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December 22, 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: **River Ridge Views, LLC –application for area variance for “Minimum distance between facing buildings” (bulk schedule for RD- 7.5 District)**
Parcel L, Beacon, New York 12508 (SBL: 5954-34-630770, 637879 and 649885)

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

Documents submitted in support of application:

The Applicant respectfully requests submits the following documents in support of its Application for a variance from the required 70 feet separation between buildings so as to authorize the proposed building layout, which provides a minimum separation of 18.9 feet at the corner between Building Group 2 and Building Group 3.

Enclosed are the following:

1. Application for variance.
2. \$250 application fee.
3. Entity disclosure form and related materials.
4. Site Plan showing proposed 18-unit single-family townhouse project, located on Wolcott, just south of the Reformed Church, on property known as “Parcel L” (**Exhibit A**).
5. Rendered elevations which show the appearance of the proposed project from all sides (**Exhibit B**).
6. Materials discussing impact of project on community character, and showing how the proposed layout has been designed to enhance community character to the maximum extent possible (**Exhibit C—“Project Materials Relating to Community Character”—separately submitted**).
7. Alternate layouts considered at the Planning Board (**Exhibit D**).

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Brief Factual Summary of Application:

River Ridge Views, LLC has applied for Site Plan approval to build 18-unit single-family townhouse Project (the “Project”) (see **Exhibit A**). The appearance of the Project is shown in the rendered elevations provided in **Exhibit B**.

The proposed building layout serves a particular purpose: it provides maximum protection and privacy to the Reformed Church immediately to the north because it presents a finished appearance toward the Church, blocking views of the private service areas behind the townhouses. It also provides maximum privacy to Hammond Plaza to the southwest, by keeping the River Ridge townhouses at the higher elevation. Representatives of the Church and Hammond Plaza have appeared at the Planning Board and supported the proposed building layout. This layout provides an attractive and finished view to the streetscape and the neighborhood, which is located within the Historic Landmark Overlay District (“HLOD”).

The proposed layout requires one variance. Building Group 2 and Building Group 3 on the Site Plan are placed in the shape of an “L.” In the area closest to the inside corner of the “L,” the buildings do not meet the minimum building separation, which is 70 feet (“twice the height of the facing buildings”).¹ At its narrowest point, the proposed separation between the buildings is 18.9 feet (i.e., at the inner “corner” of the “L”). But this minimal separation extends only for a short distance. The separation grows increasingly wider along the wings of the “L,” until the minimum separation distance of 70 feet is met. Overall, the Project has a very open feel, and preserves substantial portions of the site as open space.

At the hearing, the Applicant will describe the factual nature of the Application in further detail.

THE LEGAL TEST FOR AREA VARIANCES

As background for our appearance, the following is a brief summary of how our Application meets the applicable balancing test for issuance of an area variance.

The overall legal test is a balancing test: 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.² If the benefit to the Applicant outweighs the actual harm to the community, the Applicant is legally entitled to receive the area variance. The law does not require an Applicant for an area variance to establish any “hardship.” The hardship standard applies only to use variances.

¹ The small unmarked “connector” between Building Group 2 and Building Group 2 is an accessory building, which has no effect on the separation requirement.

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



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In this case, the benefit to the Applicant of the proposed layout is actually shared by the community. There is no detriment to the community. In fact, the proposed layout provides the neighbors which a much better view of the Property than they would otherwise have.

5 FACTOR ANALYSIS OF THE BUILDING SEPARATION VARIANCE

In applying the overall balancing test, five particular factors must also be considered.

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.

Community character has been studied at length during the Planning Board review. (see **Exhibit C**). 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 Project lies within the HLOD and is in proximity to historic resources, including the National Register-listed Old Dutch Reformed Church. The Project is also located within the Waterfront Revitalization Management Area, which requires preservation of significant viewsheds, of which one of the identified viewing points is at Rombout Avenue and Route 9D, directly across the street from the entrance of the Project. Finally, the rear of the Project is adjacent to Hammond Plaza, an existing multifamily residential complex.

The Project has been sensitively designed to minimize the impact on all its neighbors, and the proposed layout is that which is most compatible with community character. The layout is favored by the Project's neighbors – including residents of Hammond Plaza and the representative of the Old Dutch Reformed Church – because it promotes both a neat neighborhood appearance and privacy for neighboring properties.

The proposed “L-shape” pattern of building layout is not foreign to the neighborhood. In fact, the proposed layout is very similar to that of Hammond Plaza, which also presents an “L-shape” angle at the intersection of its eastern and northern building. The layout of Hammond Plaza is shown on the Site Plan (**Exhibit A**) as well as in the Neighborhood Map (part of **Exhibit C**). The narrowest point of River Ridge's “corner” separation (18.9 feet) is akin to, and actually slightly larger than, the narrowest point of Hammond Plaza's separation at the similar corner (13.3 feet). The proposed building layout also helps the Project maintain its substantial distance from Hammond Plaza, providing privacy for both projects, separated by a generously landscaped retaining wall featuring native plantings.

