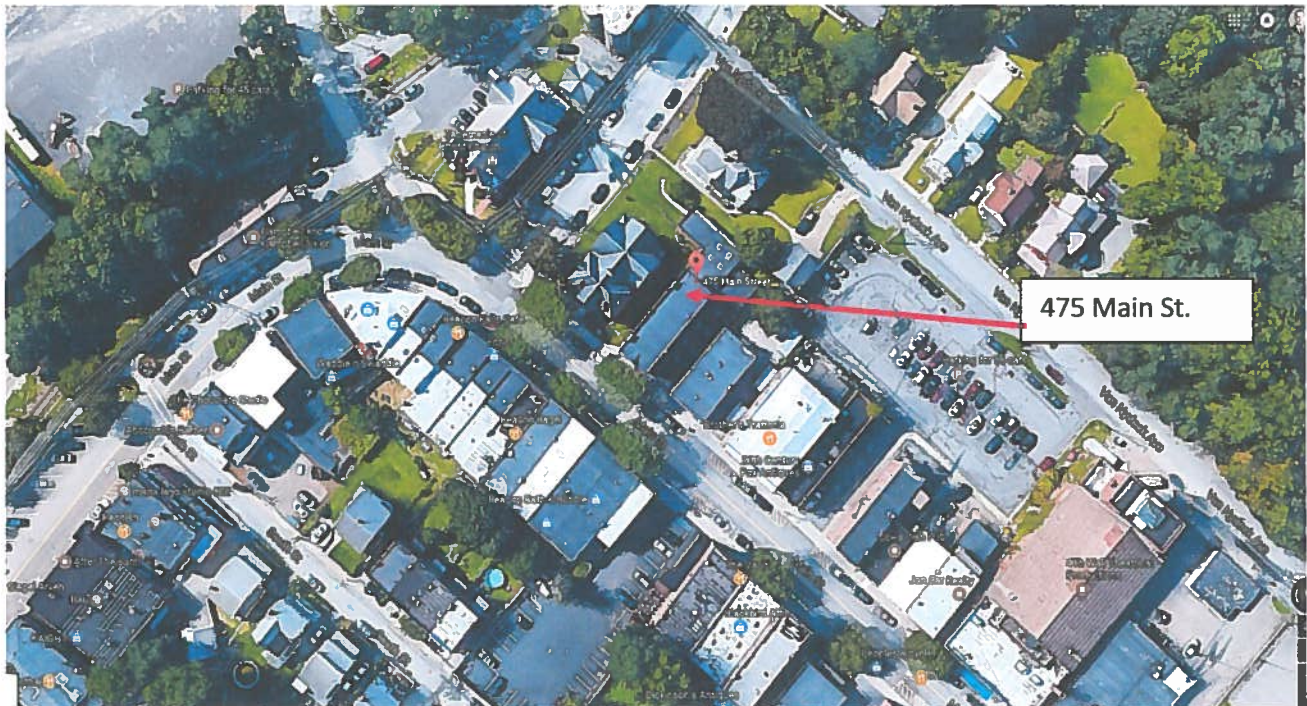


View of Premises Facing North:



Exhibit B (Cont.)

Ariel View (Birds-eye) of Premises Facing North:



View of Premises From Tironda Avenue:



Exhibit B (Cont.)

Street View of Premises From Main Street Facing South:



Street View From Main Street Premises Facing East:

