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Hon. Randy Casale, Mayor
and Members of the City Council
City of Beacon City Hall
1 Municipal Plaza
Beacon, New York 12508

Re: comments on proposed HDLO law

Dear Mayor Casale and Members of the City Council,

On behalf our client Beacon HIP Lofts, 39 Front Street, Beacon, New York, Tax Parcel ID: 6055-04-590165, I make the following comments on the proposed amendments to the HDLO Law.

Our client supports the provisions that facilitate the inclusion of additional properties in the HDLO. Section 134-4 (E) contains a reference to section 134-6.B. It is unclear what section is being referred to, since most of the section numbers are changing. There is no section 134-6.B in the proposed Local Law. If the reference is to 134-6.B in the existing law, that section refers to only two criteria, so it might make more sense to simply list them.

However, there is reason to be cautious in enacting the amendments, which can put single family homeowners and other small property owners to great expense in conforming to architectural standards, and can prevent other landowners from carrying out projects which are wholly compliant with zoning, and have been found worthy by the State Historic Preservation Office, by architectural historians, and by City agencies such as the Planning and Zoning Board.

My client writes this letter because he is concerned that a possible interpretation of this law would prevent him from being issued a Certificate of Appropriateness for his proposed building 16 improvements at Beacon HIP Lofts, the former Groveville Mills. This project has already received a SEQR Negative Declaration. It has received an affirmative letter of compatibility from the State Historic Preservation Office. It was found to be in keeping with historic compatibility standards for historic additions by an architectural historian at Hartgen Associates. The Planning Board unanimously recommended to the ZBA that a height variance be issued. And the ZBA granted a height variance, finding that the proposed height of the building did not create any harmful effect on the neighborhood or historic setting. All reviewing agencies have found the proposal historically sensitive and worthy. The closest, most affected, neighboring property owner

appeared before the Zoning Board of Appeals to express his strong support for the proposed project, including the height of building 16. In addition to the benefits of the project by virtue of its appearance, the proposal would eliminate a commercial laundry that uses almost 26,000 gpd.

The Council should make sure that this law does not have unintended consequences by stopping a project as worthy as this one, or even creating the possibility that something similar would happen in the future. Other likely unintended consequences include discouraging a creative design solution that all parties believe is the best one, because no variation or "variance" is allowed.

Fundamental problems with the law:

It is critical that the Council realize that this law allows no variances (except, perhaps, insofar as it is incorporated in special permit standards in zoning.[1]) It is no solace to a landowner to be told that, "you can always apply for a 'Certificate of Hardship' from the ZBA." The law as written makes it virtually impossible to obtain a Certificate of Hardship. The standards are even more difficult than those for a use variance. Beyond that, the certificate of hardship standards force a landowner suffering economic hardship to wait, potentially for years, while he tries to sell his property to someone who might "preserve" it, though that standard itself is very vague as applied to the 134-7.B standards. It will be harder and harder to transfer property under a regime of unforgiving and inflexible laws.

The law as drafted is a zoning law in thin disguise. Though placed outside the zoning law, it imposes standards relating to height, a basic zoning bulk standard. The law as drafted appears to be one that attempt to deprive a landowner of his/her fundamental right to seek an area variance relating to bulk standards, by simply placing the requirement in an ostensibly "non-zoning" section of the code. This would not pass constitutional muster and violates the preemptive land use regulations of the General City Law.

The issue of height should be dealt with only in the zoning law, and the Council should reconsider the standards for a certificate of hardship. Without limiting the generality of the foregoing, the Council should consider adding a more reasonable standard for certificates of hardship for modifications of the design requirements in section 134-7.B. The standards for a certificate of hardship as they are now written appear to apply solely to proposed demolition of an historic structure.

[1] The law may ultimately be deemed a zoning law even if the Council places the regulations in a chapter outside zoning.

In addition to addressing these fundamental problems, we ask the Council to address the following more specific comments.

