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October 13, 2017

By Hand and E-mail

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

Re: Third Supplemental Submission for 226 Main Street
Premises: 226 Main Street, Beacon, New York 12508 (SBL: 5954-27-860918)

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

We respectfully submit this letter and the attached exhibits to aid the Board in its consideration of the requested variances, and to support a finding by the Board that the legal balancing test for each separate area variance weighs in favor of granting the relief requested by the applicant.

Copies of the following exhibits are attached:

Exhibit A: Visual Packet, prepared by Aryeh Siegel, Architect, containing photos and renderings of existing conditions and the proposed improvements to the Premises; and

Exhibit B: Alternate Site Plan, prepared by Aryeh Siegel, Architect, with a modified layout, assessing the feasibility of providing off-street parking on the Premises.

We are also enclosing 5 additional copies of our September 15, 2017 supplemental submission package for the Board's ease of reference. Copies of our September package were previously submitted to the City on September 15 in advance of the September 19 public hearing. The September 15 letter summarizes the requested relief, explains the applicable law, facts and precedent, and provides a detailed analysis of the 5-factor balancing test for *each* of the 2 requested variances (i.e., a rear yard setback variance, and a residential parking space variance). Separate analyses for the setback and parking variances are on pages 3-9 and 10-15, respectively.

We respectfully submit that the attached Exhibits A and B further illustrate the facts and analysis provided in the September 15 letter and demonstrate that the applicant is entitled to the variances.



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**THE VISUAL PACKET SUPPORTS A FINDING THAT
THE APPLICANT IS ENTITLED TO THE SETBACK AND PARKING VARIANCES**

The applicant is proposing to construct a mixed-use retail and multifamily residential building containing ground-floor retail space and apartment units on the second through fourth floors (the "Project"). The Visual Packet contains 4 photos of the existing conditions of the Premises, and 4 corresponding renderings depicting the proposed Project improvements.

The images in Exhibit A illustrate that the setback and parking variances will not have an adverse impact on the character or physical conditions of the neighborhood, and that such variances are not substantial in their effect. The images show that the Project will improve an underutilized corner property located on Central Main Street, presently occupied by an outdated automotive repair facility, and will encourage walkability and access in the neighborhood and district. Indeed, the Dutchess County Planning Department echoed these sentiments in its Project comments:

The proposed redevelopment of this prominent corner on Main Street to a 4-story mixed use building with retail on the ground floor will result in a vast improvement in the appearance of this site and will add value to the parcel, and the City as a whole. The proposed site plan is in keeping with the City's regulations for the Central Main Street (CMS) district and we commend the applicant in proposing a building that upholds these standards.¹

In other words, the Project will "increase the vitality, attractiveness, and marketability of Main Street and the Central Business District by providing more flexibility of land use while maintaining and enhancing urban form as recommended by the City's Comprehensive Plan".² We submit that the Visual Packet, together with the applicant's prior submissions and comments in the record make clear that granting the requested variances will benefit the community, without any demonstrable detriment. For these reasons, and the reasons set forth in our September 15 submission (enclosed) supporting each variance, the applicant is entitled to the requested relief.

¹ The County's Letter, dated May 31, 2017 to the City of Beacon Planning Board is on file with the Planning Board and is enclosed as Exhibit A with the September 15 supplemental submission package.

² CITY OF BEACON ZONING CODE § 223-41.16.



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**THE ALTERNATE SITE PLAN DEMONSTRATES THAT
THE BENEFIT SOUGHT CANNOT BE ACHIEVED WITHOUT THE PARKING VARIANCE**

The Project Architect prepared the attached Alternate Plan to assess the feasibility of locating parking spaces on the Premises. The Plan's design reflects the limits and standards of the City Zoning Code and illustrates the difficulty in providing off-street parking on this corner lot.

As other applicants in similar circumstances have found for their projects, there is insufficient space on this Premises to construct off-street parking, while still maintaining the minimum feasible depth of the building. In this instance, complying with the Code and providing off-street parking leaves a building width of about 10 feet. (The details of the Alternate Plan are summarized in the September 15 letter, p. 11-13.) This limitation is the result of the shallow nature of the Premises, not its size, which is actually similar to or greater than many other lots on its block. (See September 15 letter, Exhibit B).

The Alternate Plan demonstrates quite clearly that there are no other viable means for the applicant to achieve the benefit sought by the area variance. It also confirms that the difficulty confronting the applicant is not self-created, but rather it is the result of the existing lot's shape and character as a corner lot. Placement of off-street parking spaces on the Premises would result in an unworkable building envelope, rendering any development infeasible.

The Alternate Plan and its demonstration of the infeasibility of locating off-street parking spaces on the Premises, together with other relevant facts in the record, support the Board granting the requested parking variance. The applicant is creating 2-3 additional parking spaces by closing open curbs. The Premises is located within 800 feet of two public parking lots, and there are studies that have established available on-street parking in the neighborhood. Considering the overall balancing test, the 5 factors, and precedent of past parking variances, there is no harm to the community sufficient to outweigh the benefit to the applicant from granting the variance.



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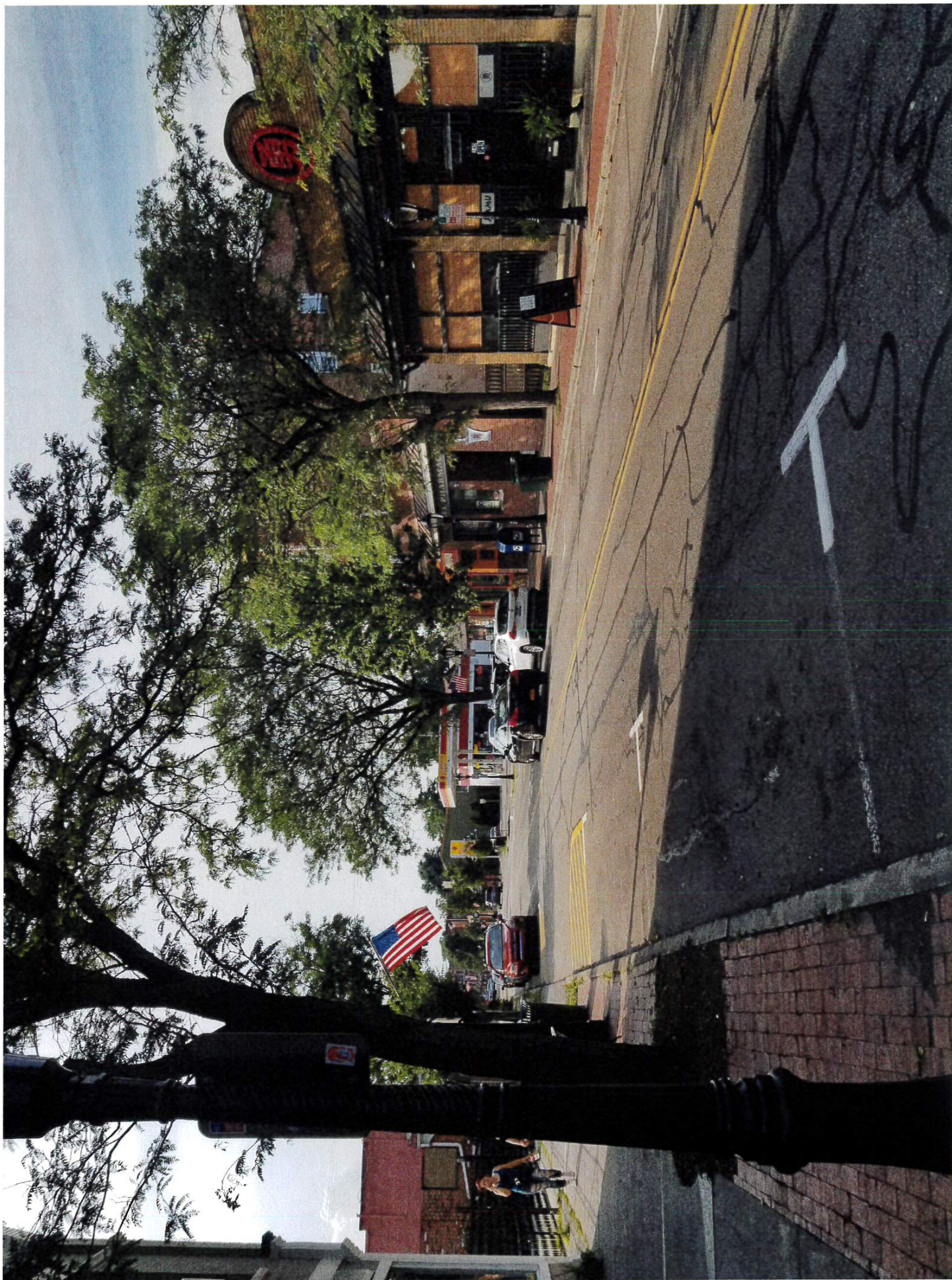
We look forward to appearing at the Zoning Board of Appeals meeting on October 17, 2017. Should you have any questions, please do not hesitate to call me or Jennifer Van Tuyl at our office.

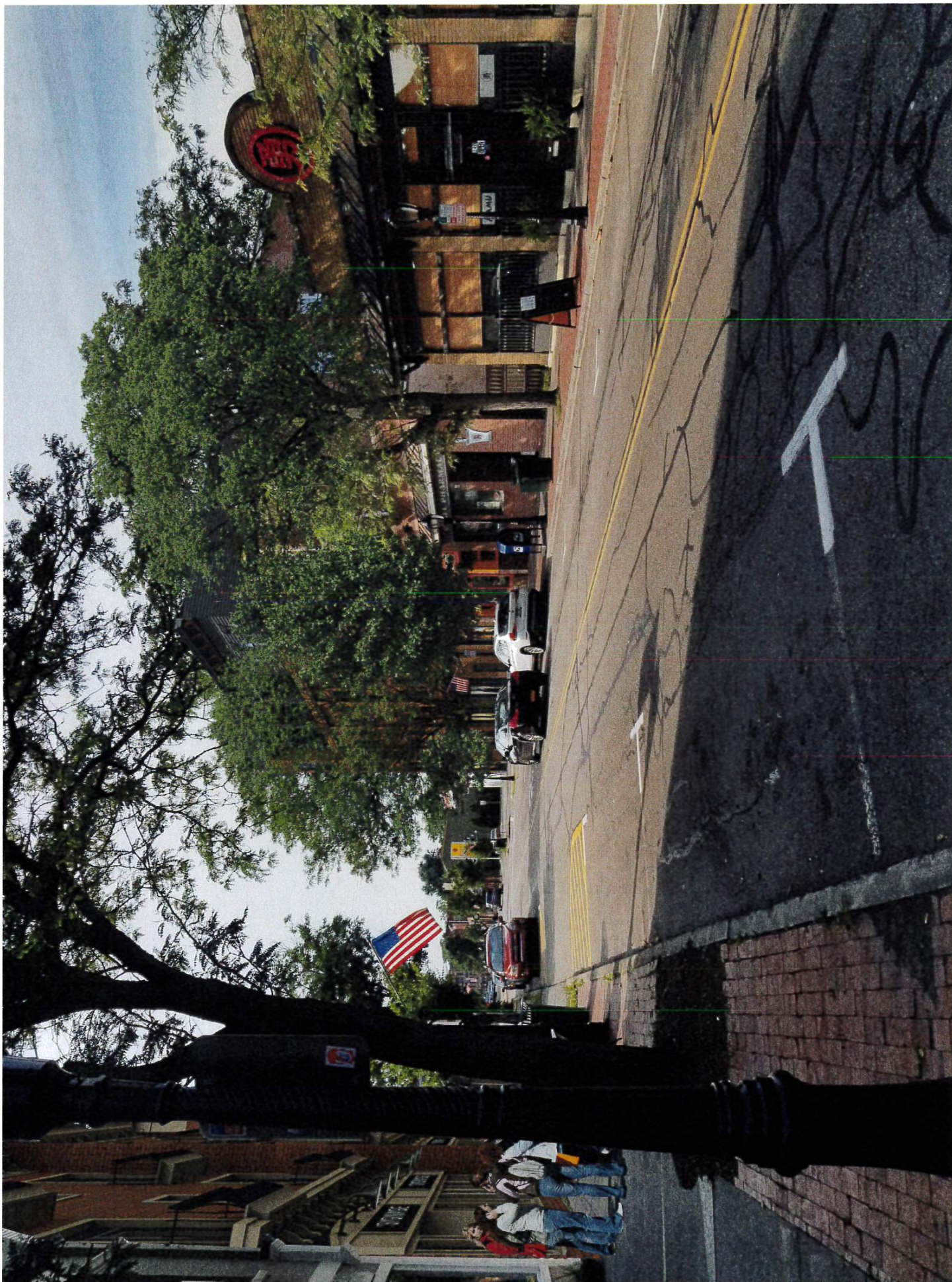
Very truly yours,

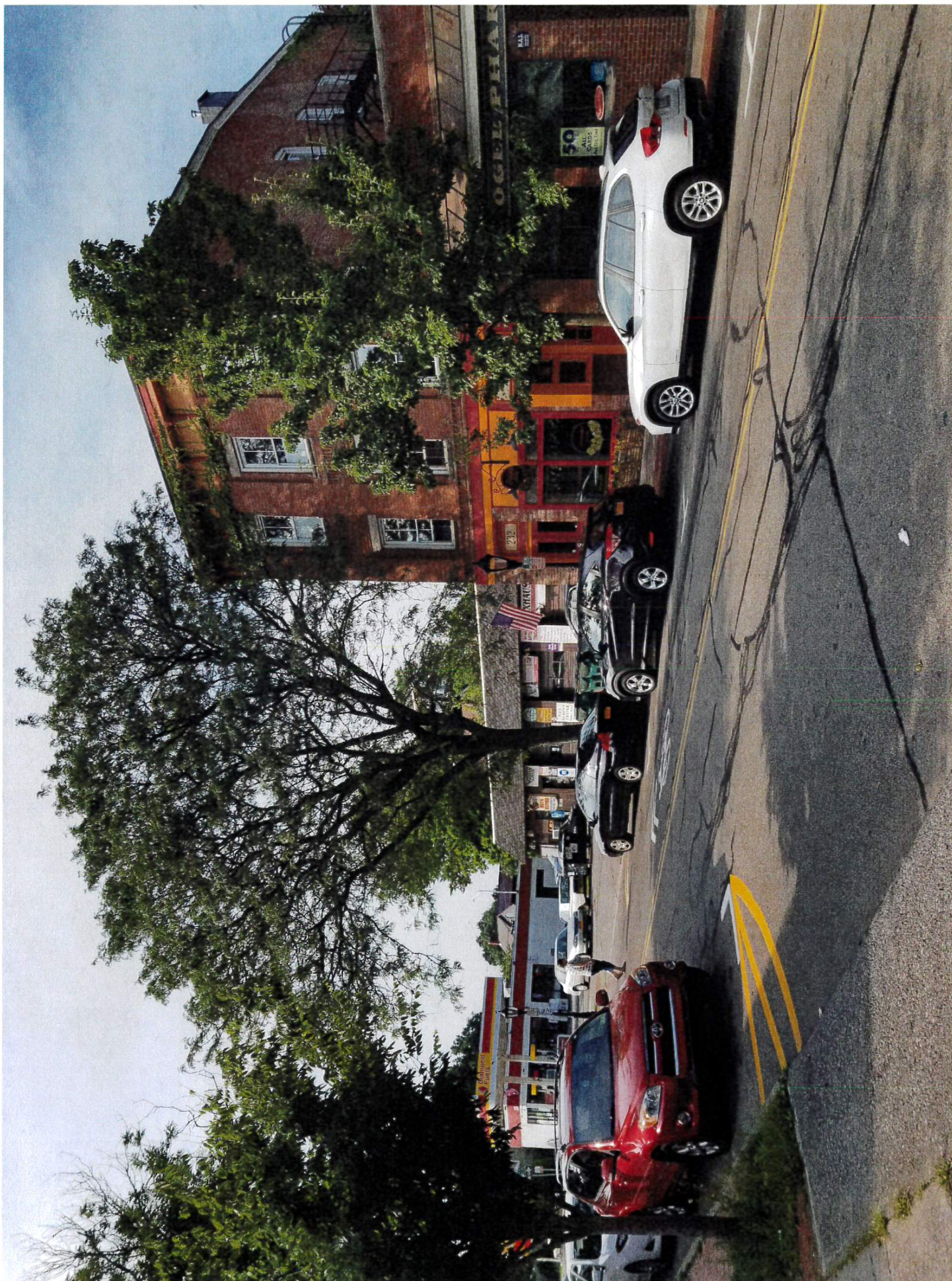
A handwritten signature in blue ink, appearing to read "A. Morando".

