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August 28, 2018

VIA HAND DELIVERY
AND E-MAIL

Hon. John Dunne
and Members of the Zoning Board of Appeals
City of Beacon
1 Municipal Plaza
Beacon, New York 12508

Re: Application For Variance Relief to Construct Multi-Family Residential Apartments
Property: 53 Eliza Street, Beacon, New York (Tax ID: 130200-6054-29-031870)

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

On behalf of PIE Development Company, Inc., (the "Applicant"), the owner of the above-referenced Property, we respectfully submit this application for a use variance to permit the Applicant to replace the existing legal non-conforming commercial buildings and operations on the residentially zoned Property with multi-family apartments consisting of nine (9) total units in buildings that have been architecturally designed to more closely resemble the neighborhood.

The ZBA is familiar with the continuing Renaissance in the City of Beacon. The City is becoming increasingly desirable as a residential community. The Applicant's proposed use of this Property is more compatible with surrounding land uses than the uses permitted under existing zoning.

The Property is zoned in the R1-5 district and surrounded by residential uses. See **Exhibit A**.¹ The Property, however, was previously zoned in the OB commercial district, and has been occupied for decades by non-conforming commercial and office buildings and related uses, including an autobody shop and the presently permitted existing legal non-conforming office, storage and contractor's yard.

The Applicant is now seeking to adaptively reuse the Property and change its use to one of less nonconformity and in a manner consistent with the area's existing residential zoning and multi-family character of adjacent properties. Indeed, the existing character of the neighborhood, in addition to the Property's unique size and existing commercial use make it particularly appropriate to accommodate this nine (9) unit multi-family development.

¹ Note: The Property was formerly zoned commercial (OB). Once rezoned to residential, the northeast portion of the Property was also located in the adjacent RD-5 zoning district. See **Exhibit A**.



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As is more fully detailed herein and shown in the enclosed site plans and financial analysis, the purpose of this letter is to set forth the technical proof required for the requested use variance.

THE VARIANCE RELIEF FOR NINE (9) RESIDENTIAL APARTMENT UNITS REPLACING THE EXISTING NON-CONFORMING COMMERCIAL BUILDINGS & USES ON THE PROPERTY

This Application is somewhat unusual because it seeks to use the Property for a residential purpose that is less intense and onerous than existing and non-conforming uses. This is unlike situations where applicants seek variances to permit the use of their land in a more intense way than zoning permits (for example, seeking to operate a commercial office with storage for a contractor in a residential zone). The Applicant here is seeking to do the opposite. The proposal will replace the existing commercial use with a residential use, bringing the Property further into conformity with surrounding uses, development patterns and the intent of residential zoning.

The Applicant met with the Building Inspector and was advised that a use variance would be required from the ZBA to authorize this nine (9)-unit market-rate apartment proposal, which will be distributed in three (3) total buildings located generally in place of existing commercial development on the Property. It is worth noting that while multi-family apartments are not expressly permitted in the underlying R1-5 District, other residential uses, such as single-family residences are permitted. Multi-family uses also exist and are permitted on properties in multi-family districts that abut the Property.² Notwithstanding these facts, the Applicant investigated the use of the Property for single-family residences and found that single-family uses on this Property are not viable, or appropriate, particularly given its unique position in the neighborhood and for the following reasons:

1. The Property, which is comprised of approximately .69 acres (30,307 sq. ft. +/-) of land, is a very large lot in the R1-5 District, which imposes a minimum lot size of 5,000 square feet. The properties that surround the Property, which comprise Eliza Street, North Chestnut Street, Oak Street and Fishkill Avenue are primarily developed by uses that *are not* permitted in the R1-5 District, including townhouses developments, two-family developments, multi-family apartment uses (similar to the Applicant's proposal) and other commercial uses. See **Exhibit A** – Images of Property and Surrounding Properties.
2. A small portion of the Property was zoned RD-5 multi-family residential until recently (2018). The Property also abuts the northern property line of the very-high density three

² Note: Multiple dwellings are permitted by Special Permit in RD and RMF Zoning Districts in the City.

