City of Beacon
Zoning Board of Appeals

RESOLUTION

WHEREAS, an application has been made to the City of Beacon Zoning Board of Appeals by **Beacon Lofts & Storage**, (the "Applicant") for a 31 foot building height variance where the maximum building height permitted is 35 feet pursuant to the City of Beacon Code § 223-17.D/223 Attachment 2:3, in connection with the proposed construction of a new building (Building 16), with 87 artist live/work units, on property located at 39 Front Street (Mason Circle) in the LI Zoning District (the "Proposed Project"). Said premises being known and designated on the City of Beacon Tax Map as **Parcel ID# 30-6055-04-590165-00**; and

WHEREAS, the Applicant is proposing to construct a new building, 66 feet in height, as part of the redevelopment of 8.74 acres, known as HIP Lofts. This project requires variance approval from the Zoning Board, Amended Special Permit Approval from the City Council and Amended Site Plan Approval from the Planning Board; and

WHEREAS, the proposed action is an Unlisted Action pursuant to the New York State Environmental Quality Review Act; and

WHEREAS, the Planning Board, as Lead Agency, opened a public hearing to consider comments regarding any environmental impacts of the Proposed Action on November 14, 2017 and continued the hearing to December 19, 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 Zoning Board of Appeals held a duly advertised public hearing on the application on January 17, 2018 and February 21, 2018 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 February 21, 2018; 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;" and

WHEREAS, as part of its presentation, the applicant represented that it proposed to substitute the proposed amended site plan for the previously approved site plan, which would, among other elements, (a) eliminate the commercial laundry with approximately 26,000 gpd water usage; and (b) eliminate the 4 story building 9A, located along the Creek, which had received a variance for a 47 foot height, and the substitution of a one-story structure in that location which is a continuation of the existing building; and applicant further represented that it would consent that, upon issuance of all approvals for the amended site plan and the vesting of rights to complete construction of building 16 under the approved amended site plan, it would agree that the previously granted height variance for building 9A be deemed rescinded and null and void; and

WHEREAS, as part of its presentation, the applicant also represented that, as part of its proposed amended site plan, it was willing to commit that, upon issuance of all approvals for the proposed amended site plan and the vesting of rights to complete construction of building 16 under the approved amended site plan, it would not seek, and would not claim rights to seek, land use approvals to place additional residential units on the subject parcel

beyond the 172 Artist Live-Work units shown on the proposed amended site plan, such Declaration to be effective only for so long as the applicable zoning regulations for the subject site permit a total of 243 or fewer Artist Live-Work units; and the Applicant further represented that, upon the same conditions, it was willing to record a Declaration to the same effect, the form, content, and timing of recording of which to be approved by the City Attorney's office; and

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 the requested variance as follows:

1. **The variance 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 variance.**

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 with a tower which is approximately 67 feet high. In addition, the main portion of the proposed building is only 6 feet taller (52 ft) than the existing building that it will replace (46 ft). The fourth story of the proposed building increases the height of the building to 66 feet, but the fourth story contains a proposed setback of 10 feet from the edge of the main buildings walls, so that this tallest portion minimizes its visual impact. This stepback brings the perceived height of the building close to the height of the adjacent Building 10, and the building's overall height of 66 feet is within the height envelope established by nearby Building 11 of the complex, at 67 feet.

The architect designed the project in compliance with two policy documents *Preservation Brief 14, New Exterior Additions to Historic Buildings*, published by the National Park Service and written by Anne E. Grimmer and Kay D. Weeks, and the Department of the Interior's *Standards for Rehabilitation*, which provide guidelines as to how to appropriately construct additions to existing historic structures.

Furthermore, the proposed building is located in the center of the property. This location reduces potential visual impacts to properties across Fishkill Creek. However, the only property located directly across Fishkill Creek is a City Water Department industrial building. Visual impacts will be further mitigated by dense vegetation consisting of mature trees. Therefore, the requested variance will not produce an undesirable change in the character of the neighborhood and will not be a detriment to nearby 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 variance.

The benefit sought by the Applicant cannot be achieved by some other method feasible for the Applicant to pursue. The Applicant is working within an existing developed historical site. The plan to redevelop HIP Lofts received initial approvals from the Planning Board and Zoning Board several years ago to restore the old factory complex at Groveville. The originally approved project included the construction of Building 9A, a 4-story building featuring 24 artist live/work lofts and renovation of Building 16 to house 36 artist live/work units. As part to the original approval of the project, the Zoning Board granted the Applicant a 7 foot building height variance for the then-proposed Building 9A, to construct a 4 story/ 47 foot building where the maximum building height in the LI District was 3 stories and 35 feet. However, subsequent engineering tests revealed that Building 16 is structurally unsound, and cannot be renovated in accordance with the original plans. Therefore, the Applicant now proposes to construct a new Building 16, with 87 artist live/work units and eliminate Building 9A. The proposed new Building 16 is designed to incorporate the units that were originally to be housed in Building 9A. In order to fit these extra units, the building must be constructed at a taller height. The requested variance is the minimum variance to accommodate the new proposal. Furthermore, eliminating Building 9A allows the applicant to meet its parking requirements without a variance.