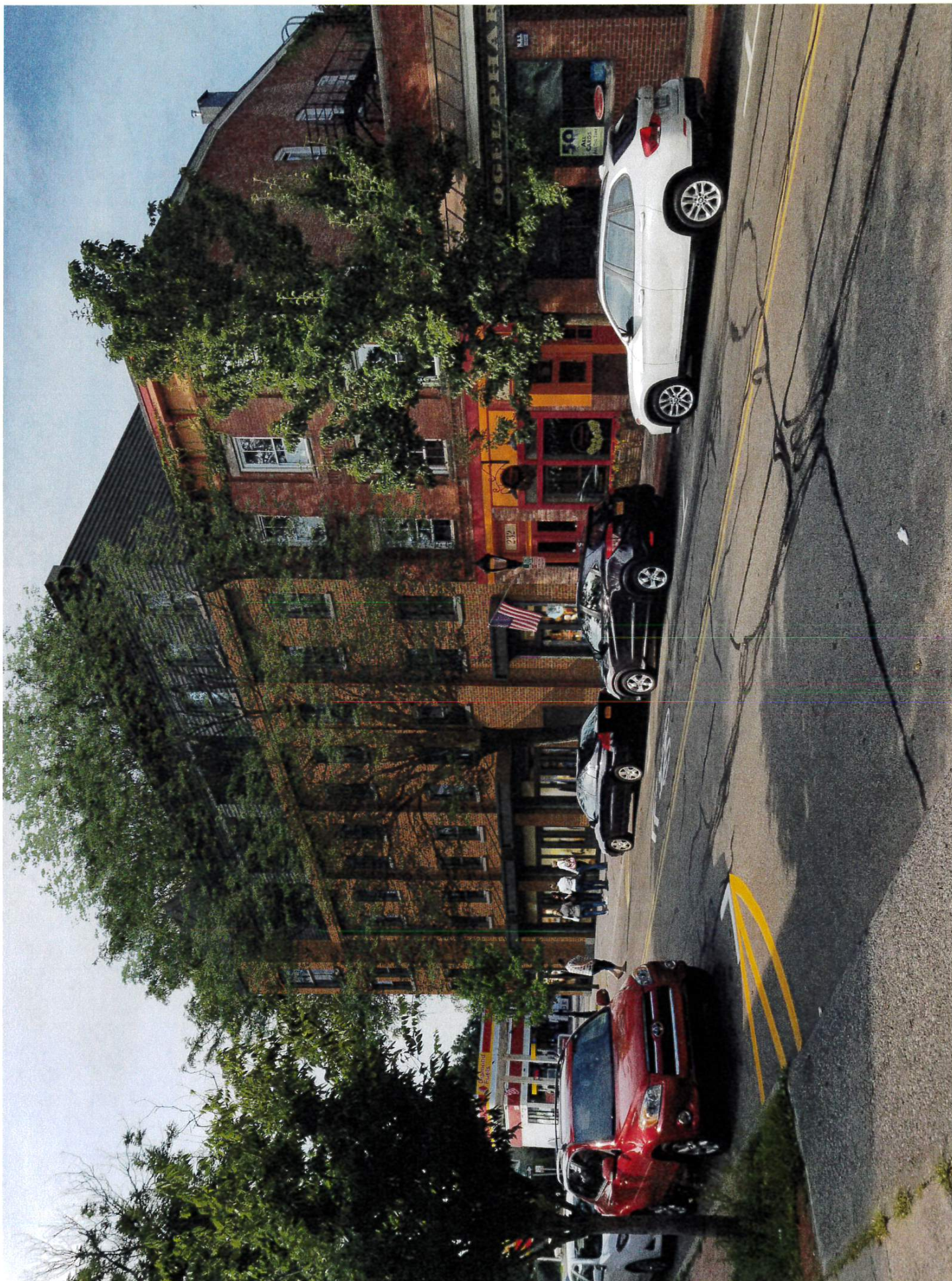
Anthony F. Morando

cc: Jennifer L. Gray, Esq.
Drew Gamils, Esq.
Aryeh J. Siegel, AIA
Brendan McAlpine
Jennifer L. Van Tuyl, Esq.



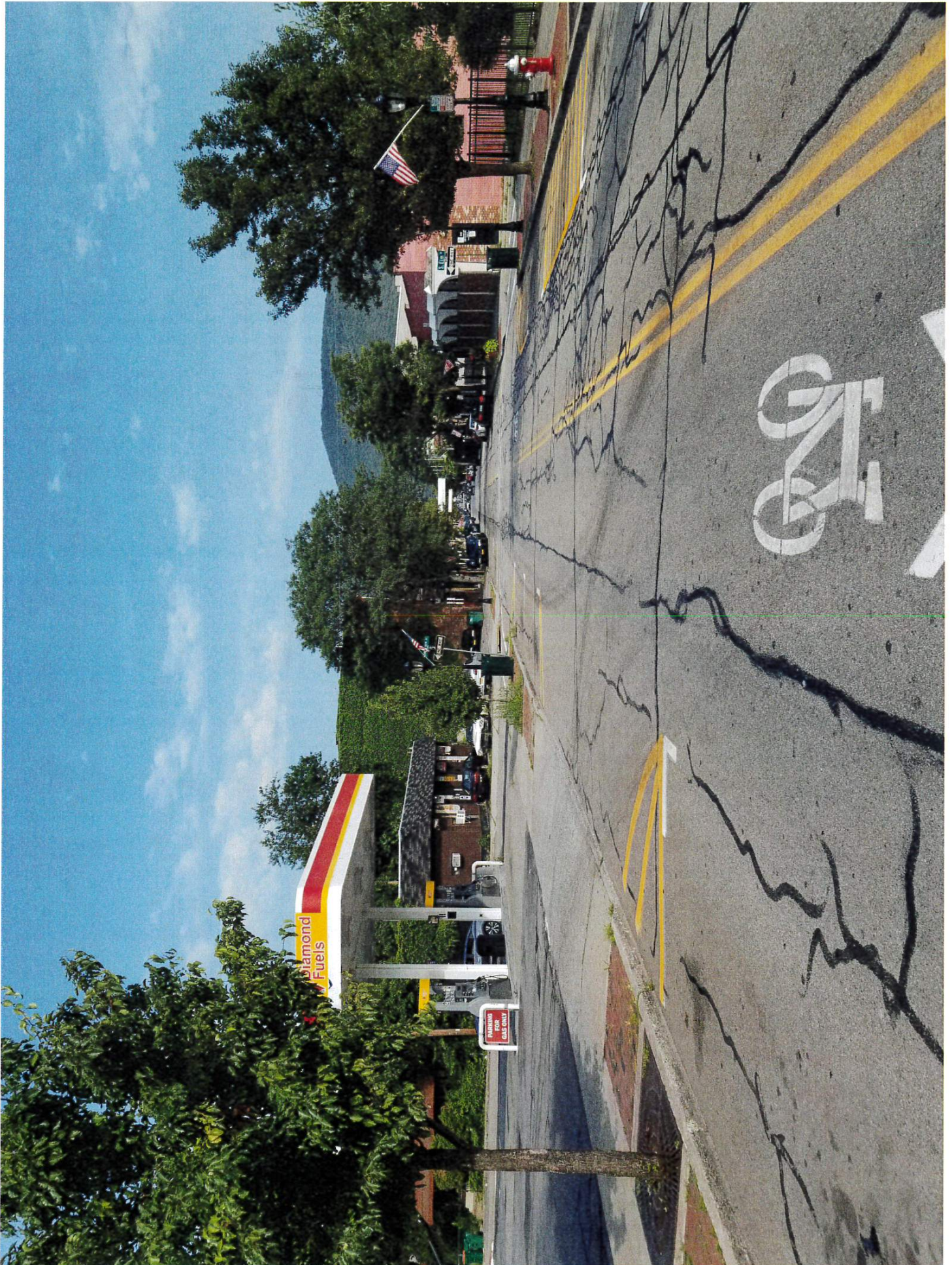


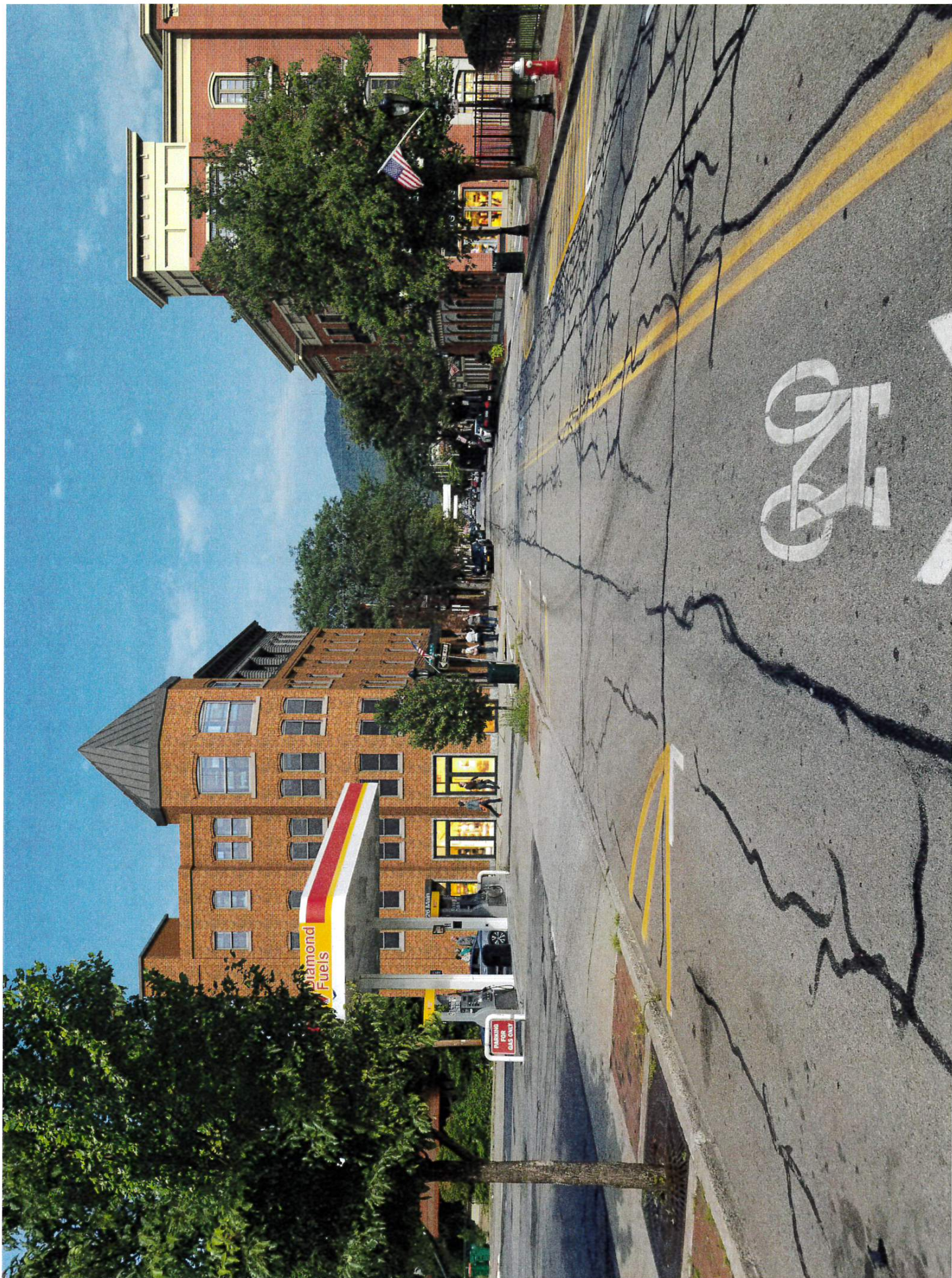












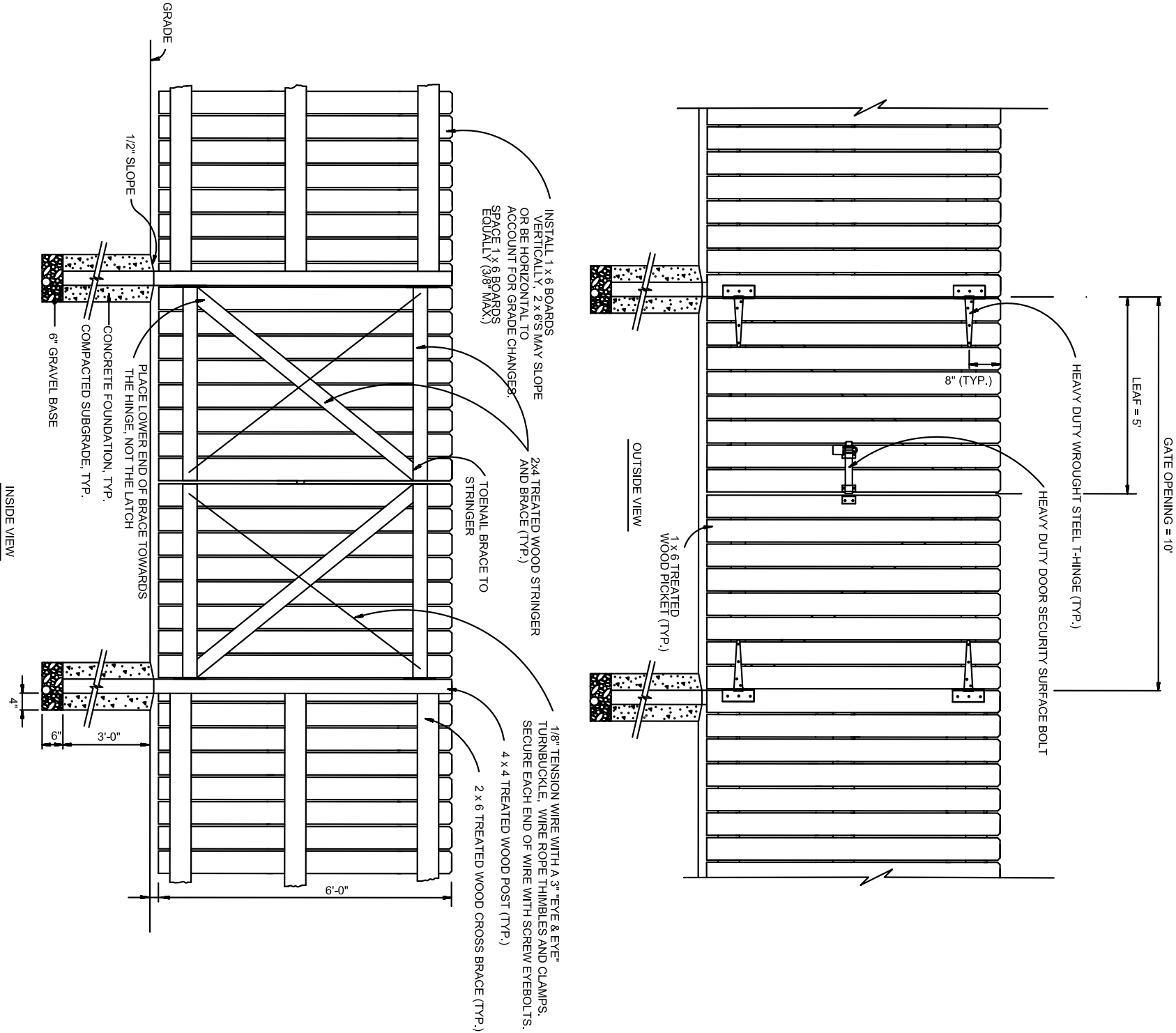
APPROVED BY RESOLUTION OF THE PLANNING BOARD OF THE CITY OF BEACON, NEW YORK, ON THE DAY OF 20, SUBJECT TO ALL REQUIREMENTS AND CONDITIONS OF THE RESOLUTION AND FURTHER, MODIFICATION OR REVISION OF THIS PLAN, AS APPROVED, SHALL VOID THIS APPROVAL.