(3)-story 31 Hamilton Fish Plaza Beacon Housing Authority development (70+/- apartment units). And the northeast corner of the Property abuts the Beacon 195 Rental Apartment building with eight (8)+/- apartment units in three (3) stories. *See Exhibit A.* The proposed multi-family use consisting of only nine (9) units is a use that would provide more support for the revitalization along Eliza Street and surrounding the former Beacon High School. The increased revitalization of Eliza Street and the surrounding community continues to discourage commercial and single-family residential uses, as exemplified by the apartment buildings and townhouse developments in proximity to the Property.

3. A Use Variance was recently granted by this Board for a similarly situated existing nonconforming commercial property also located in the R1-5 Zoning District at 123 Rombout Avenue. The 123 Rombout property is similarly adjacent to an existing multi-family and townhome uses and was formerly occupied by a commercial lumber storage yard. The 123 Rombout Avenue development was granted a Use Variance for ten (10) residential multi-family apartment units on April 18, 2017.
4. Existing commercial buildings on the Property have been there for many decades. Proposing single-family homes on three (3) subdivided lots – the maximum subdivision density – would be more visible to adjacent property owners, would arguably be more a more intense and impactful use and will not provide a reasonable return under the zoning. *See Exhibit B – Financial Analysis & Maximum 3-Lot Subdivision Layout.*
5. The Property is presently used for storage of contractor equipment and vehicles with a commercial office building that fronts on Eliza Street. *See Exhibit C.* The location of the proposed residential buildings are designed to be more consistent with the adjacent residential development and will involve landscaping to screen and beautify the property.
6. Modern planning principles encourage density to preserve open space, and the proposed use will generally provide less intense residential use of the Property by clustering the number of units and bedrooms that could be distributed in three (3) single-family residences located on subdivided lots, which single-family development is not economically viable on the Property. *See Exhibit B.*
7. The City's 2017 Comprehensive Plan Update included the goal of "[e]ncourag[ing] housing development at relatively greater densities within and adjacent to the central business district... [and] to encourage residential development of... underutilized industrial sites..." (pg. 23) [emphasis added].³ The Comprehensive Plan also notes that in preparing the plan "[m]any agreed that housing density on and near Main Street should be increased,

³ CITY OF BEACON, 2017 COMPREHENSIVE PLAN UPDATE, at 23, *available at*: http://cityofbeacon.org/pdf/Beacon_Comprehensive_Plan_Final-040417.pdf.



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particularly in the area between Elm and Teller; [and that] participants felt that more people living in the vicinity of Main Street would help ensure the economic vitality of Main Street” (page 51).⁴

For all these reasons and the details to be discussed herein, the existing commercial buildings have very limited viability for the permitted uses under zoning, particularly considering the existing development of the Property and its location and position within the neighborhood.

THE PROJECT WARRANTS THE ISSUANCE OF THE NECESSARY VARIANCE RELIEF

The Applicant is seeking to create a building that respects history while bringing the Property’s use further into conformity with surrounding properties and residential development. The following discussion supports this objective and the Board issuing the requested variance relief.⁵

1. The Applicant cannot realize a reasonable return under the existing zoning. This proof is demonstrated by competent financial evidence.

The existing zoning permits very few uses by right, including: residential uses, detached single-family dwellings not to include house trailer; buildings, structures and uses owned by the City of Beacon; Churches or other places of worship; public schools; parks and farms.

Enclosed as **Exhibit B**, is a copy of a Financial Analysis of the proposed development on the Property, prepared by Prepared by McAlpine Construction Co., Inc., and Gate House Realty, who is very familiar with the marketing of residential properties in the City of Beacon. The Financial Analysis explains why none of the permitted uses could result in a reasonable return on the Property. Indeed, the Financial Analysis confirms that subdividing the very large lot into two (2) and even three (3) lots, and improving each with single-family detached houses for rental and for sale development will result in significant losses in either scenario. Further, if the property was rented and operated as an existing nonconforming commercial use, it would also operate at a loss.