In addition it is much more expensive to demolish a building then to renovate it as originally proposed. The Applicant was unexpectedly forced to re-evaluate the project design. The proposed unit types, including mezzanine units, which require greater ceiling height, and penthouse units help to finance the building reconstruction. Building 16 includes mezzanine units which require a 17 foot floor to ceiling separation. These units have a lower vacancy rate than non-mezzanine units and can be more easily converted to other non-residential uses without the variance. Without a variance, the applicant would reconstruct Building 9A, which would block views of the creek, decrease the amount of available greenspace on site and decrease available parking area. The Applicant will not be able to achieve the same benefits without a height variance.

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

The requested variance is 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 granted the requested relief. Here, the requested height variance is not substantial in its effect. The site is located in an industrial area. The tallest building located on the site is approximately 67 feet high at the top of its tower element, which is 1 foot taller than the highest portion of the proposed building. The proposed building has also been 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. In addition, the property located directly across Fishkill Creek from the subject property is a City Water Department industrial Building.

The consolidation of Buildings 9A and 16 into one new building creates more landscaped area and results in an overall smaller building footprint. Almost all the buildings on the Beacon HIP Lofts property are substantially higher than 35 feet allowed by the current Zoning Code. The expanded height of the proposed Building 16, with its set back 4th floor, is in keeping with the scale of the rest of the property. 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 of 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. As part of the Coordinated SEQRA review conducted by the Planning Board as Lead Agency, the Planning Board determined that the Proposed Action will have no potential significant adverse environmental impacts. The Proposed Action will result in a decrease of 0.04 acres of impervious surface coverage. The consolidation of the artist live/work units from Building 9A into the proposed Building 16 also permits tighter clustering of the development, resulting in more open space. Therefore, the Board finds that the proposed variance will not have a significant adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

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

The alleged difficulty was self-created. The need for the variance arises from the subsequent engineering studies that revealed that Building 16 is structurally unsound, and cannot be renovated in accordance with the original plans. The Applicant redesigned the project eliminate Building 9A and rebuild Building 16. The height variance is required to retain the artist live/work and mezzanine units originally proposed for Building 9A. The applicant redesigned the project knowing the height constraints in the Zoning District.

NOW THEREFORE, BE IT RESOLVED, that said application for a height variance of 31 feet to construct a new building with a height of 66 ft. where 35 ft. is permitted pursuant to 223-17.D/223 Attachment 2:3 is hereby **GRANTED** 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 has six months to commence construction following the date of issuance of the building permit and 24 months after the date of issuance of said building permit to complete construction. The Applicant has six months to obtain a building permit from the date of the Planning Board's Site Plan approval.
3. The Zoning Board of Appeals may grant a six month extension of this variance approval provided that a written request for an extension is submitted before the variance expires. Such extension shall only be granted upon a showing by the Applicant that the circumstances and conditions upon which the variance was originally granted have not substantially changed.
4. As offered and agreed to by the Applicant, and more fully described within the above Resolution, prior to the issuance of a Building Permit the Applicant shall submit for review and approval by the City Attorney as to form a deed restriction which prohibits additional residential dwelling units on the subject property beyond the 172 Artist Live/Work units currently proposed, for so long as the subject property is governed by zoning restrictions which allow 243 or fewer Artist Live/Work units, as do the Light Industrial (LI) Zoning District regulations currently applicable to the property.
5. As agreed to by the Applicant, and more fully described within the above Resolution, based in part upon the Applicant's intent that the proposed Special Use Permit and Site Plan Amendments (including the removal of Building 9A and construction of a new Building 16), will supersede the prior approved Special Use Permit and Site Plan (which included a 4-story addition to Building 9A), upon the issuance of a Building Permit and vesting of rights to complete construction of Building 16 according to the amended Site Plan, the area variance previously granted by the City of Beacon Zoning Board of Appeals by Resolution 2013-12, dated June 18, 2013, to permit Building 9A to have a height of 47 feet where 35 feet is required, is rescinded and superseded.

Resolution Approved: February 21, 2018
Dated: February 28, 2018

John Dunne, Chairman

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	**3**	**2**			