SIGNED THIS DAY OF 20, BY

CHAIRMAN

SECRETARY

IN ABSENCE OF THE CHAIRMAN OR SECRETARY, THE ACTING CHAIRMAN OR ACTING SECRETARY, RESPECTIVELY, MAY SIGN IN THIS PLACE.



Wood Fence & Gate Details

Not to Scale

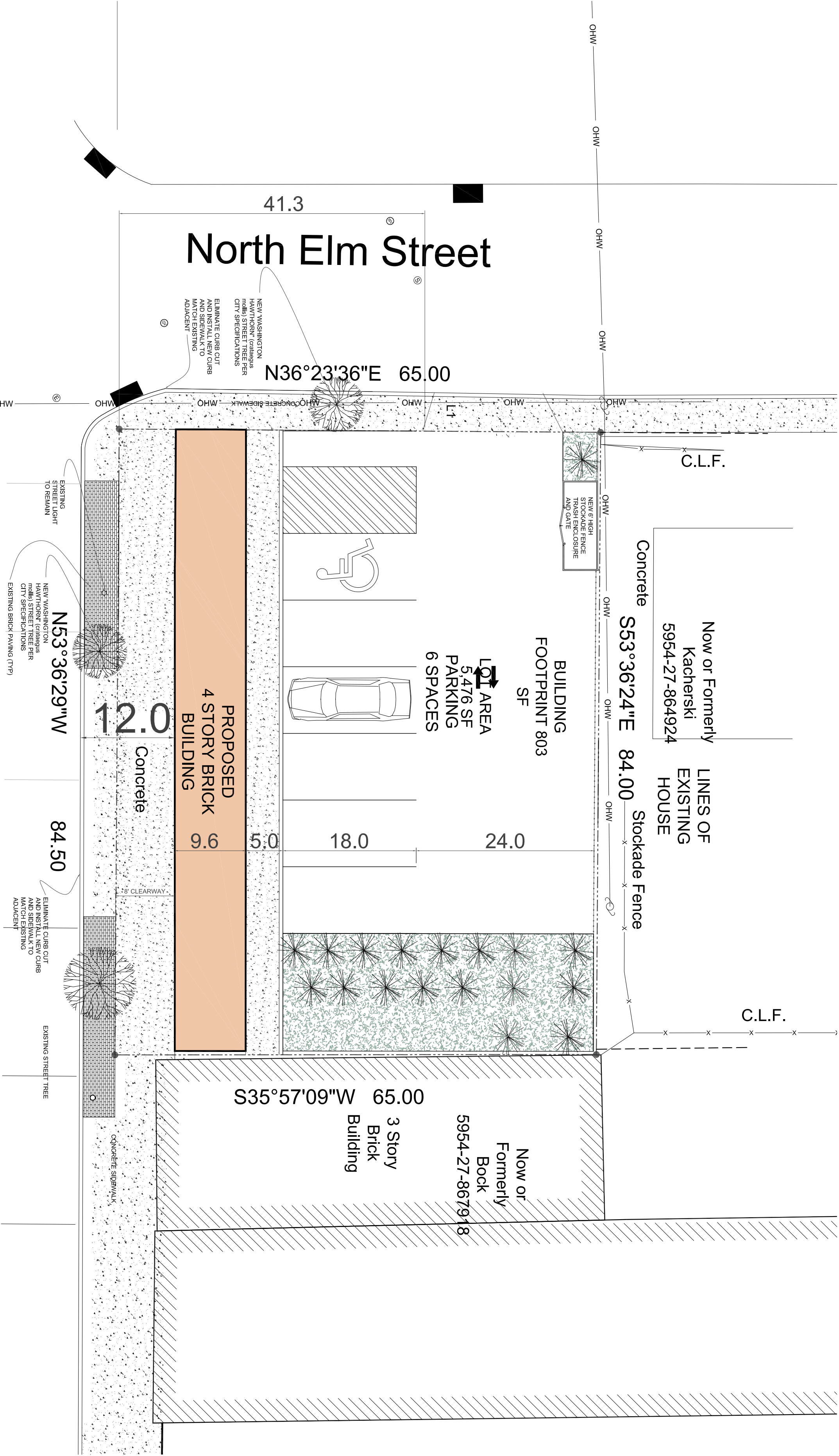


L1: Wall Mounted

Lighting

Not to Scale

NOTE: THE MANUFACTURER DOES NOT PROVIDE PHOTOMETRIC INFORMATION FOR THESE FIXTURES. FIXTURES WILL BE SHIELDED TO AVOID LIGHT SPILLAGE ONTO ADJACENT PROPERTIES, AND TO SHIELD FROM LIGHT PROJECTING UPWARD TO THE SKY.



Main Street

Site Plan

SCALE: 1" = 10'
SITE PLAN BASED ON A SURVEY BY
TEC LAND SURVEYING, 15C TIORONDA
AVENUE, BEACON, NY 12508. DATED
APRIL, 18, 2017

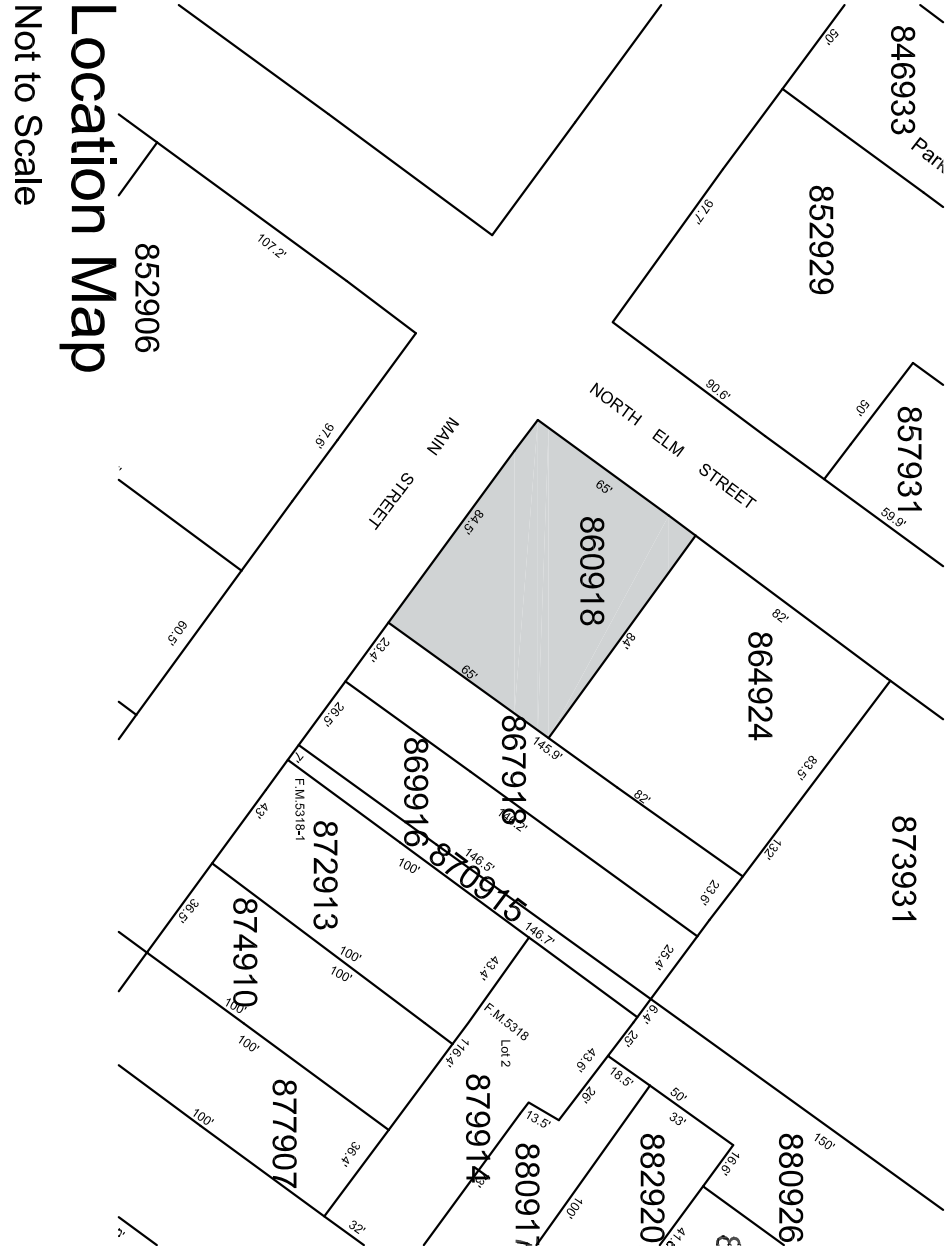
Scale: 1" = 10'

Site Plan Application - Parking Lot Demonstration

Sheet 1 of 5 - Site Plan

| Index of Drawings | | |
|-------------------|---|--|
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| Sheet 2 of 5 | Existing Conditions Survey | |
| Sheet 3 of 5 | Building Plans & Elevations | |
| Sheet 4 of 5 | Utility and Erosion & Sediment Control Plan | |
| Sheet 5 of 5 | Construction Details | |

| REVISIONS: | | |
|------------|----------|-------------------------------------|
| NO. | DATE | DESCRIPTION |
| 1 | 05/30/17 | REVISED PER PLANNING BOARD COMMENTS |
| 2 | 06/27/17 | REVISED PER PLANNING BOARD COMMENTS |
| | | |
| | | |
| | | |
| | | |



Location Map

Not to Scale

Owner:
Estate of Jeffrey McGarvey
C/O Epstein & Epstein,
PO Box 2, Beacon, NY 12508

Applicant:
328 Main Street, LLC
445 Main Street
Beacon, New York 12508

Architect:
Aryeh Siegel, Architect
514 Main Street
Beacon, New York 12508

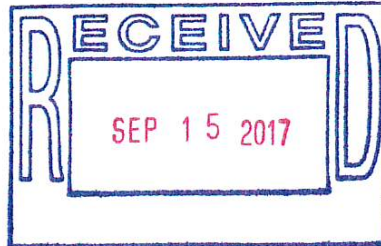
Site / Civil Engineer:
Hudson Land Design
174 Main Street
Beacon, New York 12508

Surveyor:
TEC Surveying
15C Tioronda Avenue
Beacon, New York 12508

226 Main Street
Beacon, New York
Scale: 1" = 10'
April 25, 2017



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Jennifer L. Van Tuyl
jvantuyl@cuddyfeder.com

September 15, 2017

By e-mail and by hand

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

Re: Second Supplemental Submission for 226 Main Street
226 Main Street, Beacon, New York 12508 (SBL: 5954-27-860918)

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

We respectfully submit this letter to provide the Board with supplemental information to aid in its consideration of the requested variances, and to respond to the concerns raised by the public at the July 18, 2017 public hearing.

The project seeks to improve an underutilized corner property located on Central Main Street, presently occupied by an automotive repair facility, by constructing a 4-story mixed-use retail and multifamily residential building containing ground-floor retail space and 8 apartment units on the second through fourth floors (the "Project").

The two requested area variances are summarized as follows:

A. Rear Yard Setback:

The Applicant requests relief from Zoning Code Section 223-41.18(D)(5), which requires a rear yard setback of 25 ft. The Applicant requests a variance of 15 ft., to permit a rear yard setback of 10 ft. (The existing building on the site, which would be replaced by the proposed new building, has a rear yard setback of less than one foot.)

B. Residential Parking Spaces:

The Applicant requests relief from Zoning Code Section 223-41.18(F)(2)(a), which requires 1 parking space per 1 residential unit, and thus 8 residential parking spaces, to allow zero spaces on the Premises.

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GENERAL COMMENTS BY THE PUBLIC:

The Zoning Board is obligated to consider each variance separately. However, there were certain comments made by the public which were intended to apply to both variances, and those comments are addressed first.

The Right of an Applicant to Seek Variance Relief:

There were numerous comments from the public that the ZBA should never grant a variance for any application. This clearly reflects a misunderstanding of the law.

Landowners have a constitutional due process right to request variance relief. Granting the ability to apply for variances is an essential element in preserving the constitutionality of zoning laws. Thus, the right to apply for variances is codified in New York State statutes, General City Law 81-b, and in the Beacon City Code, section 223-55 (C) (2).

General opposition to the project, or to development in general:

Many of the comments at the public hearing were general statements of opposition to the project, or to development in general, unsubstantiated by any data or objective facts. Many commenters expressed clear animus for all new development and growth in the City, even projects such as this one, which substantially complies with the requirements and intent of the recently updated City Code and Comp Plan. Multiple commenters requested that the City oppose all development and push back on developers who do not reside in Beacon – by enacting a moratorium on all new applications.

It is well settled law that such general opposition does not provide a valid ground to deny a variance.

THE LEGAL TEST FOR AREA VARIANCES:

New York law clearly states the applicable test for an area variance: weighing the *benefit* of the variance to the applicant, as against the actual *detriment*, if any, to the neighborhood from the granting of the variance.¹ If the benefit to the applicant outweighs the actual harm to the community, the applicant is entitled to receive the area variance.

¹ See GEN. CITY LAW § 81-b; CITY OF BEACON ZONING CODE § 223-55(C)(2).



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The law does not require an applicant for an area variance to establish any “hardship.” The hardship standard applies only to use variances.

The Zoning Board is obligated to consider each variance separately. Accordingly, this submission addresses the two separate variance requests in turn.

EASEMENT 1 - REAR SETBACK VARIANCE:

Precedent:

Zoning Boards are obligated to treat similar cases in a similar way. They cannot grant variances to some applicants, but not to other applicants in similar circumstances. A critical factor with respect to the rear setback variance is the precedent of this Board’s having granted similar, and even greater, rear setback variances to other properties in similar circumstances.

Specifically, the Board granted variances to:

- **344 Main Street** (SBL: 5954-36-987833), CMS District – O’Donnell Construction Corp.: The Zoning Board of Appeals approved a 0 ft. rear yard setback where 25 ft. was required. The long, narrow site did not allow the applicant to optimize the setup of interior units in the building. The granting of this variance allowed the applicant to build a 4-story mixed use building and lay out 18 apartments and 6 retail units. Further, as a corner lot, the applicant did not want to create the appearance of a “gaping hole” at the rear of the property. The Zero rear setback variance was approved on September 15, 2015. The variance requested by 226 Main Street is less extensive than this variance. The factual circumstances are very similar, since this is also a corner lot with a unique configuration.
- **249 Main Street** (SBL: 5954-27-852906), CMS District – 249 Main Street, LLC: The Zoning Board of Appeals on the same date (September 15, 2015) approved a 10 ft. rear yard setback where 25 ft. was required, to construct a new 4-story residential/retail building.

In light of this precedent, and the similarity of the circumstances, the Board is bound by its prior precedent to make a similar determination.² The circumstances are similar, and there is no justification for a different treatment for this project.³

² See *Knight v. Amelkin*, 68 N.Y.2d 975 (1986); *Dil-Hill Realty Co. v. Schultz*, 53 A.D.2d 263 (2d Dept. 1976).