The “L-shape” layout also does the best job of separating the residential uses from the Church. The proposed layout provides long-term privacy for the Church by avoiding views from the churchyard into the parking areas of the residential Project and presents a neat and uniform appearance facing the Church. The building length and layout have been designed to be of a scale

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that relates well to the adjacent Church and is supported by the Church, but also to be consistent with the nearby single-family homes located across Wolcott Avenue in the HLOD.

In summary, the variance plan actually has a better effect on community character than the alternative plans that do not require a variance.

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

There is no other feasible method for the Applicant to pursue besides requesting the building separation variance. To be considered feasible, the alternative must still provide the benefit sought by the Applicant and must be feasible for the Applicant to pursue.

The Applicant and Planning Board explored several alternate options for site layout to the Planning Board (see **Exhibit D**), but there was a consensus that the proposed layout is the most beneficial for all neighbors. The overall “L-shape” pattern is congruent with the nearby Hammond Plaza, which also presents an “L-shape” angle at the intersection of its eastern and northern building. Further, this layout provides the maximum possible separation distance between the Project and Hammond Plaza. The Church prefers the proposed layout to the other alternatives, as the “L-shape” layout does the best job of separating the residential uses from the Church. Each of the alternate layouts has substantial areas where the churchyard would look in to paved parking areas next door. Plantings alone would not totally screen these views, and plantings can lose their screening effect as they get older and more open. The proposed layout provides long-term privacy for the Church by avoiding views from the churchyard into the parking areas of the residential Project, and presents a neat and uniform appearance facing the Church.

Therefore, based on all the necessary considerations in layout out a plan consistent with community needs, the Applicant has no other feasible method to pursue as an alternative to requesting the instant variance.

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.

Upon the consideration of the facts and circumstances in the instant Application, the requested area variance is not substantial. “Substantiality” is not solely a matter of the mathematical proportion of the permitted minimum that the Applicant is seeking to vary.³ Rather, the

³ 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. C&F: 3618234.2



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important test of substantiality is whether the variance will actually have a detrimental effect on the surrounding neighborhood.⁴

Here, the requested variance is not substantial in its effect, since the nonconformity exists at its most extreme only at the narrowest point of the “L”, and widens thereafter until the minimum 70-foot separation requirement is met. The zoning compliance problem is inherent in the L-shape configuration, which necessarily results in the close proximity of buildings at the “corner” of the L.” The layout has a positive purpose in project design and echoes the layout of its closest neighbor.

Substantiality also should be considered in the context of the purpose of the regulation. The separation requirement applies to “facing” buildings. The buildings in an “L-shape” layout don’t really “face” each other in a traditional sense. While the regulation makes sense in the context of large apartment buildings that actually face each other along the entire length of a building, it has less apparent a purpose in an “L-shape” townhouse layout, where the overall arrangement is very open.

In any event, 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.⁵

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 area 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 the requested building separation variance. In fact, the Project will improve the existing neighborhood conditions as it is more protective of neighbors’ views and is sensitive to nearby historic resources.

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).

⁴ *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.”).

⁵ *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 Project will have little or no significant traffic impacts.⁶ A photometric lighting plan has been submitted to the Planning Board demonstrating that there will be no light spillage off the property. A stormwater pollution prevention plan (“SWPPP”) for the Project has been submitted, which ensures that the Project will mitigate its stormwater impacts. Substantial landscape screening is proposed along the Project’s northern property line, which buffers the views of the Project from the Church in a manner that has been deemed acceptable by SHPO.⁷ The plantings take a naturalistic form that provides visual interest, rather than a simple, linear buffer planted along the property line. The generous native plantings at the rear of the site serve to screen views of the retaining wall from Hammond Plaza. The area behind Units 9 to 12, located at the southwest corner of the site, will remain undisturbed. The Project layout provides a wide opening of 70 feet at the entrance, framing a view through to the River. The Site Plan features an attractive central green immediately within the viewshed, which also preserves an historic gazebo.

The Project is a Type I action undergoing coordinated SEQRA review. A Full Environmental Assessment Form (“EAF”) has been submitted to the Planning Board as Lead Agency, which confirms that the Project will have no significant adverse environmental impacts.

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 resulting in the need to request this variance was not self-created, but instead is a result of the shape and topography of the Property, coupled with the planning considerations and needs of neighboring properties.

It is also a well-established legal principle that, even if the hardship *were* self-created, this factor does not alone justify denial of an area variance under N.Y. General City Law §81-b(4)(b)(v).⁸

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 five factors discussed above, for each of the requested variances, the Applicant respectfully submits that there is no harm to the community that weighs against the benefit to the Applicant, and that the proposed variances are the minimum variances that meet the Applicant’s needs and at the same time fully protect the character of the neighborhood and the health, safety and welfare of the community.

⁶ See Creighton Manning Letter, dated October 31, 2017.

⁷ A revised landscaping plan separating the Project from the Church was reviewed by SHPO and SHPO has submitted a letter dated December 21, 2017 confirming that the plan is acceptable.

⁸ 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).



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The Applicant looks forward to appearing at the Zoning Board of Appeals meeting on January 17th, 2018. Should there be any questions in the meantime, I am available at the office. My direct line is 914-872-1941.

Very truly yours,

A handwritten signature in blue ink, appearing to read "JL Van Tuyl". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jennifer L. Van Tuyl