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December 22, 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: Supplemental Submission – Height Area Variance for Beacon HIP Lofts
Premises: 39 Front Street, Beacon NY 12508 (SBL: 6055-04-590165)

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

Beacon HIP Lofts (the “Project”) is an ongoing, phased, mixed-use redevelopment of an old industrial site, which is approximately 8.74 acres in size and is located within the Light Industrial (“LI”) Zoning District. The above height variance application was filed with the ZBA in August, as part of the amended application to reconfigure the site plan. For the past several months the Planning Board, as Lead Agency under SEQR, has been conducting the environmental review, which is a necessary prerequisite to any other permits. Last month, the Planning Board determined that the project would not have a significant adverse effect on the environment, and adopted a SEQR Negative Declaration confirming that determination. A copy of the Negative Declaration is attached (Exhibit A).

Therefore, the height variance application is now back before the ZBA for hearing and determination. This letter is submitted in advance of the public hearing to be held on Tuesday, January 17, 2018, to provide further information demonstrating how the requested area variance meets the applicable standards for the issuance of variances.

Project Background

The plan to redevelop the HIP Lofts received initial approvals several years ago to restore the old factory complex at Groveville. As part of those approvals, the ZBA granted a building height variance (permitting 4 stories/42 ft.) for then-proposed Building 9A. The LI District provides for 3 stories/35 ft height. The approved project included the construction of Building 9A, a 4-story building featuring 24 artist live/work lofts, renovate Building 16 to house 36 artist live/work units, and retain the existing commercial laundry use of Buildings 18, 24, and 25. Phase 1 of the Project was completed in 2013, and Phase 2 construction of Building 11 has also been completed.

However, engineering tests subsequently revealed that Building 16 is structurally unsound, and cannot be renovated in accordance with the original plans. Therefore, the current proposal is to



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construct a new Building 16, with 87 artist live/work units. The proposed revised project would increase the number of artist live/work units by 29 from the original proposal (for a total of 172 live/work apartments), and would eliminate of the commercial laundry use and building 9A.

Proposed Building Design: Height Variance

The revised plans seek to maximize retention of open space and optimize circulation around the buildings, while designing the new Building 16 to fit in with the existing mill complex. Building 16 (“the proposed building”) is proposed to be a taller building, nestled behind the existing community gardens and within the central portion of the building complex. Submitted herewith is Exhibit B, a series of rendered elevations and photographs of other buildings in the HIP Lofts Mill Complex. These drawings and photographs show the visual impact of the requested height variance for the proposed building.

The height limit in the LI District is 3 stories/35 feet (Bulk schedule 223-17 (C)). The applicant requests a variance for the proposed building to allow 4 stories (the fourth floor being set back from the main roof line), and a height of 52 feet to the main roof line and 66 feet to the upper roof line, most of which is set back, as shown in the rendered elevations in Exhibit B.

While the variance appears large on the surface, it is important to note that the appearance of height in the proposed building is substantially reduced by several factors. First, the property sits in a valley, at an elevation approximately 30 feet lower than Route 52, and also lower than the elevation of the City Water Department on the opposite side of the Creek. Submitted herewith is Exhibit C, a Section drawing which shows the change in elevation. Second, the proposed new building is placed behind other buildings in the central part of the site, thus providing distance from off-premises viewpoints, limiting appearance of height. Thirdly, the proposed fourth floor of the building is largely set-back from the building line, making it appear less substantial from a distance, and rendering it not visible from the ground level near the building. Fourth, the building design incorporates varying roof lines in the various portions of the building, so it fits in with similar variations in roof line throughout the Groverville Mill complex.

Analysis of the 5 Factors for Area Variances

Pursuant to N.Y. Gen. City Law § 81-b and City of Beacon Zoning Code § 223-55(C)(2), the proper test for area variances is a balancing of the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In applying the overall balancing test, the Board considers 5 specific factors. We hereby submit an analysis of these factors for the Board’s consideration:

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

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No undesirable change will be produced in the character of the neighborhood and no detriment to nearby properties will be created by the granting of the area variance. The proposed height is not out of character with the existing mill complex, since the complex already contains a building which is approximately 67 ft. high. Moreover, the proposed new building (at its main roof line at 52 feet) is only 6 feet taller than the existing building that it will replace. The fourth story of the proposed building (66 ft. at highest point) is largely set back 10 ft. from the edge of the main building walls, so that this tallest portion minimizes its visual impact. The scale of the proposed building is in keeping with the overall massing of the other buildings (see Exhibit B). The architectural style of the building is in keeping with the existing buildings.