³ See *Frisenda v. ZBA of Town of Islip*, 215 A.D.2d 479 (2d Dept. 1995); *Callahan Indus. Inc. v. Rourke*, 187 A.D.2d 781 (3d Dept. 1992).



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5 Factor Analysis of the Rear Yard Setback Variance:

The grant of the variance is also supported by a consideration of the 5 area variance factors, even independent of the precedent of prior decisions.

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting the area variance.

The existing building on the subject property sits less than 1 foot from the rear property line. The proposed variance will actually increase this significantly, reducing the nonconformity. The proposed project, including the requested setback variance will also have a positive effect on the character of the neighborhood, as documented by the Dutchess County Planning Department comments on the proposal:

The proposed redevelopment of this prominent corner on Main Street to a 4-story mixed use building with retail on the ground floor will result in a vast improvement in the appearance of this site and will add value to the parcel, and the City as a whole. The proposed site plan is in keeping with the City's regulations for the Central Main Street (CMS) district and we commend the applicant in proposing a building that upholds these standards.⁴

The express purpose of the CMS District is to "increase the vitality, attractiveness, and marketability of Main Street and the Central Business District by providing more flexibility of land use while maintaining and enhancing urban form as recommended by the City's Comprehensive Plan."⁵ Furthermore, the CMS District regulations contemplate that the most ideal location to site taller buildings in the district are on corner lots.⁶

The City's 2007 Comprehensive Plan and 2017 Comprehensive Plan Update "encourage housing development at relatively greater densities within and adjacent to the central

⁴ The County's Letter, dated May 31, 2017 to the City of Beacon Planning Board is on file with the Planning Board and is enclosed herein as **Exhibit A** for the ZBA's ease of reference.

⁵ CITY OF BEACON ZONING CODE § 223-41.16.

⁶ CITY OF BEACON ZONING CODE § 223-41.18(B)(1)(b) (5-story buildings, which are even taller than the 4-story building currently proposed as-of-right, are permissible with special use permit: "Corner locations are deemed most appropriate for such buildings").



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business district.”⁷ Referencing the 2007 Comprehensive Plan, the 2017 Comprehensive Plan Update recognized and affirmed that:

While Main Street is viewed as an important asset of the City, many residents expressed the need to improve the ‘transition area’ between Teller and Digger Phelps Street. This area lacks the density and architectural features of the more historic sections of Main Street to the east and west. The 2007 Plan stated that many residents felt the City should encourage the development of more residences on Main Street, particularly in the transition area, which would help provide a larger local market for businesses.

... The Main Street business district needs an increased residential population in the area near Main Street in order to support a larger market necessary for long-term economic viability.⁸

There is no adverse impact on the neighborhood which justifies the denial of the setback variance. The generalized claims of so-called “shadow” impacts have been investigated, and the applicant submits herewith a Shadow Study (Exhibit C) which shows that there is no perceptible difference in the nature of the shadows created by the proposed building under the 10 foot setback as compared to the 25 foot as-of-right setback. These claims are discussed in detail below under factor 4, pages 7-9.

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.

The applicant cannot achieve the benefit he seeks---the construction of a viable building---without a setback variance, because of the shape and shallow nature of the Premises, and its character as a corner lot.

The facts demonstrate that the Premises and proposed development are actually comparable in lot size (in terms of overall acreage/SF) to the other lots on its block, but the Premises is distinguishable from most of the other properties because it is a corner lot. *See Exhibit B.*

⁷ CITY OF BEACON, 2007 COMPREHENSIVE PLAN at 7 (Population and Residential Development), 106 (Land Use, Objective C);

⁸ See CITY OF BEACON, 2017 COMPREHENSIVE PLAN UPDATE at 61-62 (Section 4.2, Goals and Recommendations)

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Despite its comparable square footage to other lots located on its block within the CMS District, 226 Main Street is quite shallow, being only about 57 ft. deep. The requested 10 ft. setback would allow a building depth of approximately 47 ft., with an interior dimension of about 45 ft. This is the minimum feasible depth to create a layout that permits apartments to be located on either side of a central 5-foot wide corridor, and creates apartments of a viable size, each 20 ft. wide. It is infeasible to lay out an apartment unit that is less than 20 ft. deep, and still maintaining a configuration that features adequate living space and facilities. To meet Building Code requirements for a 3+ story multifamily building, the double-loaded corridor must be at least 5 ft. wide, and there must be two means of ingress/egress access to the building. Applying the 25 ft. setback requirement would make the double-loaded corridor impossible, as there would simply not be enough space within the building footprint to support the amount of square footage required by the corridor and ingress/egress access ways, and maintain reasonably sized apartment units on each floor.

Allowing the Applicant to build on the Premises and receive an economic return from its property is a legitimate "benefit" to be sought by an area variance, and cannot be rejected by a ZBA as an "unworthy" motive. This consideration is particularly applicable to the present case, where the Applicant seeks to develop this corner lot in accordance with the broader objectives of the CMS District regulations and Comprehensive Plan. It is improper for a ZBA to deny a variance and attempt to relegate an applicant to an alternative design that is a "profound departure" from, or at causing a substantial loss compared to what the applicant is seeking through the variance request.⁹ Similarly, where an applicant seeks the benefit of a variance a ZBA may not reject a variance on the ground or allegation that the applicant doesn't "need" it.¹⁰

3. Whether the requested area variance is substantial.

The variance is not substantial in its effect. The substantiality of a variance cannot be judged solely by a comparison of the percentage deviation from the mandated requirements of the Zoning Code. In considering whether a variance is substantial, the ZBA shall examine the totality of the circumstances within an application.¹¹ Thus, the

⁹ 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) (Court reversed ZBA's denial of variance where the ZBA attempted to force the applicant to a profound departure from its own proposal, and would cost applicant an additional \$1 million).

¹⁰ See *Baker v. Brownlie*, 248 A.D.2d 527 (2 Dept. 1998) (Board may not reject a variance on the ground that the applicant doesn't "need" the variance to have a patio not facing the water).

¹¹ 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 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 5649523 2007 N.Y. Slip. Op. 52571(U) ("Substantiality cannot be judged in the abstract; rather, the totality of

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overall effect of granting the relief is the appropriate inquiry. The ZBA must consider the surrounding neighborhood and nearby lots when determining whether the application is substantial.¹²

Here, the requested variance is not substantial in its effect, because a 10 ft. rear yard setback is greater than the Premises' existing rear yard setback (less than 1 ft.), and is consistent with other existing properties in the CMS District. The existing building on the property is set back less than one foot from the rear property line, and other properties in the area feature rear yard setbacks of 10 feet or less, including several that were granted variances for reduced rear yard setbacks.

Moreover, even if a variance is deemed "substantial," this factor alone does not preclude the granting of a variance, since the applicant meets the overall balancing test.¹³

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

The proposed variance will have no adverse impacts on the physical or environmental conditions in the neighborhood or district. There will be no adverse effects of noise, vibrations, odor, traffic, or impact on public services, caused by a mere 15-foot reduction in rear yard setback. As the County Planning Board establishes in its letter, there will in fact be a positive visual/aesthetic effect on the neighborhood and district - as the proposed Project employs a pleasing architectural design in character with the goals of the CMS District. The increased residential density in the CMS District will revitalize Main Street's economy and contribute to a vibrant and walkable streetscape.

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).

¹² *See* Crystal Pond Homes, Inc. v. Prior, 305 A.D.2d 595 (2d Dept. 2003) (Court overturned lot area application for 12,750 square foot lot where 21,780 was required where there were a substantial amount of substandard lots in area); Gonzalez v. ZBA of Putnam Valley, 3 A.D.3d 496 (2d Dept. 2004) (denial overturned where record showed substandard lots next to subject lot and other nearby nonconforming structures similar to that sought by applicant); 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.).

¹³ *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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The only public comments that had any specific connection to the proposed project included unsupported claims that a 4-story building in this location is inappropriate because it will create “shadows” on neighboring properties and it block the flow of “light and air” in the neighborhood.

These comments reflect generalized opposition to the project itself and the proposed building height, not the requested setback variance. Height is not an issue before this Board, nor is it an issue for debate, since it is zoning compliant. The Beacon Zoning Code § 223-41.18(D)(7) expressly permits 4-story buildings in the CMS District. The Zoning Code also notes that the most appropriate location for a taller building is on a corner lot.¹⁴

Moreover, under New York State law, a neighboring property owner has no natural or inherent right to light or air, and may not complain that either has been cut off by the erection of buildings on adjoining land.¹⁵ Nor does such owner possess an implied visual easement over property he does not own.¹⁶ It is well-settled law in New York that no easement for light or air will ever be implied in favor of one city lot over another, and that doctrine of implied easements of that kind does not exist in this state; further, no such rights may be acquired by prescription, even where the existing neighboring parcel has been in place for many decades.¹⁷

Therefore, arguments by neighbors that the proposed Project will cut off light and air access to existing buildings located on adjacent or nearby properties are without legal merit. The adjacent and neighboring property owners have no inherent right to light or air; these lots, like any other lot in a city, do not enjoy a perpetual right to undeveloped surroundings merely by virtue of having been there first. The only means by which a property owner may acquire a right to light and air is by an express easement. No such easement exists.

¹⁴ See CITY OF BEACON ZONING CODE § 223-41.18(B)(1)(b) (“Corner locations are deemed most appropriate for such buildings...”).

¹⁵ See Myers v. Gemmel, 10 Barb 537, 542-543 (New York Gen. Term 1851); De Baun v. Moore, 6 N.Y. Ann. Cas. 132, 32 A.D. 397, 52 N.Y.S. 1092 (2d Dept. 1898), *aff’d* 167 N.Y. 598, 60 N.E. 1110; Kingsway Realty & Mortgage Corp. v. Kingsway Repair Corp., 228 N.Y.S. 265, 223 A.D. 281 (2d Dept. 1928); 1 N.Y. Jur.2d Adjoining Landowners § 57; Pica v. Cross County Construction Corp., 259 App.Div. 128, 18 N.Y.S.2d 470 (1st Dept. 1940); Blair v. 305-313 East 4th Street Assocs., 123 Misc.2d 612 (New York Co. 1983). The English doctrine of “ancient lights” (providing that a landowner had a legal right to light and air based on an extended period of uninterrupted use and enjoyment) has been rejected in New York State and almost universally in every United States jurisdiction. See Myers v. Gemmel, 10 Barb 537, 542-543 (New York Gen. Term 1851).

¹⁶ Haber v. Paramount Ice Corp., 239 App.Div. 324, 327, 267 N.Y.S. 329, *aff’d*, 264 N.Y. 98, 190 N.E. 163; Salvin v. Northbraceth Coal Co., 9 Law R., Ch. Appeals, 705, *cited in* Campbell v. Seaman, 63 N.Y. 568, 577; Blair v. 305-313 East 4th Street Assocs., 123 Misc.2d 612 (New York Co. 1983).

¹⁷ Cohan v. Fleuroma, Inc., 43 A.D.2d 741, 346 N.Y.S.2d 157 (2d Dept. 1973); Wilmurt v. McGrane, 16 App.Div. 412, 418-19, 45 N.Y.S. 32 (1st Dept. 1897); Cutting v. Cutting, 86 N.Y. 41 Sickels 522 (1881); Edgerton v. Foote, 19 Wend 309 (1838); Merriam v. 352 West 42nd Street Corp., 14 A.D.2d 383, 221 N.Y.S.2d 82 (1st Dept. 1961).



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Moreover, to respond to these neighbor comments, the applicant hereby submits a "Shadow Impact Study" which establishes that the requested variance, changing the rear setback from 25 feet to 10 feet does not result in any perceptible change in shadow impacts on neighboring properties. Please refer to **Exhibit C**.

The owner of 4 North Elm Street, to the rear of 226 Main Street, objected at the last meeting that this property would suffer adverse effects if the rear setback variance is granted. The Shadow Study refutes these allegations. It is also worthy of note that the owner of 4 North Elm Street has made several offer to purchase 226 Main Street, and his opposition may be motivated by the desire to own the property himself. Moreover, upon information and belief, the owner of 4 North Elm Street, as a partner in O'Donnell Construction Corporation, is the direct beneficiary of this Board's grant of a zero feet rear yard setback at 344 Main Street. It seems inappropriate to object to one's neighbor receiving a variance, after benefitting from the grant of a similar—and even greater—variance oneself.

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.

The difficulty is not self-created, but rather arises because of the shallow configuration of a corner lot, as described above. However, even if the hardship *were* self-created, this does not alone justify denial of an area variance under N.Y. GENERAL CITY LAW § 81-b(4)(b)(v).¹⁸

Conclusion as to Easement 1 - rear setback variance

Based upon a consideration of the 5 factors, the overall balancing test, and the binding nature of the Board's past decisions in similar cases, the applicant has established its entitlement to this variance.

¹⁸ See Matter of Daneri v. ZBA Town of Southold, 98 A.D.3d 508 (self-created nature of difficulty is not preclusive of the ability to obtain an area variance).



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EASEMENT 2 -THE PARKING VARIANCE:

The applicant has also requested that the Board grant a variance of the 8 required off-street spaces for the 8 new apartments. The applicant has noted that its plan provides at least 2 and possibly 3 new parking spaces along the new frontage created by the new project, and that there are two public parking lots in close proximity to the site.

Precedent:

As noted above, Zoning Boards are obligated to treat similar cases in a similar way. They can't grant variances to some applicants, but not to other applicants in similar circumstances. The ZBA has granted parking variances to a number of Main Street projects featuring a residential component, including:

- **232 Main Street (SBL: 5954-27-867918), Preshrock Corp., Central Business ("CB") District:** On September 16, 2003, the ZBA unanimously voted 7-0 to grant a variance of 29 parking spaces, to permit zero parking spaces where 29 were required, and further to waive the fee-in-lieu of parking requirement. The applicant established that there was no space for parking because the building had been converted from original retail use to seasonal restaurant with retail sales, and the back of the property had been converted to an outdoor dining patio to maximize investment. The applicant relied on parking available in a nearby public parking lot.
- **544 Main Street (SBL: 6054-30-129788), 544 Main Street LLC, CB District:** The ZBA voted unanimously 5-0 to grant a parking variance allowing the applicant to provide 14 off-street parking spaces where 18 spaces were required, for a variance of 4 parking spaces. The applicant intended to renovate an existing building to ground floor retail/commercial and apartments above. Due to topographic (steep slope) conditions of the site, the parking area could not be extended to the rear of the parcel. There was an adjacent municipal parking lot, which was at one time a part of the 544 Main Street property. The applicant showed that it would be impossible to provide parking on its property due to topographic conditions.
- **536 Main Street (SBL: 6054-30-132779), Grzegorz Stachnik, CB District:** The ZBA unanimously voted 5-0 on February 21, 2006 to grant a variance of 3 parking spaces, to provide 5 off-street parking spaces where 8 were required. The applicant proposed to construct a new three-story building with artist live/work space on the ground floor and apartment units on the upper floors on a vacant parcel of land.

Naturally, the consideration of a parking variance is dependent on the relevant facts. The key relevant facts in this situation are that: (1) the applicant is creating 2-3 additional parking spaces by closing in open curbs on its property; (2) the proposed property is located within 800 feet of

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two public parking lots, and (3) that studies have established available on-street parking in the neighborhood.

5 Factor Analysis of Requested Parking Variance:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting the area variance.

No undesirable change will be produced in the character of the neighborhood and no detriment to nearby properties will be created by granting the area variance, for three separate reasons. First, there is adequate street parking surrounding the Premises; the City's 2017 Comprehensive Plan Update noted that "The City of Beacon is well-served by current public and private parking facilities."¹⁹ A 2014 parking analysis of Center City parking availability by the Dutchess County Planning Department also "suggests there is still ample parking capacity in the downtown area for future growth."²⁰

Second, the existing street parking will be supplemented by the closing of multiple curb cuts on the Premises' frontage, thereby allowing for the addition of 2 to 3 new on-street parking spaces.

