

**City of Beacon  
Zoning Board of Appeals**

**RESOLUTION**

**WHEREAS**, an application has been made to the City of Beacon Zoning Board of Appeals by **Scenic Beacon Developments, LLC** (the "Applicant") to (1) allow three proposed buildings to have 5 stories where the maximum building height is 4.5 stories pursuant to City § 223-17.C/223 Attachment 1:6; (2) allow four proposed buildings to exceed 36 units where the maximum number of dwelling units per building is 36 units pursuant to the City Code § 223-17.C/223 Attachment 1:6; and (3) allow less than 30 feet between buildings where the minimum distance between buildings on the same lot is 30 feet pursuant to City Code § 223-17.C/223 Attachment 1:6, in connection with the construction of seven apartment buildings containing a total of 307 units (413 bedrooms) on property located and collectively known as 22 Edgewater Place, located in the RD-1.7 Zoning District. Said premise being known and designated on the City Tax Map as Pace IDs 5954-25-581985, 5955-19-590022, 5954-25-566983 and 5954-25-574979; and

**WHEREAS**, the Applicant is proposing to demolish two existing buildings, construct seven (7) apartment buildings containing 307 units on 12.009 acres in the RD-1.7 Zoning District (the "Proposed Project"); and

**WHEREAS**, the Proposed Project requires variance approvals from the Zoning Board of Appeals, Special Permit approval from the City Council and Site Plan approval from the Planning Board; and

**WHEREAS**, the Proposed Action is a Type I action pursuant to the New York State Environmental Quality Review Act ("SEQRA"); and

**WHEREAS**, the Planning Board, as Lead Agency, opened a public hearing to consider comments regarding any environmental impacts of the Proposed Action on May 9, 2017 and continued the hearing to July 11, 2017, August 8, 2017, September 12, 2017, October 12, 2017, November 14, 2017 and December 12, 2017, at which time the (SEQRA) public hearing was closed; and

**WHEREAS**, after taking a "hard look" at each of the relevant areas of environmental concern through review of the Environmental Assessment Form and all associated materials prepared in connection with the Proposed Action, the Planning Board adopted a Negative Declaration on December 12, 2017; and

**WHEREAS**, the Planning Board determined that the Proposed Project is entirely consistent with the Local Waterfront Revitalization Program ("LWRP") policies which apply to the Project; and

**WHEREAS**, the Zoning Board of Appeals held a duly advertised public hearing on

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the application on March 21, 2017 and continued the public hearing to December 19, 2017, at which time all those wishing to be heard on the application were given such opportunity; and

**WHEREAS**, the Board closed the public hearing on December 19, 2017; and

**WHEREAS**, pursuant to New York State General City Law § 81-b(4) and Zoning Code Section 223.55(C)(2)(b), when deciding the request for an area variance:

In making its determination, the Zoning Board of Appeals shall take into consideration 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 making such a determination, the board shall also consider:

- [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;
- [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;
- [3] Whether the requested area variance is substantial;
- [4] Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- [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.

**WHEREAS**, pursuant to Zoning Code Section 223.55(C)(2)(c) "the Board of Appeals, in granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community."

**WHEREAS**, based upon the Record before it and after viewing the premises and neighborhood concerned and upon considering each of the factors set forth in Section 223.55(C)(2)(b)[1]-[5] of the City of Beacon Code, the Zoning Board finds with respect to each of the requested variances as follows:

1. The variances will not produce an undesirable change in the character of the neighborhood and there will not be a detriment to nearby properties created by the granting of the area variances.

*A. Maximum Building Height- Number of Stories*

The City's Zoning Code Section 223-17.C/223 Attachment 1:6 permits a building height to be no greater than fifty-five (55) feet or 4 ½ stories. Each of the seven proposed buildings will comply with the maximum height of 55 feet permitted by the Zoning Code Section 223-17.C. A height variance of half a story is required for three buildings designed with gabled roofs.