Furthermore, the proposed building is located at the center of the property, and a previously approved 47 foot-tall building at the property line along Fishkill Creek is being eliminated. Relocating the units to a more central portion of the property greatly reduces any potential visual impacts of the Project as seen from across Fishkill Creek. The visual impacts on properties located across Fishkill Creek will be negligible, as those properties are densely vegetated with mature trees, and the only building directly across the river is a City Water Department industrial building. Therefore, the proposed height variance will have no negative effects on neighborhood character or surrounding properties.

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;*

There is no other feasible method for the Applicant to pursue besides requesting the building height variance. The range of appropriate alternatives is limited by two standards: first, the alternative must still provide the benefit sought by the Applicant, and second, it must be feasible for the Applicant to pursue. The Applicant is working within an existing developed site and context of an historic industrial site. The Applicant has already successfully redeveloped Building 11 on the property as loft apartments with mezzanines. Building 11 is two stories tall, with 20 ft. ceilings. The minimum ceiling height to permit sufficient space for a mezzanine is 17 ft. The proposed building is designed to incorporate the units that were originally to be housed in Building 9A, which is being eliminated. Together, these circumstances require that the proposed building be constructed at a taller height than originally proposed, and the requested variance is the minimum variance that can accommodate the requested building program.

3. *Whether the requested area variance is substantial; and as a related question, whether the variance is the minimum necessary and adequate to achieve the benefit to the applicant while preserving the health, safety, and welfare of the neighborhood;*

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While the requested variance appears substantial on the surface, consideration of the facts and circumstances in the instant Application demonstrates that the requested height variance is not substantial in its effect. “Substantiality” is not solely a matter of the mathematical proportion of the permitted maximum/minimum that an Applicant is seeking to vary. Rather, the important test is always whether the variance will actually have a detrimental effect on the neighborhood.¹

The requested height variance is not substantial in its effect, when the industrial context of the site, the topography, the surrounding uses, and relative heights of existing and proposed buildings are considered. The tallest building located on the site is approximately 67 ft. high, which is 1 ft. taller than the highest portion of the proposed Building (66 ft). The proposed building has also been thoughtfully designed with a top-story setback to minimize the visual impact of its height to the greatest possible extent while still being able to accommodate the artist live/work units originally proposed for Building 9A. The other features that minimize the apparent height of the proposed building are stated above. When all these factors are considered, the requested height variance is not substantial in its effect.

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 height variance will not have an adverse effect or impact 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 the granting of this variance. In fact, the removal of the commercial laundry and substitution of artist live/work units decreases the intensity of the site’s water use. The consolidation of the artist live/work units into the proposed building also permits tighter clustering of the development, resulting in more open space. Further, the building height is in keeping with the industrial character of the other onsite buildings, and the architectural design carefully minimizes visual impact (Exhibit B). The Planning Board, as lead agency, has confirmed that there will be no adverse impacts on the physical or environmental conditions in the neighborhood or district with its decision to issue a negative declaration, finding that the entire action has no potential to cause any significant adverse environmental impacts. (Exhibit A)

¹ See Aydellott 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).

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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 alleged difficulty was not self-created, but arises out the unanticipated engineering problems in the existing building which prevent its use, the design constraints created by the existing configuration of buildings, and the desire to maximize circulation and open space around the complex. The Applicant's intent is to stay true to the character of the existing industrial buildings, while retaining the artist live/work units originally slated for Building 9A.

However, even if the hardship *were* self-created, this factor does not alone justify denial of an area variance under N.Y. Gen. City Law § 81-b(4)(b)(v).²

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, 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 necessary 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.

The Applicant looks forward to further discussions with the Zoning Board of Appeals meeting on January 17, 2018. Should there be any questions in the meantime, I am available at my direct line 914-872-1941.

Very truly yours,

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

Jennifer L. Van Tuyl

Attachments

cc: Aryeh J. Siegel, AIA

² See Matter of Daneri v. Zoning Bd. of Appeals of Town of Southold, 98 A.D.3d 508 (self-created nature of difficulty is not preclusive of the ability to obtain an area variance).