Third, there are also 2 public parking lots located within 800 feet of the property: the Pleasant Ridge Pizza lot (parking for 13 cars) and the Dutchess County Motor Vehicles lot (parking for 92 cars).²¹ The existing and new street parking, coupled with the nearby public parking lots, are sufficient to meet the residential 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 complaints by neighbors of crowded parking by tourists and shopper, as well as church attendees, are inapplicable to the proposed request, since demand for residential parking generally occurs at different hours than the commercial parking.²²

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.

¹⁹ CITY OF BEACON, 2017 COMPREHENSIVE PLAN UPDATE at 84 (Section 6: Transportation, Parking).

²⁰ *Id.*; see also Dutchess County Department of Planning and Development, *Beacon Center City Parking Analysis* at 6 (2014).

²¹ See CITY OF BEACON ZONING CODE § 223-41.18(F)(3), which lists criteria that the Planning Board may consider in choosing to modify the residential parking requirement of ZONING CODE § 223-41.18(F)(2). "That there is sufficient public parking available within 800 feet of the site and within the CMS or PB Districts to meet foreseeable parking needs of the proposed use and surrounding uses for the duration of the proposed use." *Id.* at § 223-41.18 (F)(3)(d).

²² See Dutchess County Department of Planning and Development, *Beacon Center City Parking Analysis* at 7, 15 (2014).

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There are no other viable means for the Applicant to achieve the benefit sought by the area variance. There is insufficient space on the site to construct off-street parking, while still maintaining the minimum feasible depth of the building to support a multifamily residential layout. The difficulty in providing off-street parking on this corner lot is exacerbated by the City's Zoning Code prohibition on parking within a front yard.²³ Because the Premises is a corner lot, it is treated as having two front yards.²⁴ Further, the CMS Zoning District regulations require that buildings within the CMS District be sited right at the streetscape, to improve the pedestrian experience.²⁵ Therefore, the only permitted location for off-street parking on this lot would be at the rear of the lot.²⁶

But the shallow nature of the lot does not create the possibility to provide such parking. A minimum 42 ft. setback from the rear property line would be required to provide any parking at the rear of the Premises, considering that the required width/length of a parking space is 9 ft./18 ft.²⁷, and the required width of a drive aisle is 24 ft.²⁸ This would leave only approximately 23 ft. in depth for a building sited on the lot. As detailed in the analysis for the rear setback variance, the Premises is only about 57 ft. in depth. Requiring off-street parking to be sited on the lot, leaving only 23 ft. in which to construct a building, would make not only a double-loaded corridor setup impossible, [see discussion of building requirements in analysis of setback variance above, pages 5-6] but would render any possible building configuration unworkable and the lot effectively undevelopable.

²³ CITY OF BEACON ZONING CODE § 223-41.18(D)(1) ("Front setback on Main Street: minimum zero, maximum 10 feet, except that a larger maximum may be allowed if the **area in front of a building has no parking spaces** and is landscaped and used in a manner that enhances the street life on Main Street by such means as pocket parks or plazas, fountains, outdoor dining areas, public art and outdoor display of items for sale on the premises. Such outdoor space shall be landscaped with plant materials as appropriate to the use, in a configuration approved by the Planning Board." [bold emphasis added]); CITY OF BEACON ZONING CODE § 223-41.18(D)(2) ("Front setback on other streets: minimum zero, maximum 25 feet. If surrounding buildings have a larger setback, the setback line may be placed in a location that harmonizes with the prevailing setbacks, **provided that there is no parking in the front yard** other than on a driveway accessing a rear garage." [bold emphasis added]); CITY OF BEACON ZONING CODE § 223-41.18(F)(1) ("All off-street parking for buildings that have Main Street frontage **shall be located behind, underneath, or to the side** of a building. If on the side, the parking area shall be located at least 40 feet from the Main Street property line..." [bold emphasis added]); *see also* CITY OF BEACON ZONING CODE § 223-41.18(D)(13).

²⁴ CITY OF BEACON ZONING CODE § 223-41.18(D)(3) ("Corner buildings: Corner buildings **shall be treated as having frontage on both streets and front setbacks shall apply to both**, as appropriate to the street. Corner buildings with **frontage on Main Street** shall **wrap around corners** and **maintain a consistent setback line** along the side." [bold emphasis added]).

²⁵ CITY OF BEACON ZONING CODE § 223-41.18(D)(1), (2); *see also* CITY OF BEACON ZONING CODE § 223-41.18(D)(13).

²⁶ Indeed, this is the parking scheme envisioned by the Comprehensive Plan for the CMS District. *See* City of Beacon Comprehensive Plan at 106 (2007) ("The properties between Digger Phelps Street and Teller Avenue should be encouraged to be redeveloped at greater density, with incentives (such as increased floor area ratio) for new housing construction above the first floor and **parking included behind the building**." [bold emphasis added]).

²⁷ CITY OF BEACON ZONING CODE § 223-26(C)(2)(a).

²⁸ CITY OF BEACON ZONING CODE § 223-26(C)(2)(c).



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Because a building that shallow in depth is completely unworkable, parking cannot be provided on the site.

As noted in the earlier portion of this letter (see page 6), allowing the Applicant to build on the Premises and receive an economic return from its property is a legitimate "benefit" to be sought by an area variance. It is impossible to provide the required number of off-street parking spaces and still preserve the benefit sought by the Applicant; therefore, a variance from the required number of off-street parking spaces is the only means by which the Applicant can achieve the benefit sought.

3. Whether the requested area variance is substantial.

The requested variance to permit zero parking spaces where 8 spaces are required is not substantial in its effect. The substantiality of a variance cannot be judged solely by a comparison of the percentage deviation from the mandated requirements of the Zoning Code. In considering whether a variance is substantial, the ZBA shall examine the totality of the circumstances within an application.²⁹ Thus, the overall effect of granting the relief is the appropriate inquiry. The ZBA must consider the surrounding neighborhood and nearby lots, including the availability of on-street and off-street parking, when determining whether the application is substantial.³⁰

Here, the proposed Project is not substantial in its effect. The Board must consider the Applicant's parking variance request individually on its own merits, and should not be distracted by discussions of other sections of Main Street which don't have nearby public parking lots for residential parking, by complaints about tourist parking or Sunday church parking which are irrelevant to the demand for residential parking since the demands

²⁹ 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 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).

³⁰ See Crystal Pond Homes, Inc. v. Prior, 305 A.D.2d 595 (2d Dept. 2003) (Court overturned lot area application for 12,750 square foot lot where 21,780 was required where there were a substantial amount of substandard lots in area); Gonzalez v. ZBA of Putnam Valley, 3 A.D.3d 496 (2d Dept. 2004) (denial overturned where record showed substandard lots next to subject lot and other nearby nonconforming structures similar to that sought by applicant); 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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occur at different hours, or speculation about future development and future circumstances. The comments at the public hearing conflate this specific parking variance request with other issues, and other speculative future developments on Main Street. Whether future projects, on other properties, may have a substantial effect on existing parking is not an issue now before this Board. Likewise, this Board is not the forum in which to debate legislative issues concerning the CMS District's preference for increased residential density.

An essential part of the context of this application is the availability of two nearby municipal parking lots (with space for 13 cars and 92 cars, respectively) in the immediate vicinity. These lots supplement the available on-street parking. Additionally, the applicant will be creating 2-3 additional parking spaces immediately adjacent to this building. These existing parking resources are more than sufficient to serve central Main Street's parking needs.

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

The proposed variance will have no adverse impacts on the physical or environmental conditions in the neighborhood or district.

The data discussed in the previous sections establishes that the proposed Project will have no adverse effect or impact on the physical or environmental conditions of the neighborhood or district. The proposed Project encourages walkability and access to public transportation, and will have a beneficial impact on the aesthetics, walkability, and economy of the neighborhood and district. It will also result in closing multiple curb cuts, allowing for the addition of 2 to 3 on-street parking spaces and thereby only truly generating a need for 5-6 off-site parking spaces.

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.

The difficulty is not self-created, but results from the lot's shape and character as a corner lot. As discussed above, placement of the 8 required off-street parking spaces on the Premises would result in an unworkably narrow 23 ft. building envelope, rendering *any* development of the Premises infeasible. The proposed Project is in conformance with the other aspects and intent of the CMS Zoning District, and with the goals of the Comprehensive Plan, but will be impossible to achieve without obtaining the requested

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parking variance. Finally, even if the hardship *were* self-created, this does not alone justify denial of an area variance under N.Y. GENERAL CITY LAW § 81-b(4)(b)(v).³¹

Conclusion with respect to Easement 2 - parking variance:

The facts clearly show that there is ample available public parking in the neighborhood of the proposed building to provide 8 residential spaces. The proposed project itself will provide 2 or 3 new spaces immediately in front of the building. Considering the overall balancing test, the 5 factors, and the precedent of past parking variances, there is no harm to the community sufficient to outweigh the benefit to the applicant from the grant of the parking variance.

Summary:

The Applicant looks forward to appearing at the Zoning Board of Appeals meeting on September 19, 2017. Should you have any questions, please call me at the office. My direct line is 914-872-1941.

The following exhibits are attached to this letter:

- Exhibit A: 293-m Referral Response Letter from Dutchess County Department of Planning & Development to City of Beacon Planning Board, dated May 31, 2017;
- Exhibit B: Chart, Map, and Property Cards Illustrating Comparable Lot Sizes to the Premises located within the same Block in the CMS District; and
- Exhibit C: "226 Main Street Shadow Impact Study," prepared by Patrick Cleary, AICP, dated September 15, 2017.

Very truly yours,

A handwritten signature in blue ink, appearing to read "JL Van Tuyl", is written over a light blue horizontal line.

Jennifer L. Van Tuyl

cc: Edward J. Phillips, Esq.
Eric L. Gordon, Esq.

³¹ See Matter of Daneri v. ZBA Town of Southold, 98 A.D.3d 508 (self-created nature of difficulty is not preclusive of the ability to obtain an area variance).



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Jennifer L. Gray, Esq.
Aryeh J. Siegel, AIA
Brendan McAlpine

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Exhibit A

Dutchess County Department of Planning & Development,
Response to City of Beacon Planning Board Referral for 226 Main Street

May, 31, 2017 5:22PM

No. 0330 P. 2

MARCUS J. MOLINARO
COUNTY EXECUTIVE



Eoin Wrafter, AICP
COMMISSIONER

COUNTY OF DUTCHESS
DEPARTMENT OF PLANNING AND DEVELOPMENT

May 31, 2017

To: Planning Board, City of Beacon

Re: Referral # 17-165, 226 Main Street 4-story retail/MFR Building Special Permit and Site Plan
Parcel: 5954-27-860918, Main Street

The Dutchess County Department of Planning and Development has reviewed the subject referral within the framework of General Municipal Law (Article 12B, Sections 239-l and 239-m).

ACTION

The applicant is seeking a special use permit and site plan approval for the demolition of an existing 1-story service garage building and the construction of a new 4-story multifamily residential building with retail on the 1st floor.

COMMENTS

The proposed redevelopment of this prominent corner on Main Street to a 4-story mixed use building with retail on the ground floor will result in a vast improvement in the appearance of this site and will add value to the parcel, and the City as a whole. The proposed site plan is in-keeping with the City's regulations for the Central Main Street (CMS) district and we commend the applicant in proposing a building that upholds these standards.

Streetscape Improvements

Currently, the site maintains two curb cuts, one on North Elm Street and a second on Main Street to allow vehicles to access the existing service garage. As part of this project, or in the future, we suggest these curb cuts be replaced with raised curbs to allow additional on-street parking immediately adjacent to the building. As part of that project, an additional street light and street tree could be added on Main Street to continue the existing streetscape improvements further west.

Trash Enclosure

Retail tenants could include a deli or coffee shop or other use that could generate large amounts of waste. We note that the doors to the enclosure open to the building and not the street, and so we question what kind of receptacles will be used as it does not appear that commercial trucks will be accessing the area. The Board should ensure that the trash enclosure is appropriately sized to allow for both garbage and recycling for both the retail and residential tenants.

May. 31. 2017 5:22PM

No. 0330 P. 3

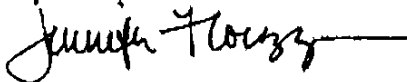
Referral 17-165; 226 Main Street 4-story retail/MFR building special permit and site plan - page 2/2

RECOMMENDATION

The Department recommends that the Board rely upon its own study of the facts in the case with due consideration of the above comments.

Eoin Wrafter, AICP
Commissioner

By

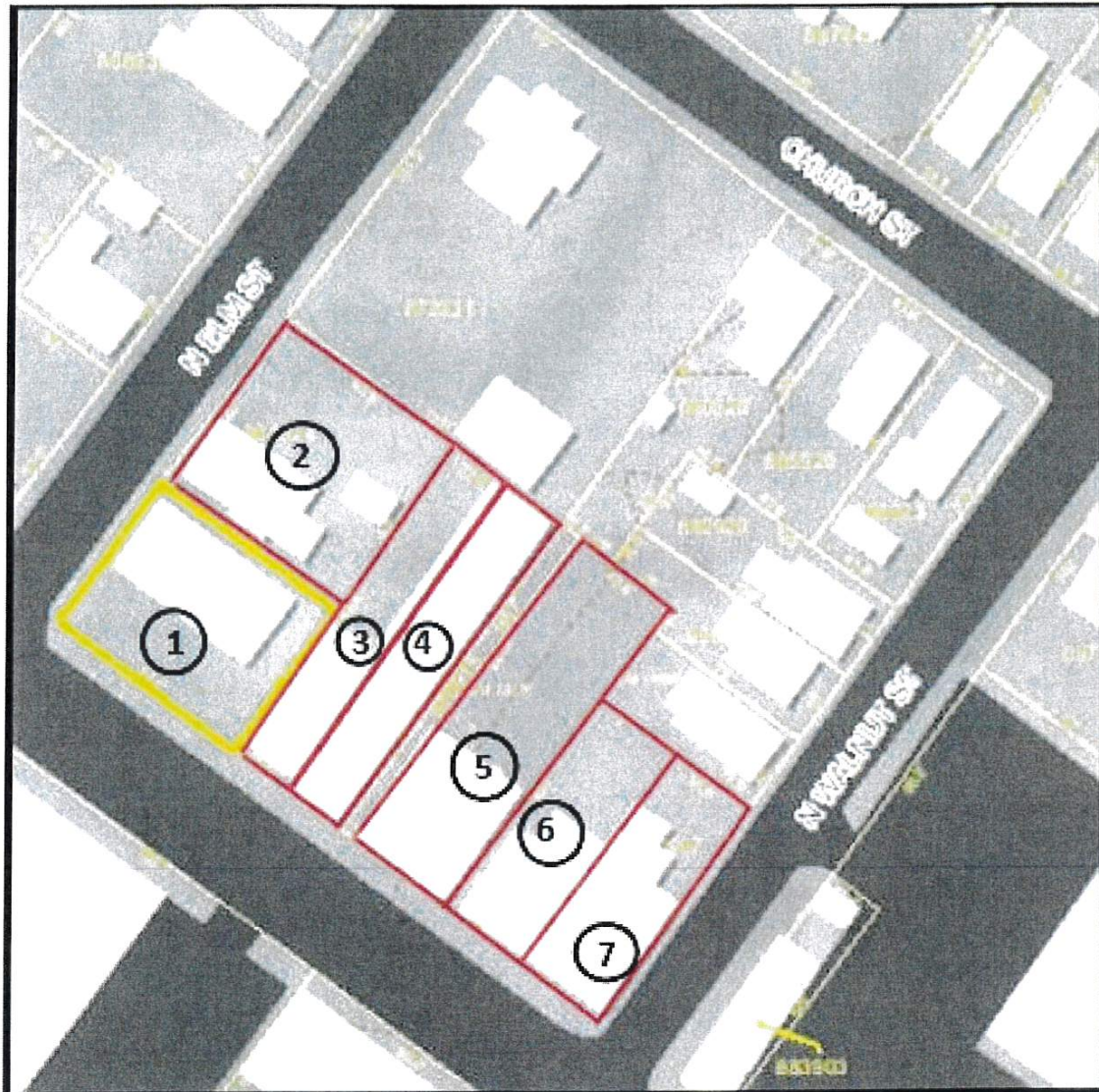
A handwritten signature in black ink, appearing to read "Jennifer F. Coccozza", followed by a horizontal line.