The Board find that 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 of half a story permitting a maximum height of 5 stories for three of the seven buildings where the maximum amount of stories permitted by the code is 4 ½ stories. Under the Zoning Code Section 223-63, the "height of building" is measured as the "vertical distance from the average established grade in front of the lot or from the average natural grade at the building line, whichever is higher, to the level of the highest point of the roof, if the roof is flat, or to the mean level between the eaves and the highest point of the roof, if the roof is of any other type." Under this definition, gabled roofs and angled roofs are measured differently. The gabled roofs are measured with an extra half story because of its design. The three buildings for which variances are required are not as tall at the peak of the angled roofs as the other four buildings that comply with the 4 ½ story height requirement. Furthermore, the roofs of the buildings are all accessible by the Beacon Fire Department apparatuses. As all seven buildings are within the permitted height of 55 feet, the granting of a half story variance for three of the seven buildings does not create a detriment to nearby properties.

*B. Maximum Number of Dwelling Units Per Building*

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 an area variance permitting more than 36 dwelling units. The Zoning Code Section 223-17.C states that the maximum number of dwelling units per building shall not exceed 36. The Applicant proposes to construct a total of 307 dwelling units, to be distributed among seven buildings, as permitted on the 12-acre parcel by right. The buildings are proposed to contain the following number of units:

- Building 1- 48 units;
- Building 2- 52 units;

- Building 3- 59 units
- Building 4- 32 units (no variance required)
- Building 5- 32 units (no variance required)
- Buildings 6- 51 units; and
- Building 7- 32 units (no variance required)

Three (3) of the buildings are proposed to contain 32 residential dwelling units, this is four less units than permitted. All the buildings will look similar from the exterior, and the total number of units (307 units) proposed for the 12-acre property is permitted. Under the density regulation in 223 Attachment 1:6, the lot area required per dwelling unit is 1,700 square feet. Therefore, on a 12 acre lot, approximately 522,720 square feet, 307 dwelling units may be constructed. The proposed development will not result in any adverse impacts to the neighborhood character because by permitting the Applicant to have more dwelling units per building, the Applicant is able to preserve more open space and decrease overall lot coverage and impervious surface. Otherwise, the Applicant could construct the same number of units (307), but in more buildings which would have greater impacts.

*C. Minimum Separation Between Buildings*

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 a variance to permit a minimum distance of less than 36 feet between buildings. There are a total of five openings between the proposed seven buildings on the premises. The closest minimum distance between the buildings is 12 feet. By reducing the distance between buildings the Applicant is able to cluster the buildings to preserve a maximum amount of open space. In addition, the buildings include additional fire suppression systems and will utilize fire suppression materials to ensure fire safety and further preserve the welfare of the neighborhood and ensure the safety of all residents. The Fire Department received the plans and had no objection to the reduced separation distance between buildings. Overall, the proposed project enhances the character of the neighborhood, and will not have a detrimental impact to either the neighborhood or adjacent properties.

2. **The benefit sought by the Applicant cannot be achieved by some method feasible for the Applicant to pursue, other than the requested area variances.**

*A. Maximum Building Height- Number of Stories*

The benefit sought by the Applicant cannot be achieved by some other method feasible for the Applicant to pursue. The Applicant may construct 307 dwelling units on the premises by right. The Applicant has presented two other alternatives. Such alternatives require the Applicant to construct eight buildings (providing 288 dwelling units) or nine buildings (providing 307 units). Both alternatives create higher development impacts. The Applicant wants to pursue a sustainable development to maximize open space. Under the

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proposed project there is 35% impervious coverage. Both alternatives require at least 40% impervious coverage.

The premises is located in the Coastal Management Zone as defined by the City's Local Water Front Revitalization Program (LWRP). The proposed project condenses and clusters the footprint of the buildings and decreases impervious surfaces to achieve the clustered effect recommended by the LWRP. Specifically the LWRP provides that "the scenic qualities of Beacon results from the combination of clustered buildings (many historic) and wooded hillsides against the backdrop of the Hudson Highlands." On December 12, 2017, the Planning Board issued a Local Waterfront Revitalization (LWRP) Consistency Determination, which provides in part that the proposed Project is consistent with the policies in the LWRP because it condenses and clusters the footprint of the buildings and impervious surfaces to achieve the clustered effected by the LWRP. The proposed alternatives do not achieve the same effect.