It is inappropriate to incorporate the architectural/historic appropriateness criteria into special permit standards:

We are concerned about the incorporation of a very complicated and somewhat subjective set of criteria as criteria of a special permit, in addition to being criteria for a certificate of appropriateness. The standards for architectural appropriateness are fundamentally different from zoning standards, and it may not be wise to mix the two concepts. Such a mixture would appear to effectively incorporate the appropriateness standards into zoning, thus making it possible to actually obtain a variance from the standards. (see above discussion as to the legality of such an effort) Moreover, it appears to violate the principle of zoning that standards must be uniform within districts. Under the existing law, the Council has very broad discretion in determining special permit applications, so this amendment does not seem necessary to grant the Council any additional authority on special permits. Finally, the incorporation of these standards as special permit standards will often result in two different boards, the Council and the Planning Board, applying the same set of criteria, possibly with different results. This does not make sense.

If the Council determines to incorporate the section B standards into special permit standards, the law should at least clarify that these standards only apply to special permits under section 223-24.7.

If the Council nonetheless determines to apply these standards to special permits, it should clarify that the section B criteria apply only to special permits under section 223-24.7, i.e. those special permits for which one is eligible only because the subject property is within the HDLO.

> 134-7 Criteria for approval of a certificate of appropriateness or special permit under section 223-24.7 for properties in the HDLO.

This seems to be the clear purpose and intent, as set forth in section 2 of the law on page 13-14.

The standards in section 134-7.B should be reconsidered in light of the differing settings in the City of Beacon:

The law was obviously drafted with the CMS district in mind, i.e. a densely settled streetscape, with established patterns of development, and buildings very close to each other. But other ares of the city, such as old factory buildings along the Fishkill Creek, either in the LI or FCD Districts, present different circumstances. These settings are much more open, viewing points to these properties are much more distant, and each property tends to be unique, rather than part of a

consistent streetscape. In some cases, a single parcel is in the HDLO as a Landmark which is inherently of a different character than surrounding lands, and a Landmark might be significantly larger and more massive than the surrounding buildings. In that case, setting the height for adjoining buildings based upon those of the Landmark does not necessarily lead to the right result. Each setting is unique and the section B standards should not be applied in the same way. Our client's property at the former Groveville Mills is one such unique setting.

The Council should consider adopting a separate set of standards for the CMS to address the unique concerns of that area. In the alternative, some of the proposed 134-7.B standards should be applicable only in the CMS district.

Specific suggestions on the Section B Criteria that incorporate the above comments (new language shown as redlines):

Section (1) (e): Parking shall where possible[2] be placed towards the rear of the property in an unobtrusive location with adequate screening from public views, unless another location provides better screening.[3]

Section (2) (a): Any addition ~~that is deemed necessary~~ to an historic structure ~~shall~~ should[4] be so placed on the property[5] ~~toward the rear~~, or at least recessed, so that character-defining features of the historic structure are not damaged or obscured

Section (2) (b)[6] Any addition to an historic structure should[7] be designed so that the addition is subsidiary to the main historic structure and so that the historic structure remains more prominent than the ~~subsidiary~~addition.

[2] This change is also being recommended by the Planning Board. Changes recommended by the Planning Board are shown in black line. The "should" standard is defined in the CMS Law, section K.2, and the definition should be repeated in the HDLO law, or incorporated by reference.
[3] The rear of the property may not always be the location that provides the best screening.
[4] Change recommended by the Planning Board.
[5] Depending on the lot size, shape, and surrounding properties, the rear of the lot is not necessarily the best location.
[6] This comment proposes separating the current section (2) (a) into two separate sections, since lot location and subsidiarity are two separate issues.
[7] Change recommended by the Planning Board.

Section (2) (c) Buildings in the CMS District that are also in the HDLO are subject to the additional standard that the height of any new building facades in the HDLO ~~shall~~ should[8] reflect the typical heights of adjacent historic structures.

Section (2) (d) Larger buildings or additions shall incorporate significant breaks in the facades and rooflines, generally at intervals of no more than 35 feet.

Additional clarification:

Page 6, section A, line 5: It is unclear what "an HDLO application" is and the term is not defined. The section should read, "In reviewing an application for a Certificate of Appropriateness and the plans relating thereto, the ....."

Conclusion:

We thank the Council for considering these comments. We all share the interest of encouraging the best possible built environment in Beacon.

Very Truly Yours,

Jennifer L. Van Tuyl

[8] Change recommended by the Planning Board.