Jennifer F. Coccozza
Deputy Commissioner

Exhibit B**Comparable Lot Sizes within Same Block of 226 Main Street**

| No. (Map Key) | Address | SBL | Lot Size |
|--------------------------|-------------------------------------|----------------|---|
| 1 | 226 Main Street (the "Premises") | 5294-27-860918 | 0.13 acres/ 5,663 SF |
| 2 | 4 North Elm Street | 5954-27-864924 | 0.15 acres/ 6,534 SF |
| 3 | 232 Main Street | 5954-27-867918 | "23.4x146.2" = 0.08 acres/ 3,421 SF |
| 4 | 234 Main Street | 5954-27-869916 | 0.09 acres/ 3,920 SF |
| 5 | 236-240 Main Street | 5954-27-872913 | 0.15 acres/ 6,534 SF |
| 6 | 242 Main Street | 5954-27-874910 | 0.08 acres/ 3,485 SF |
| 7 (Note: Corner Lot) | 246 Main Street | 5954-28-877907 | 0.08 acres/ 3,485 SF |

Exhibit B Map



ParcelAccess - Property Card

<http://geoaccess.co.dutchess.ny.us/parcelaccess/propertyCard.asp?pa...>

①

Final Roll

Parcel Grid Identification #:
130200-5954-27-860918-0000
Municipality: Beacon

Parcel Location
226 Main St

Owner Name on March 1
Mc Garvey, Jeffery (P)

Primary (P) Owner Mail Address
272 Baxtertown Rd
Fishkill NY 125240000

**Parcel Details**

Size (acres): .13 Ac (C)
File Map:
File Lot #:
Split Town

Land Use Class: (430) Commercial: Motor Vehicle Services
Agri. Dist.: (0)
School District: (130200) Beacon City School District

Assessment Information (Current)

| | | | | | |
|--------------------|----------------------|------------------------|---------------------------|------------------------|-------------------------|
| Land: | Total: | County Taxable: | Town Taxable: | School Taxable: | Village Taxable: |
| \$115000 | \$334700 | \$334700 | \$334700 | \$334700 | \$0 |
| Tax Code: | Roll Section: | Uniform %: | Full Market Value: | | |
| N: Non-Homestead | 1 | 100 | \$ 334700 | | |
| Tent. Roll: | Final. Roll: | Valuation: | | | |
| 5/1/2017 | 7/1/2017 | 7/1/2016 | | | |

Last Sale/Transfer

| | | | | | |
|---------------------|-------------------|-------------------|-------------------|------------------------|---------------------|
| Sales Price: | Sale Date: | Deed Book: | Deed Page: | Sale Condition: | No. Parcels: |
| \$0 | 0 | 1380 | 0238 | () | 0 |

Site Information:

| | | | | |
|-----------------------|--------------------|----------------------|---------------------|--------------------|
| Site Number: 1 | Sewer Type: | Desirability: | Zoning Code: | Used As: |
| Water Supply: | (3) Comm/public | (3) Normal | CB | (G04) Auto srv ctr |
| (3) Comm/public | | | | |

Commercial/Industrial/Utility Building Information:

| | | | | |
|--------------------------|-------------------------------------|--------------------------|---------------------------|----------------------|
| Site Number: 1 | Bldg Sec.: 1 Bldg. Number: 1 | Gross Floor Area: | Boeck Model | Const. Qual.: |
| Year Built: | No. Stories: | 1860 | (0109) 1 sty apt load sup | (2) Average |
| 1930 | 1 | | | |
| Air Cond. %: | Sprinkler %: | Alarm %: | No. Elevator: | Basement sf.: |
| 0 | 0 | 0 | 0 | 0 |
| Number Identical: | Condition Code: | | | |
| 0 | 3 | | | |

ParcelAccess - Property Card

<http://geoaccess.co.dutchess.ny.us/parcelaccess/propertyCard.asp?pa...>

Commercial Rental Information:

Site Number: 1

Use Number: 1

Used As: (G04) Auto srv ctr

| | | | | |
|------------|------------------|-------------------|-------------------|-------------------|
| Unit Code: | Total Rent Area: | Area 1 Bdrms Apts | Area 2 Bdrms Apts | Area 3 Bdrms Apts |
| (10) Bays | 1860 | 0 | 0 | 0 |

| | | | |
|--------------|------------------|------------------|------------------|
| Total Units: | No. 1 Bdrms Apts | No. 2 Bdrms Apts | No. 3 Bdrms Apts |
| 3 | 0 | 0 | 0 |

Improvements:

Site Number: 1

Improvement Number: 1

| | | | | |
|--------------------|--------|-------|----------|------------|
| Structure Code: | Dim 1: | Dim 2 | Quantity | Year Built |
| (OH1) Ovrhdoor-com | 10 | 10 | 3 | 1960 |

| | | |
|------------|-------|---------|
| Condition: | Grade | Sq. Ft. |
| (2) Fair | C | 0 |

Site Number: 1

Improvement Number: 4

| | | | | |
|--------------------|--------|-------|----------|------------|
| Structure Code: | Dim 1: | Dim 2 | Quantity | Year Built |
| (LP4) Pavng-asphlt | 0 | 0 | 1 | 1950 |

| | | |
|------------|-------|---------|
| Condition: | Grade | Sq. Ft. |
| (3) Normal | D | 2100 |

ABSOLUTELY NO ACCURACY OR COMPLETENESS GUARANTEE IS IMPLIED OR INTENDED. ALL INFORMATION ON THIS MAP IS
SUBJECT TO CHANGE BASED ON A COMPLETE TITLE SEARCH OR FIELD SURVEY.

This report was produced with ParcelAccess Internet on 9/11/2017. Developed and maintained by OCIS - Dutchess County, NY.

ParcelAccess - Property Card

<http://geoaccess.co.dutchess.ny.us/parcelaccess/propertyCard.asp?pa...>

2

Final Roll

Parcel Grid Identification #:
130200-5954-27-864924-0000
Municipality: Beacon

Parcel Location
N 4 Elm St

Owner Name on March 1
Kacherski, Charles (P)

Primary (P) Owner Mail Address
N 4 Elm St
Beacon NY 125080000

Parcel Details

Size (acres): 0.15 Ac Land Use Class: (220) Residential: Two Family Year-Round Residence
File Map: Agri. Dist.: (0)
File Lot #: School District: (130200) Beacon City School District
Split Town

Assessment Information (Current)

| | | | | | |
|---------|----------|-----------------|---------------|-----------------|------------------|
| Land: | Total: | County Taxable: | Town Taxable: | School Taxable: | Village Taxable: |
| \$39000 | \$273300 | \$273300 | \$273300 | \$273300 | \$0 |

| | | | |
|--------------|---------------|------------|--------------------|
| Tax Code: | Roll Section: | Uniform %: | Full Market Value: |
| H: Homestead | 1 | 100 | \$ 273300 |

| | | |
|-------------|--------------|------------|
| Tent. Roll: | Final. Roll: | Valuation: |
| 5/1/2017 | 7/1/2017 | 7/1/2016 |

Last Sale/Transfer

| | | | | | |
|--------------|---------------------|------------|------------|-----------------|--------------|
| Sales Price: | Sale Date: | Deed Book: | Deed Page: | Sale Condition: | No. Parcels: |
| \$275000 | 4/6/2017 3:44:46 PM | 22017 | 3504 | (J) | 1 |

Site Information:

| | | | | |
|-----------------|-----------------|---------------|--------------|----------|
| Site Number: 1 | Sewer Type: | Desirability: | Zoning Code: | Used As: |
| Water Supply: | (3) Comm/public | (2) Typical | CB | () |
| (3) Comm/public | | | | |

Residential Building Information:

| | | | | | |
|----------------|-----------------|-----------------|---------------|------------------|----------------|
| Site Number: 1 | Year Remod.: | Building Style: | No. Stories: | Sfla: | Overall Cond.: |
| Year Built: | 0 | (08) Old style | 2 | 1998 | (3) Normal |
| 1900 | | | | | |
| No. Kitchens: | No. Full Baths: | No. Half Baths: | No. Bedrooms: | No. Fire Places: | Basement Type: |
| 2 | 2 | 0 | 4 | 0 | (4) Full |
| Central Air: | Heat Type: | Fuel Type: | First Story: | Second Story: | Addl. Story: |
| 0 | (3) Hot wtr/stm | (4) Oil | (4) 1101 | (4) 897 | (4) 0 |

ParcelAccess - Property Card

<http://geoaccess.co.dutchess.ny.us/parcelaccess/propertyCard.asp?pa...>

Half Story: 0 3/4 Story: 0 Fin. Over. Gar.: 0 Fin. Attic: 0 Unfin 1/2 Story: 0 Unfin 3/4 Story: 0

Fin Rec Room: 0 No. Rooms: 0 Grade: (C) Average Grade Adj. Pct.: 95

Improvements:

Site Number: 1

Improvement Number: 1

Structure Code:
(RP2) Porch-coverd

| Dim 1: | Dim 2 | Quantity | Year Built |
|--------|-------|----------|------------|
| 0 | 0 | 1 | 1900 |

Condition:
(3) Normal

| Grade | Sq. Ft. |
|-------|---------|
| C | 132 |

Site Number: 1

Improvement Number: 2

Structure Code:
(RG4) Gar-1.0 det

| Dim 1: | Dim 2 | Quantity | Year Built |
|--------|-------|----------|------------|
| 0 | 0 | 1 | 1900 |

Condition:
(3) Normal

| Grade | Sq. Ft. |
|-------|---------|
| C | 200 |

Site Number: 1

Improvement Number: 3

Structure Code:
(LS5) Pool-abv grn

| Dim 1: | Dim 2 | Quantity | Year Built |
|--------|-------|----------|------------|
| 0 | 0 | 1 | 1900 |

Condition:
(3) Normal

| Grade | Sq. Ft. |
|-------|---------|
| C | 314 |

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ParcelAccess - Property Card

<http://geoaccess.co.dutchess.ny.us/parcelaccess/propertyCard.asp?pa...>

3

Final Roll

Parcel Grid Identification #:
130200-5954-27-867918-0000
Municipality: Beacon

Parcel Location
232 Main St

Owner Name on March 1
Bock, Stephen Trustee (P)
Bock, Ricann Trustee (A)

Primary (P) Owner Mail Address
NE 11540 Wing Point Way
Bainbridge Island WA 98110

**Parcel Details**

Size (acres): 23.4 x 146.2 **Land Use Class:** (482) Commercial: Multiple Use or Multipurpose: Downtown Row Type (detached)
File Map: Agri. Dist.: (0)
File Lot #: School District: (130200) Beacon City School District
Split Town

Assessment Information (Current)

| | | | | | |
|--------------------|----------------------|------------------------|---------------------------|------------------------|-------------------------|
| Land: | Total: | County Taxable: | Town Taxable: | School Taxable: | Village Taxable: |
| \$75000 | \$395000 | \$395000 | \$395000 | \$395000 | \$0 |
| Tax Code: | Roll Section: | Uniform %: | Full Market Value: | | |
| N: Non-Homestead | 1 | 100 | \$ 395000 | | |
| Tent. Roll: | Final. Roll: | Valuation: | | | |
| 5/1/2017 | 7/1/2017 | 7/1/2016 | | | |

Last Sale/Transfer

| | | | | | |
|---------------------|----------------------|-------------------|-------------------|------------------------|---------------------|
| Sales Price: | Sale Date: | Deed Book: | Deed Page: | Sale Condition: | No. Parcels: |
| \$0 | 5/23/2007 2:26:30 PM | 22007 | 5617 | (I) | 1 |

Site Information:

| | | | | |
|-----------------------|--------------------|----------------------|---------------------|--------------------|
| Site Number: 1 | | | | |
| Water Supply: | Sewer Type: | Desirability: | Zoning Code: | Used As: |
| (3) Comm/public | (3) Comm/public | () | CB | (D08) Small retail |

Commercial/Industrial/Utility Building Information:

| | | | | |
|-------------------------------------|------------------------|--------------------------|-----------------------------------|----------------------|
| Site Number: 1 | | | | |
| Bldg Sec.: 1 Bldg. Number: 1 | | | | |
| Year Built: | No. Stories: | Gross Floor Area: | Boeck Model | Const. Qual.: |
| 1965 | 3 | 4140 | (0320) 3 sty Str/off/apt load sup | (2) Average |
| Air Cond. %: | Sprinkler %: | Alarm %: | No. Elevator: | Basement sf.: |
| 0 | 0 | 0 | 0 | 0 |
| Number Identical: | Condition Code: | | | |
| 1 | 3 | | | |

ParcelAccess - Property Card

<http://geoaccess.co.dutchess.ny.us/parcelaccess/propertyCard.asp?pa...>

Commercial Rental Information:

Site Number: 1

Use Number: 1

Used As: (D08) Small retail

| | | | | |
|------------------|------------------|-------------------|-------------------|-------------------|
| Unit Code: | Total Rent Area: | Area 1 Bdrms Apts | Area 2 Bdrms Apts | Area 3 Bdrms Apts |
| (01) Square feet | 1380 | 0 | 0 | 0 |

| | | | |
|--------------|------------------|------------------|------------------|
| Total Units: | No. 1 Bdrms Apts | No. 2 Bdrms Apts | No. 3 Bdrms Apts |
| 1 | 0 | 0 | 0 |

Site Number: 1

Use Number: 2

Used As: (A01) Walk-up apt

| | | | | |
|------------------|------------------|-------------------|-------------------|-------------------|
| Unit Code: | Total Rent Area: | Area 1 Bdrms Apts | Area 2 Bdrms Apts | Area 3 Bdrms Apts |
| (01) Square feet | 2760 | 0 | 0 | 0 |

| | | | |
|--------------|------------------|------------------|------------------|
| Total Units: | No. 1 Bdrms Apts | No. 2 Bdrms Apts | No. 3 Bdrms Apts |
| 4 | 0 | 0 | 0 |

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ParcelAccess - Property Card

<http://geoaccess.co.dutchess.ny.us/parcelaccess/propertyCard.asp?pa...>

4

Final Roll

Parcel Grid Identification #:
130200-5954-27-869916-0000
Municipality: Beacon

Parcel Location
234 Main St

Owner Name on March 1
Norman , Harry P (P)

Primary (P) Owner Mail Address
N 165 Elm St
Beacon NY 125080000

**Parcel Details**

Size (acres): .09 Ac (C)
File Map:
File Lot #:
Split Town

Land Use Class: (450) Commercial: Retail Services
Agri. Dist.: (0)
School District: (130200) Beacon City School District

Assessment Information (Current)

| | | | | | |
|--------------------------------------|---------------------------------|------------------------------------|--|------------------------------------|--------------------------------|
| Land: \$110000 | Total: \$436500 | County Taxable: \$436500 | Town Taxable: \$436500 | School Taxable: \$436500 | Village Taxable: \$0 |
| Tax Code: N: Non-Homestead | Roll Section: 1 | Uniform %: 100 | Full Market Value: \$ 436500 | | |
| Tent. Roll: 5/1/2017 | Final. Roll: 7/1/2017 | Valuation: 7/1/2016 | | | |