#### *B. Maximum Number of Dwelling Units Per Building*

The Applicant is proposing 31 dwelling units as below-market rate units, in accordance with the City's Affordable-Workforce Housing Laws. By granting the variance and permitting more than 36 dwelling units in a building, the Applicant can create a better mix of unit types and overall diversity in unit counts to better achieve the goals of the Affordable-Workforce Housing Law.

The Applicant is permitted to build 307 units on the premises pursuant to the density requirements of the RD-1.7 Zoning District on a 12 acre parcel, subject to special use permit approval by the City Council to approve multifamily complexes. Without the variances, the Applicant will need to construct one or two extra buildings, increasing lot coverage and impervious surface. The Applicant's goal to preserve 65% green space, create diversity in buildings and unit types and provide common gathering space for residents cannot be achieved without the requested variance.

If each building contained the same number of units it would necessitate more buildings, and would therefore create a much higher-impact development. Therefore, there is no other feasible means to achieve the required number of units but for the granting of the variance to permit more than 36 dwelling units per building.

#### *C. Minimum Separation Between Buildings*

As discussed above, the relative clustering of the buildings contributes to maximizing the amount of open space provided onsite. The proposed layout allows for the preservation of the maximum amount of green space (65%) and will overall enhance the community. Thus, the benefit the Applicant seeks, to develop 307 residential dwelling units and preserve 65% open space, cannot be achieved without the requested variance.

- 3. The requested variances are mathematically substantial; however, this does not outweigh the other factors meriting the granting of the variance.**

The requested variances are mathematically substantial. However, in considering whether a variance is substantial, the Board must examine the totality of the circumstances within the application and the overall effect of granting the requested relief. Here, the variances are not substantial in their effect. The project design provides a variety of units, both market-rate and below-market rate units, while preserving the most amount of open space. Moreover, even though the requested variances are mathematically substantial, this factor alone does not preclude the granting of the variances.

The Board reviewed the overall effect of the requested variances to permit the clustering of units on this 12 acre parcel requiring (1) a half story height variance for three buildings, (2) a variance to permit more than 36 residential dwelling units per building and (3) a variance to allow less than 30 feet between the proposed buildings. While the requested variance is mathematically substantial, the variance will result in minimal impacts to the surrounding neighborhood and environment. Therefore, the Board finds that the requested variance is not substantial.

- 4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.**

The proposed variances 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 requested variances. As part of the Coordinated SEQRA review conducted by the Planning Board as Lead Agency, the Planning Board has determined that the entire action, including the required variances, will have no potential significant adverse environmental impacts. As mentioned above, the Planning Board also granted a LWRP Consistency Determination which provides that the proposed Project is consistent with policies and guidance of the LWRP. The proposed project will preserve 65% open space and utilize green infrastructure practices to reduce runoff, minimize grading and soil disturbance, and minimize impervious surface areas. The proposed project will also incorporate soil conservation and dust control best management practices and utilize native vegetation in all proposed landscaping to enhance wildlife habitat.

- 5. The alleged difficulty was self-created but this factor does not preclude the granting of the area variances.**

The need for the variances is self-created since it is presumed the Applicant selected the Property as the location for its proposed development knowing the zoning requirements pertaining to the maximum height of buildings permitted, the maximum number of residential dwelling units per building and the minimum distance required between buildings. However, this does not preclude the granting of the area variance.

**NOW THEREFORE, BE IT RESOLVED**, that, for the reasons set forth above, the application of Scenic Beacon Developments, LLC (the "Applicant") to allow Building 3, Building 4, and Building 6, as identified on the proposed Site Plan dated January 31, 2017, to have 5 stories where the maximum building height is 4.5 stories pursuant to City § 223-17.C/223 Attachment 1:6, is hereby GRANTED.

