

City of Beacon  
Zoning Board of Appeals

**RESOLUTION**

**WHEREAS**, an application has been made to the City of Beacon Zoning Board of Appeals by **River Ridge Views, LLC** (the “Applicant”) to allow a minimum distance between proposed Building Group 2 and proposed Building Group 3 to be 18.9 feet where the minimum distance between buildings on the same lot is 70 feet (51.1 foot variance) pursuant to the City of Beacon Code § 223-17.C/223 Attachment 1:2, in connection with the proposed construction of a new residential development on property located and known as 12 Ferry Street (“Parcel L”), in the RD-7.5 Zoning District on property. Said premises being known and designated on the City of Beacon Tax Map as **Parcel ID# 5954-34-637879-00, 5954-34-649885-00 and 5954-34-630770-00**

**WHEREAS**, the Applicant is proposing to construct eighteen (18) residential attached townhouses to be subdivided into individual lots plus one common lot, along with associated infrastructure including but not limited to landscaping, stormwater, management facilities, lighting, off-street parking areas and retaining walls. This project requires variance approval from the Zoning Board of Appeals; and Subdivision Plat Approval and Site Plan Approval from the Planning Board (the “Project” or “Proposed Action”); 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 November 14, 2017 and continued the hearing to December 19, 2017 and January 9, 2018 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 January 9, 2018; 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 January 17, 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 January 17, 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.”

**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.**

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

subject property abuts the Dutch Reformed Church, listed on the National Register of Historic Places. The subject property also abuts Hammond Plaza, an existing townhouse project to the west and south. The subject property is located in the Historic Overlay District (“HLOD”) and 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 entrance from the Project.

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 project layout promotes both a neat neighborhood appearance and privacy for neighboring properties. The proposed “L-shape” pattern of building 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 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 “L-shape” layout also separates the residential uses from the neighboring historic Dutch Reformed 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 that relates well to the adjacent Church. The Project’s overall layout “L-Shaped” Layout and design is supported by the Church, and is consistent with the nearby single-family homes located across Wolcott Avenue in the HLOD.

For all these reasons, the proposed variance will have no negative effects on neighborhood character or surrounding properties. 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.

**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.**

The benefit sought by the Applicant cannot be achieved by some other method feasible for the Applicant to pursue. The proposed building layout serves a particular purpose: it provides the maximum protection and privacy to the Reformed Church located immediately to the north of the Proposed Project. The proposed layout presents a finished appearance toward the Church, blocking views of the private service areas behind the proposed townhouses. The proposed layout also provides maximum privacy to Hammond Plaza to the southwest, by keeping the River Ridge townhouses at a higher elevation. The proposed layout requires one variance. Building Group 2 and Building Group 3 of 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 pursuant to the City of Beacon Code § 223-17.C/223 Attachment 1:2 (“twice the height of the facing building”). The proposed minimum distance between Building Group 2 and Building Group

3 is 18.9 feet to protect the neighboring properties and preserve substantial portions of the site as open space.

The Applicant and Planning Board explored several alternative options for site layout, but there was a consensus among the Planning Board, the Applicant and the neighbors that the proposed layout is the most beneficial for all neighbors. In contrast, each of the alternative 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, the Applicant will not be able to achieve the same benefits without the building separation variance.

**3. The requested variances are 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 granting the requested relief. Here, the requested building separation variance is not substantial in its effect. 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 to maximize privacy to the adjacent Dutch Reformed Church and preserve the maximum amount open space. The layout also echoes the layout of its closest neighbor, Hammond Plaza. 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 City of Beacon Code § 223-17.C/223 Attachment 1:2 provides that the minimum distance between buildings on the same lot is “twice the average height of the facing buildings.” The separation requirement applies to “facing” buildings. The buildings in an “L-shape.” 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 a less apparent purpose in an “L-shape” townhouse layout, where the overall arrangement is very open. However, it has been determined nonetheless that under the City Code the minimum distance required between buildings in the Proposed Project is 70 feet.

Upon the consideration of the facts and circumstances in the instant Application, 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 Planning Board also granted a Local Waterfront Revitalization Program (“LWRP”) Consistency Determination which provides that the proposed Project is consistent with the policies and guidance of the LWRP.

While construction on a sloped site could create potential for erosion, the project limits disturbance in several ways and incorporates protective measures to avoid erosion. The site plan incorporates extensive landscaping within the retaining wall system. Substantial landscape screening is specifically 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 New York State Historic Preservation Office (“SHPO”). The plantings take a naturalistic form that provides visual interest, rather than a simple, linear buffer planted along the property line. In addition, the generous native plantings at the rear of the site serve to screen views of the retaining wall from Hammond Plaza.

Disturbance of slopes will be stabilized using best management practices during construction and post-construction. Because site disturbance will exceed 1-acre, a full Stormwater Pollution Prevention Plan (SWPPP) will be prepared. The proposed stormwater practices shown on the plans and described in the SWPPP will be designed in accordance with the NYSDEC Stormwater Management Design Manual. The SWPPP will ensure that the Project will mitigate its stormwater impacts.

The only state-listed species recorded within or near the Project Site is the Indiana Bat (NYS Listing: Endangered). The main impact of concern for bats is the removal of potential roost trees. A permit is required for the incidental taking of any species identified as “endangered” or “threatened,” which can include the removal of habitat, as determined by NYSDEC. Pursuant to NYSDEC recommendations, all tree removal at the Project Site must take place between October 1 and March 31 in any given year.

The Proposed Action will affect a viewshed identified in the City’s Local Waterfront Revitalization Program (LWRP), namely the viewshed at Rombout Avenue and Route 9D. The identified view is west, directly over the Site. The LWRP describes the view as “dominated by the Reformed Church, its gazebo and graveyard.” The LWRP also notes the view of the train station, parking lot, and River Front Park in the middle ground, with the background dominated by Newburgh Bay, the City Center, and the hills beyond. Currently, the views at this location are limited for a number of reasons including unplanned and

opportunistic vegetation. The Proposed Action protects and advances views at this location by creating a viewing point. The entrance of the site has been configured to create a 70 foot wide opening into the vista over the Site at the entrance. This opening provides a view to the Hudson River. The Site Plan also features an attractive central green immediately within the viewshed, which also preserves the historic gazebo. Therefore, the public viewing point will include views of the early 20th century gazebo within a landscaped setting.

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 need for the variance is self-created since it is presumed that the Applicant selected the Property as the location for its proposed development knowing the zoning requirements pertaining to the minimum distance required between buildings. However, this does not preclude the granting of the area variance.

**NOW THEREFORE, BE IT RESOLVED**, that said application to allow a minimum distance between proposed Building Group 2 and proposed Building Group 3 to be 18.9 feet where the minimum distance between building on the same lot is 70 feet (51.1 foot variance) pursuant to the City of Beacon Code § 223-17.C/223 Attachment 1:2, is hereby **GRANTED** subject to the following conditions:

1. No permit or Certificate of Occupancy shall be issued until the Applicant has 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 and one year to complete from the date of obtaining the last land use approval.

Dated: January 17, 2018

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John Dunne, Chairman

<b>Mr. Dunne called the roll:</b>							
<b>Motion</b>	<b>Second</b>	<b>Zoning Board Member</b>	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Excused</b>	<b>Absent</b>
		John Dunne	<b>X</b>				
		Jordan Haug	<b>X</b>				
	<b>X</b>	Robert Lanier	<b>X</b>				
<b>X</b>		Judy Smith	<b>X</b>				
		David Jensen	<b>X</b>				
<b>Motion Carried</b>			<b>5</b>	<b>0</b>			