Last Sale/Transfer

| | | | | | |
|----------------------------|------------------------|---------------------------|---------------------------|-------------------------------|--------------------------|
| Sales Price: \$0 | Sale Date: 0 | Deed Book: 1508 | Deed Page: 0504 | Sale Condition: () | No. Parcels: 0 |
|----------------------------|------------------------|---------------------------|---------------------------|-------------------------------|--------------------------|

Site Information:

| | | | | | |
|---|---------------------------------------|------------------------------------|---------------------------|---------------------------------------|--|
| Site Number: 1 | | | | | |
| Water Supply: (3) Comm/public | Sewer Type: (3) Comm/public | Desirability: (3) Normal | Zoning Code: CB | Used As: (D08) Small retail | |

Commercial/Industrial/Utility Building Information:

| | | | | |
|-------------------------------------|-----------------------------|----------------------------------|---|-------------------------------------|
| Site Number: 1 | | | | |
| Bldg Sec.: 1 Bldg. Number: 1 | | | | |
| Year Built: 1930 | No. Stories: 1 | Gross Floor Area: 2980 | Boeck Model (0109) 1 sty apt load sup | Const. Qual.: (2) Average |
| Air Cond. %: 0 | Sprinkler %: 0 | Alarm %: 0 | No. Elevator: 0 | Basement sf.: 0 |
| Number Identical: 0 | Condition Code: 3 | | | |

ParcelAccess - Property Card

<http://geoaccess.co.dutchess.ny.us/parcelaccess/propertyCard.asp?pa...>

Commercial Rental Information:

Site Number: 1

Use Number: 1

Used As: (D08) Small retail

| | | | | |
|------------------|------------------|-------------------|-------------------|-------------------|
| Unit Code: | Total Rent Area: | Area 1 Bdrms Apts | Area 2 Bdrms Apts | Area 3 Bdrms Apts |
| (01) Square feet | 2860 | 0 | 0 | 0 |

| | | | |
|--------------|------------------|------------------|------------------|
| Total Units: | No. 1 Bdrms Apts | No. 2 Bdrms Apts | No. 3 Bdrms Apts |
| 1 | 0 | 0 | 0 |

Site Number: 1

Use Number: 2

Used As: (F05) Row storage

| | | | | |
|------------------|------------------|-------------------|-------------------|-------------------|
| Unit Code: | Total Rent Area: | Area 1 Bdrms Apts | Area 2 Bdrms Apts | Area 3 Bdrms Apts |
| (01) Square feet | 120 | 0 | 0 | 0 |

| | | | |
|--------------|------------------|------------------|------------------|
| Total Units: | No. 1 Bdrms Apts | No. 2 Bdrms Apts | No. 3 Bdrms Apts |
| 1 | 0 | 0 | 0 |

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ParcelAccess - Property Card

<http://geoaccess.co.dutchess.ny.us/parcelaccess/propertyCard.asp?pa...>

5

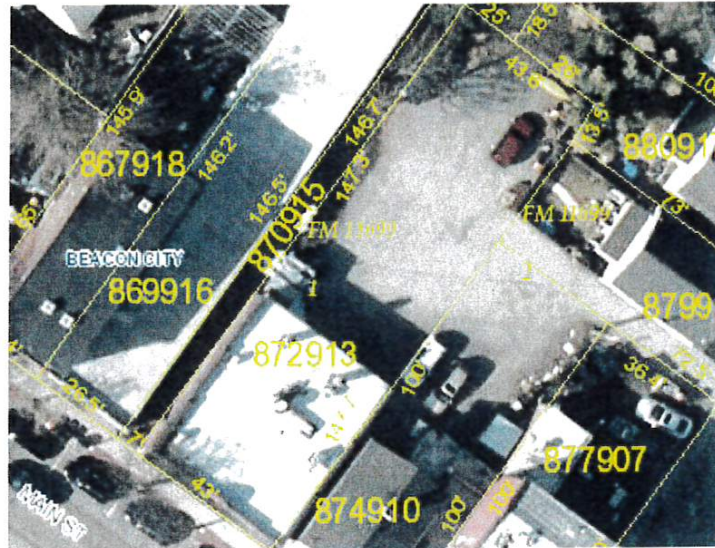
Final Roll

Parcel Grid Identification #:
130200-5954-27-872913-0000
Municipality: Beacon

Parcel Location
236-240 Main St

Owner Name on March 1
240 Main St Beacon LLC , (P)

Primary (P) Owner Mail Address
E 18 22nd St
New York NY 125080000

Parcel Details

Size (acres): .15 ac (s) Land Use Class: (484) Commercial: Multiple Use or Multipurpose: One Story Small Structure
File Map: 11699 Agri. Dist.: (0)
File Lot #: 1 School District: (130200) Beacon City School District
Split Town

Assessment Information (Current)

| | | | | | |
|------------------|---------------|-----------------|--------------------|-----------------|------------------|
| Land: | Total: | County Taxable: | Town Taxable: | School Taxable: | Village Taxable: |
| \$95000 | \$315300 | \$315300 | \$315300 | \$315300 | \$0 |
| . | | | | | |
| Tax Code: | Roll Section: | Uniform %: | Full Market Value: | | |
| N: Non-Homestead | 1 | 100 | \$ 315300 | | |
| . | | | | | |
| Tent. Roll: | Final. Roll: | Valuation: | | | |
| 5/1/2017 | 7/1/2017 | 7/1/2016 | | | |

Last Sale/Transfer

| | | | | | |
|--------------|----------------------|------------|------------|-----------------|--------------|
| Sales Price: | Sale Date: | Deed Book: | Deed Page: | Sale Condition: | No. Parcels: |
| \$1 | 11/3/2008 3:03:02 PM | 22008 | 6863 | (B) | 1 |

Site Information:

| | | | | |
|-----------------|-----------------|---------------|--------------|--------------------|
| Site Number: 1 | | | | |
| Water Supply: | Sewer Type: | Desirability: | Zoning Code: | Used As: |
| (3) Comm/public | (3) Comm/public | () | CB | (D08) Small retail |

Commercial/Industrial/Utility Building Information:

| | | | | |
|------------------------------|-----------------|-------------------|-----------------------------|---------------|
| Site Number: 1 | | | | |
| Bldg Sec.: 1 Bldg. Number: 1 | | | | |
| Year Built: | No. Stories: | Gross Floor Area: | Boeck Model | Const. Qual.: |
| 1970 | 1 | 2100 | (0312) 1 sty store load sup | (2) Average |
| . | | | | |
| Air Cond. %: | Sprinkler %: | Alarm %: | No. Elevator: | Basement sf.: |
| 0 | 0 | 0 | 0 | 0 |
| . | | | | |
| Number Identical: | Condition Code: | | | |
| 1 | 3 | | | |

ParcelAccess - Property Card

<http://geoaccess.co.dutchess.ny.us/parcelaccess/propertyCard.asp?pa...>

Commercial Rental Information:

Site Number: 1

Use Number: 1

Used As: (D08) Small retail

| | | | | |
|------------------|------------------|-------------------|-------------------|-------------------|
| Unit Code: | Total Rent Area: | Area 1 Bdrms Apts | Area 2 Bdrms Apts | Area 3 Bdrms Apts |
| (01) Square feet | 2100 | 0 | 0 | 0 |

| | | | |
|--------------|------------------|------------------|------------------|
| Total Units: | No. 1 Bdrms Apts | No. 2 Bdrms Apts | No. 3 Bdrms Apts |
| 1 | 0 | 0 | 0 |

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<http://geoaccess.co.dutchess.ny.us/parcelaccess/propertyCard.asp?pa...>



9/11/2017, 1:04 PM

ParcelAccess - Property Card

<http://geoaccess.co.dutchess.ny.us/parcelaccess/propertyCard.asp?pa...>

Commercial Rental Information:

Site Number: 1

Use Number: 1

Used As: (C01) Restaurant

| | | | | |
|------------------|------------------|-------------------|-------------------|-------------------|
| Unit Code: | Total Rent Area: | Area 1 Bdrms Apts | Area 2 Bdrms Apts | Area 3 Bdrms Apts |
| (01) Square feet | 1538 | 0 | 0 | 0 |

| | | | |
|--------------|------------------|------------------|------------------|
| Total Units: | No. 1 Bdrms Apts | No. 2 Bdrms Apts | No. 3 Bdrms Apts |
| 1 | 0 | 0 | 0 |

Site Number: 1

Use Number: 2

Used As: (A01) Walk-up apt

| | | | | |
|-----------------|------------------|-------------------|-------------------|-------------------|
| Unit Code: | Total Rent Area: | Area 1 Bdrms Apts | Area 2 Bdrms Apts | Area 3 Bdrms Apts |
| (02) Apartments | 690 | 690 | 0 | 0 |

| | | | |
|--------------|------------------|------------------|------------------|
| Total Units: | No. 1 Bdrms Apts | No. 2 Bdrms Apts | No. 3 Bdrms Apts |
| 1 | 1 | 0 | 0 |

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An aerial photograph of a residential area with yellow dashed lines delineating property boundaries. Two main lots are highlighted. The lot on the left is labeled "874910" in large yellow numbers, with "BEACON CITY" written below it in blue. Its dimensions are marked as "147' 7\"

9/11/2017, 1:05 PM

ParcelAccess - Property Card

<http://geoaccess.co.dutchess.ny.us/parcelaccess/propertyCard.asp?pa...>

Commercial Rental Information:

Site Number: 1

Use Number: 1

Used As: (C06) Nbhd tavern

| | | | | |
|--------------------------------|--------------------------|------------------------|------------------------|------------------------|
| Unit Code: (01) Square feet | Total Rent Area: 1800 | Area 1 Bdrms Apts 0 | Area 2 Bdrms Apts 0 | Area 3 Bdrms Apts 0 |
|--------------------------------|--------------------------|------------------------|------------------------|------------------------|

| | | | |
|-------------------|-----------------------|-----------------------|-----------------------|
| Total Units: 1 | No. 1 Bdrms Apts 0 | No. 2 Bdrms Apts 0 | No. 3 Bdrms Apts 0 |
|-------------------|-----------------------|-----------------------|-----------------------|

Site Number: 1

Use Number: 2

Used As: (B06) Room/dorm

| | | | | |
|--------------------------|--------------------------|------------------------|------------------------|------------------------|
| Unit Code: (03) Rooms | Total Rent Area: 4045 | Area 1 Bdrms Apts 0 | Area 2 Bdrms Apts 0 | Area 3 Bdrms Apts 0 |
|--------------------------|--------------------------|------------------------|------------------------|------------------------|

| | | | |
|--------------------|-----------------------|-----------------------|-----------------------|
| Total Units: 20 | No. 1 Bdrms Apts 0 | No. 2 Bdrms Apts 0 | No. 3 Bdrms Apts 0 |
|--------------------|-----------------------|-----------------------|-----------------------|

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226 Main Street
226 Main Street, LLC

Shadow Impact Study



September 15, 2017



Introduction:

This study has been prepared to respond to public comments at the public hearing that the proposed rear setback variance, reducing the permitted setback from 25 feet to 10 feet, would result in adverse effects of “shadows” on nearby buildings, including 4 Elm Street and 17 Church Street. It presents the findings of an analysis of the difference in the shadows cast by a new building proposed at 226 Main Street in the City of Beacon under both a 25-foot setback and 10-foot setback scenario.

Shadows are variable, and depend on factors such as the height and size of buildings, proximity of buildings to each other, intervening features such as topography and vegetation and the angle of the sun. The angle of the sun varies based on the rotation of the earth (i.e. time of day) and it’s elliptical orbit (i.e. change in seasons). The longest shadows are cast during the winter months, and the shortest shadows are cast during the summer months.

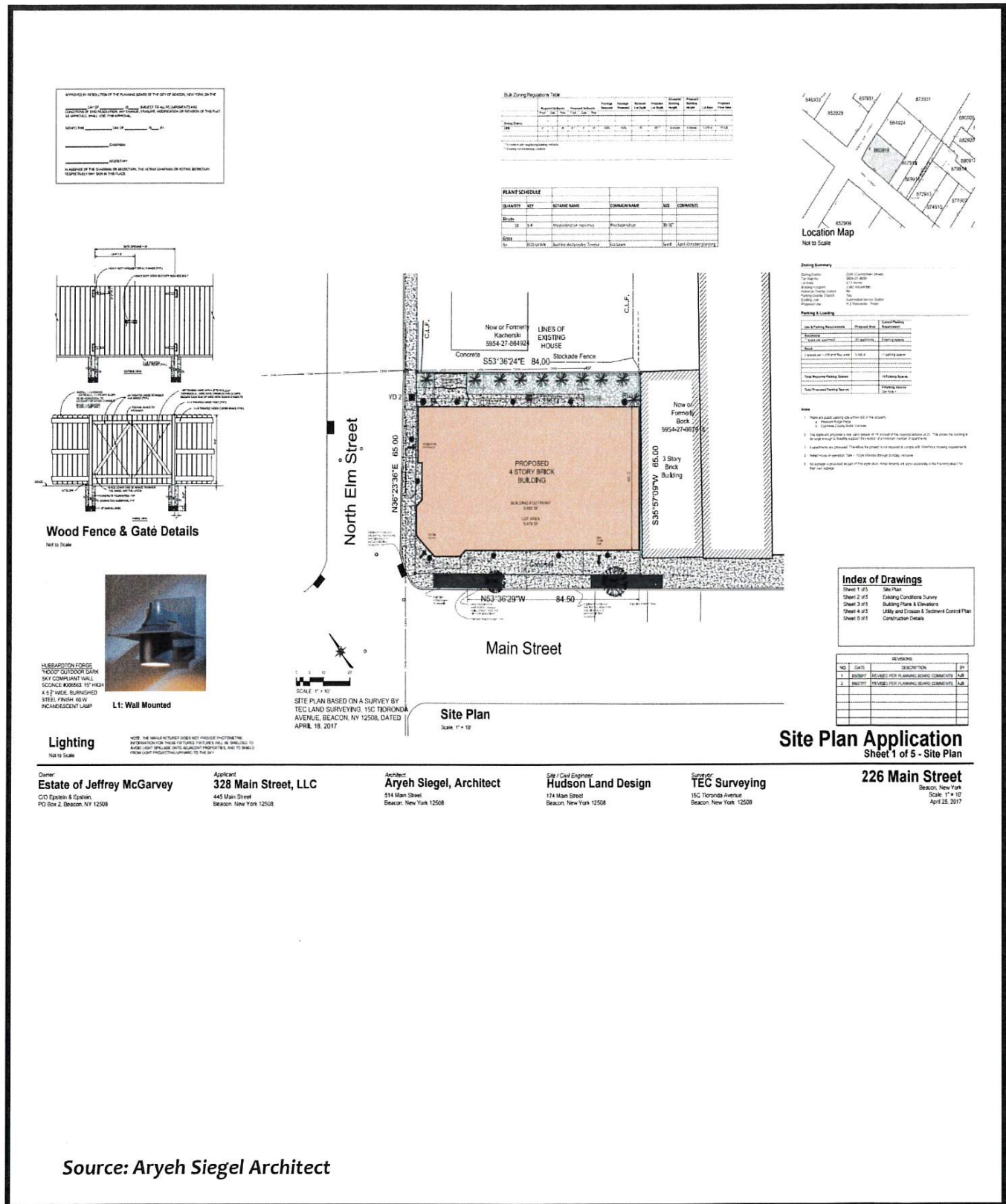
Proposed Project and Setting:

226 Main Street, L.L.C. is proposing the construction of a new 4-story mixed-use building, consisting of first floor retail space, and 8 apartments on the second through fourth floors. (Figure 1 – Proposed Site Plan and Figure 2 Building Floor Plans & Elevations). The height of the proposed building is zoning-compliant. The issue before the Zoning Board is whether to grant an area variance to reduce the rear setback from 25 feet to 10 feet. The Zoning Board has previously granted variances to other buildings on Main Street for similar, or greater, setback variances.