**BE IT FURTHER RESOLVED**, that for the reasons set forth above, the application of Scenic Beacon Developments, LLC, to allow four proposed buildings to exceed 36 units where the maximum number of dwelling units per building is 36 units pursuant to the City Code § 223-17.C/223 Attachment 1:6, is hereby GRANTED subject to the following conditions:

1. If the Applicant builds less than 252 units (7 buildings x 36 dwelling units= 252 units), this variance is void. The Applicant will be required to comply with the Zoning Code requirements restricting the number of units per building and may not exceed 36 residential dwelling units per building.
2. The Applicant is permitted to construct a maximum number of four buildings with more than 36 residential dwelling units. The maximum number of dwelling units for any one building may not exceed 59 residential dwelling units per building.


**BE IT FURTHER RESOLVED**, that for the reasons set forth above, the application of Scenic Beacon Developments, LLC, to allow less than 30 feet between buildings where the minimum distance between buildings on the same lot is 30 feet pursuant to City Code § 223-17.C/223 Attachment 1:6, is hereby GRANTED subject to the following conditions:

1. The Applicant shall maintain at least 65% of the 12-acre parcel as open space, but for Planning Board approval of impervious infrastructure including, but not limited to, sidewalks, development of land banked parking, roads, and decks. The total amount of open space land preserved after Planning Board approval of said impervious infrastructure shall not be less than 60% of the 12-acre parcel.
2. Impervious surface shall not exceed 35% of the 12-acre parcel, but for Planning Board approval of impervious infrastructure, including, but not limited to, sidewalks, development of land banked parking, roads, and decks. The total impervious surface area, including any additional approved impervious surfaces, shall not to exceed 40% of the 12-acre parcel.
3. The distance between any of the proposed buildings shall not be less than 12 feet.

**BE IT FURTHER RESOLVED**, that all the variances granted herein are subject to the following conditions:

1. No permit or Certificate of Occupancy shall be issued until the Applicants have paid in full all application and consultant fees incurred by the City of Beacon in connection with the review of this application.
2. The Applicant shall obtain a building permit within twelve months from the date of obtaining the last land use approval.
3. The variance shall terminate unless the Proposed Project, as defined herein, has been substantially completed within five years from the date of obtaining the last land use approval or the Applicant appears before the Board for an extension.

Dated: January 17, 2018

  
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Mr. John Dunne, Chairman



**Height Variance**

Mr. Dunne called the roll							
Motion	Second	Zoning Board Member	Aye	Nay	Abstain	Excused	Absent
		John Dunne	X				
		Jordan Haug	X				
	X	Robert Lanier	X				
X		Judy Smith	X				
		David Jensen		X			
Motion Carried			4	1*			

*\*Mr. Jensen was in favor of granting the variance for Buildings 3 and 6 to have 5 stories but was not in favor of granting the variance for Building 4.*

**Maximum Number of Dwelling Units Variance**

Mr. Dunne called the roll:							
Motion	Second	Zoning Board Members	Aye	Nay	Abstain	Excused	Absent
		John Dunne	X				
X		Jordan Haug	X				
		Robert Lanier	X				
	X	Judy Smith	X				
		David Jensen		X			
Motion Carried:			4	1			

**Maximum Distance Between Buildings Variance**

<b>Mr. Dunne called the roll:</b>							
<b>Motion</b>	<b>Second</b>	<b>Zoning Board Members</b>	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Excused</b>	<b>Absent</b>
		John Dunne	<b>X</b>				
<b>X</b>		Jordan Haug	<b>X</b>				
	<b>X</b>	Robert Lanier	<b>X</b>				
		Judy Smith	<b>X</b>				
		David Jensen		<b>X</b>			
<b>Motion Carried:</b>			<b>4</b>	<b>1</b>			

Received in the Office of the  
City Clerk  
January 24, 2018