The proposed building is located on Main Street in the City of Beacon, an urban setting, in the CMS zoning district. In such a setting, it is common for buildings to create shadows on nearby buildings. Such shadows are in constant motion, and vary according to weather. Cloud cover and overcast skies eliminate shadows. There are no shadow sensitive receptors immediately surrounding the site, and the existing developed “Main Street” character of the surrounding neighborhood, already results in shadows from existing buildings, which is typical in such a setting.

Methodology:

The analysis presented herein demonstrates the comparable impacts of the project as currently proposed by the applicant, which is setback 10’ off the northern property line, compared to a project that is setback 25’ off the northern property line. In particular, the analysis has been designed to document the impact of project related shadows on two nearby residential properties; 4 North Elm Street and 17 Church Street, which are both located to the north of the subject site.



Scale: N.T.S.



Figure 1
Site Plan





226 Main Street
Beacon, New York
Scale: 1" = 10'
April 25, 2017

This shadow study is based on a computer generated 3-dimensional (3D) model of the project area. Two alternative 3D architectural models, representing the 25-foot setback and 10-foot setback scenarios, were geo-located to their precise location within the project area model in the software program SketchUp using Google Earth. Data on solar declination (angle) and position and time of day on exact dates were calculated by SketchUp.

The accepted framework of shadow analysis is to illustrate the potential shadows at the summer and winter solstice, and at the vernal and autumnal equinoxes. On June 21st at solar noon, aka the summer solstice, the sun reaches its highest point in the sky for the entire year. On December 21st at solar noon, aka the winter solstice, the sun is at its lowest midday elevation in the sky for the entire year. On March 21st and September 21st aka the vernal and autumnal equinoxes, daylight and darkness each last for 12 hours.

These four key dates are the accepted norm, since they show the range of the effects of the changing solar declination, which is the primary factor in determining shadow length. The longest shadows are cast on December 21st at solar noon, when the sun is at its lowest midday elevation in the sky for the entire year. All times are referenced as standard or daylight savings time, in keeping with standard practice. The 21st of each month is used as the standardized approximation. Depending on the calendar year, these dates may be +/- two (2) days.

The attached graphics illustrate the length of shadows in these four "snapshots" which illustrate the range of shadow lengths. To further emphasize the shadows cast by the proposed building; they have been highlighted with a yellow outline.

It must be emphasized that these graphics show a "worst-case" scenario, since they illustrate the maximum shadow, and do not account for important factors, such as (1) the fact that shadows are always changing due to cloud cover, which is in turn influenced by wind, and (2) that overcast days eliminate shadows altogether. The graphics also show the isolated effects of only a single building's shadow, ignoring the effect of the rest of the built environment. Thus, shadow studies tend to exaggerate the effect of the shadows, because they lack the overall context. Additionally such studies tend to create a false impression that a "shadow" is necessarily a negative effect. Shadows are very common in an urban built environment. In the summer, they become the "shade" that is welcomed as relief from summer heat. Again, the fleeting and changing nature of the shadows is not apparent in the "snapshot" approach, so the reviewer must keep in mind the overall context of the changing environment.

Analysis:

A time of day was selected for each of the 4 dates to demonstrate the "worst case" shadow impact on the properties situated to the north of the subject site; 3:00 PM for 3/21, 9/21 and 12/21 and 2:00 PM for 6/21.

For all dates, the most significant shadow effect occurs in the early morning and late afternoon, when the sun is lowest in the sky and the corresponding shadows are lengthiest. However, in these instances, the building's shadows would be cast to the east or west, and would not impact or be anywhere near 4 North Elm Street or 17 Church Street, which are located to the north.

For each date, two images are presented. The top image depicts the project as proposed by the applicant, with a 10' setback, and the associated shadow impacts. The bottom image depicts the shadow impacts of a modified project with a 25' setback.

Vernal (Spring) Equinox (Exhibit 1):

Image A – 10' Setback – At 3:00 in the afternoon, the proposed building will cast a shadow across the rear two-thirds of the adjacent residence at 4 North Elm Street. The shadow would extend across the building and onto the adjacent property to the north, and would include the entire rear yard.

Image B – 25' Setback – At 3:00 in the afternoon, shadows would still extend entirely across the 4 North Elm Street residence, but would extend approximately across the middle of the building instead of the rear two-thirds of the building, and onto the adjacent property to the north. The entire rear yard would continue to be cast in shadow.

Summer Solstice (Exhibit 2):

Image A – 10' Setback - At 2:00 in the afternoon, the proposed building would cast a shadow that would extend approximately 10' up the southern wall of the residence at 4 North Elm Street, and cross the southern half of the rear yard. The shadow does not reach the roof of the residence on 4 North Elm Street, nor cross any of the building.

Image B – 25' Setback – The proposed building would cast a shadow that extends along the subject site (226 Main Street) but does not extend onto the 4 North Elm Street property.

Autumnal Equinox (Exhibit 3):

Image A – 10' Setback – The shadows created during the Autumnal Equinox are quite similar to those created during the Spring Equinox. The shadows cast by the proposed building would cross the rear two-thirds of the building at 4 North Elm Street, and the entire rear yard. The shadow would extend onto the adjacent property to the north

Image B – 25' Setback – The shadow cast by the building would cross the rear 1/3 of the building and would continue to extend across the entire width of that portion of the building, the entire rear yard, and onto the adjacent property to the north.

Winter Solstice (Exhibit 4):

Image A – 10' Setback – At 3:00 in the afternoon, the proposed building would cast a long shadow to the north and slightly east, crossing all of the 4 North Elm Street property and just reaching the corner of the building at 17 Church Street. This is the only time of the year, and corresponding time of the day, when a shadow cast by the proposed building would reach 17 Church Street.

Image B – 25' Setback – The shadow cast by the building is similar in length. It would cross the 4 North Elm Street Property and would still reach the corner of 17 Church Street, and its side yard.

Summary & Findings:

The comparison of the shadows in the 10-foot and 25-foot scenarios confirms that the grant of the setback variance would not result in any perceptible change in shadow impacts on adjacent properties. Solar declination, rather than building footprint, is the dominant factor in determining shadow pattern. Moving the footprint of a building would not necessarily result in a modification to shadow length because the proportional relationship between building location and shadow length is primarily dependant on solar declination. Increasing a setback by 1 foot would not result in a corresponding decrease in shadow length by a similar distance.

The shadows which would be cast by the building at the requested 10 foot rear setback would be entirely consistent with the shadows cast by other buildings along Main Street, and are entirely typical of the commercial "Main Street" setting. Nor would any sensitive shadow receptors be adversely impacted.

Shadows from the new building will cross portions of the 4 North Elm property only at very limited time periods, primarily during the mid afternoon, as the sun travels past the site from east to west. As graphically depicted herein, changing the setback of the proposed building from 10' to 25' would have a negligible impact on reducing shadow impacts on that property. The property would be similarly cast in shadow in either alternative. The only instance where the shadow crosses the 4 North Elm property line under the 10-foot setback scenario, but not in the 25-foot scenario, is at the height of the summer, where shadows are a welcome respite from the summer heat. Moreover, the shadow in that situation is extremely minor, and does not even reach the roof.

There is no material shadowing of 17 Church Street. No shadows reach the property in the growing season. The flowering plantings located along the wrought iron fencing

surrounding the site would not be impacted by new shadows cast by the proposed building. Shadows would reach a small corner of 17 Church Street only in very limited circumstances, with setback either 10' or 25', only during the very late afternoon, during the shortest days of the year. This impact consists of a shadow on the southeast corner of the building and more shade along the grassy lawn area on the east side of the building. This impact is at the height of winter, outside the growing season. This is a time of year when shadows from all buildings are longest, and also when the sky is most often overcast, a situation which eliminates shadows.

In conclusion, the requested rear setback variance does not create any perceptible difference in shadow impact as compared to the shadows to be created by a 25-foot setback, and there is no basis to deny the requested setback variance based on such alleged impacts.

EXHIBIT 1
March 21
Vernal Equinox
3:00 PM

Image A – 10' Setback



Image B – 25' Setback

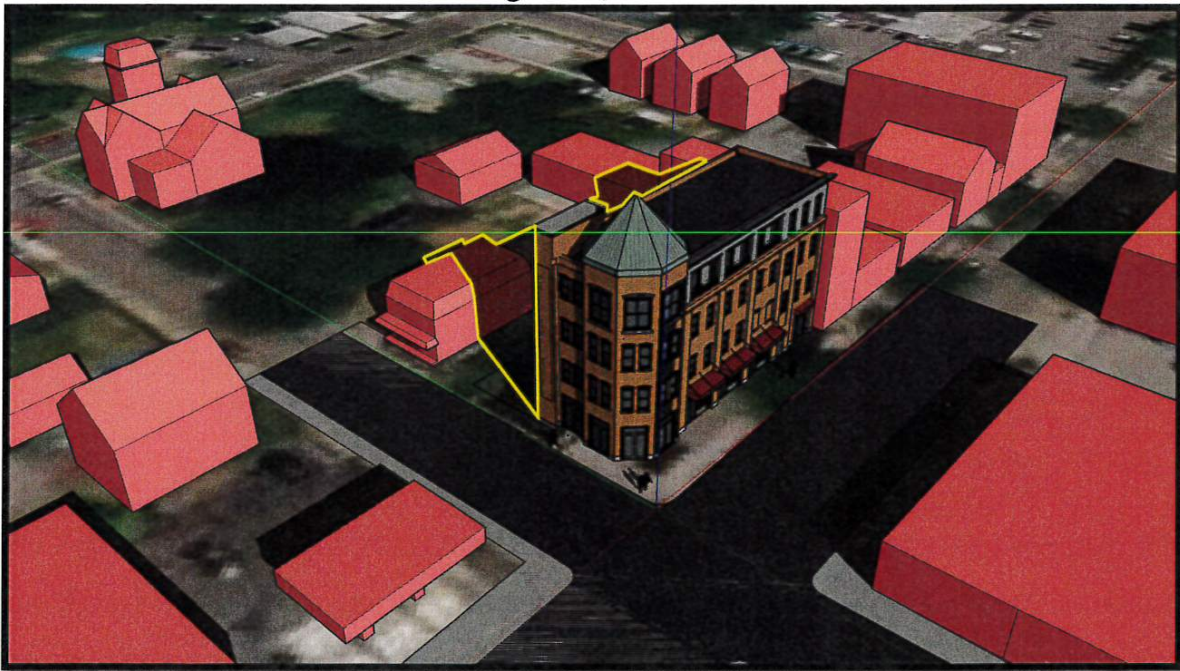


EXHIBIT 2
June 21
Summer Solstice
2:00 PM

Image A – 10' Setback



Image B – 25' Setback



EXHIBIT 3
September 21
Autumnal Equinox
3:00 PM

Image A – 10' Setback



Image B – 25' Setback

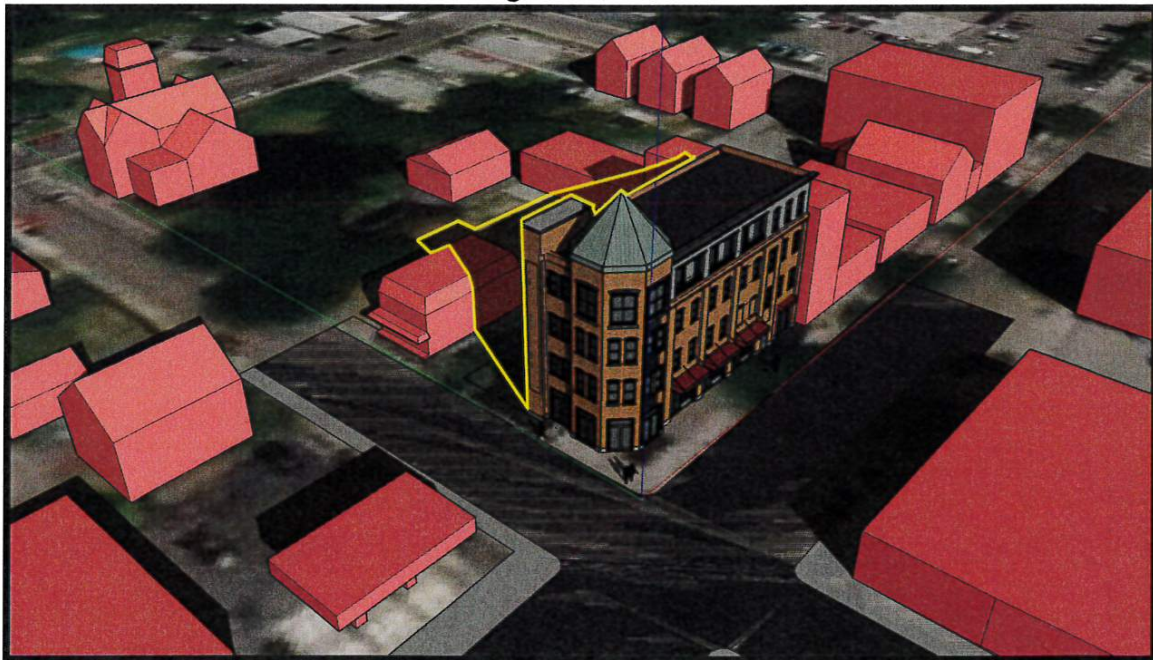


EXHIBIT 4
December 21
Winter Solstice
3:00 PM

Image A – 10' Setback

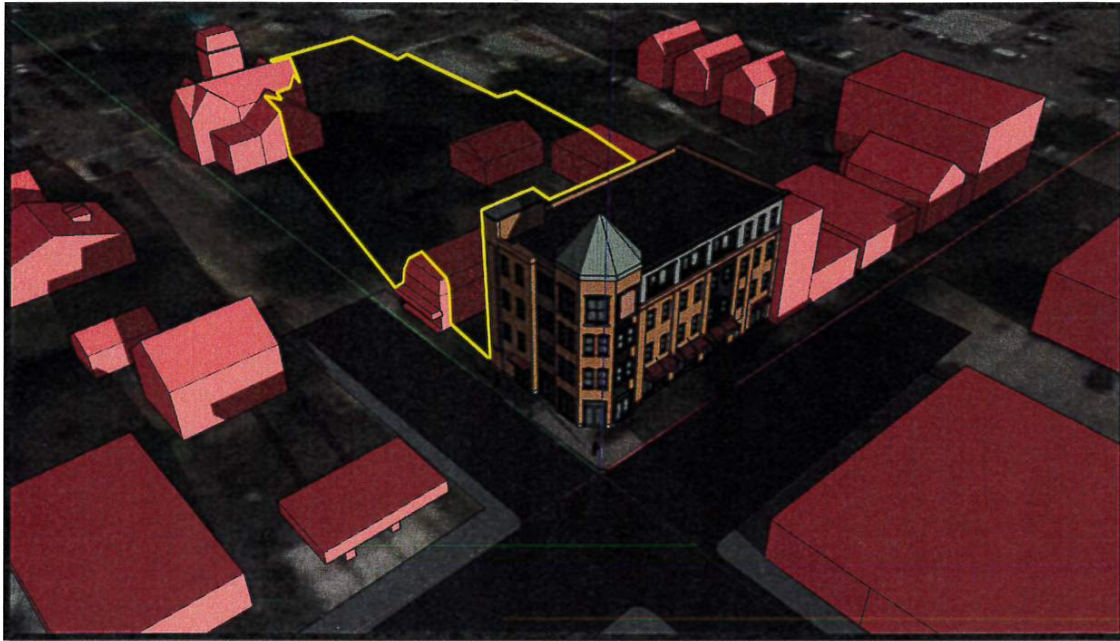


Image B – 25' Setback