Considering the other uses in the District, uses by the City of Beacon are not-for-profit uses. Churches are similarly not-for-profit uses and any such use requiring intensive public assembly

⁴ CITY OF BEACON, 2017 COMPREHENSIVE PLAN UPDATE, at 51, *available at*: http://cityofbeacon.org/pdf/Beacon_Comprehensive_Plan_Final-040417.pdf.

⁵ The highest court in NYS upheld a ZBA action granting a use variance to allow general multi-family use in a light industrial zone, where the only residential use permitted by zoning was for artists’ live-work. Soho Alliance v. NYC Board of Standards and Appeals, 95 NY2d 437, affirming 264 AD2d 59 (1st Dept. 2000).



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confronts severe parking and access constraints that make the present building configuration impractical and would be inconsistent with the surrounding neighborhood. The Property is located only a few hundred feet from the former City of Beacon High School, and the Property is severely undersized for a public school. A park is a not-for-profit use, and the proposal clusters the development area. The Property is too small for a farm to be an economically viable use. Additionally, uses by special permit include public library and art galleries; horticultural nursery; private school; firehouse or headquarters of volunteer fire or ambulance organization; and club.⁶

Use of the Property for nine (9) apartment units is unique. The proposal involves the demolition and adaptive reuse of the existing commercial structures to make them into a residential use that is more consistent with the surrounding properties and those properties located in the District. The Applicant believes that the proposed use of the Property will benefit the community, considering the City's potential growth and the need for additional rental units. The 2017 Comprehensive Plan Update restated the City's goal of "[e]ncourag[ing] housing development at relatively greater densities within and adjacent to the central business district... [and] to encourage residential development of... underutilized industrial sites..." (pg. 23) [emphasis added].⁷ The 2017 Plan also notes that in preparing the plan "[m]any agreed that housing density on and near Main Street should be increased, particularly in the area between Elm and Teller; [and that] participants felt that more people living in the vicinity of Main Street would help ensure the economic vitality of Main Street" (page 51).⁸ The Property is indeed located a few hundred feet from Main Street, between Teller Avenue and Elm Street. If the Zoning Board grants the requested variance, the residential project will be more inclusive and comply with the City's goals for development in the vicinity of Main Street.

The Financial Analysis concludes that none of the permitted uses under zoning would provide a reasonable return. It also concludes that the use of the Property for residential use, as proposed, is the only viable use, and that the number of units requested, nine (9) units, is the minimum variance that would provide a reasonable return.

2. The alleged hardship relating to the Property is unique and does not apply to

⁶ Technically, analysis of allowable special permit uses is not required in proving that a reasonable return cannot be realized from any of the uses permitted in the zone. *Muller v. Williams*, 88 AD2d 725 (3d Dept. 1982). Notwithstanding, such uses are no more viable for this Property than the uses permitted by right.

⁷ CITY OF BEACON, 2017 COMPREHENSIVE PLAN UPDATE, at 23, available at: http://cityofbeacon.org/pdf/Beacon_Comprehensive_Plan_Final-040417.pdf.

⁸ CITY OF BEACON, 2017 COMPREHENSIVE PLAN UPDATE, at 51, available at: http://cityofbeacon.org/pdf/Beacon_Comprehensive_Plan_Final-040417.pdf.



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a substantial portion of the district or neighborhood.

This Property presents a unique situation because of its large lot size, existing buildings, and its pre-existing non-conforming commercial use. Its shape is also unique, which lends to the difficulty of developing the Property. This situation does not generally exist elsewhere in the district or neighborhood. It is fortunate that with this project the buildings can be demolished and the Property revitalized to serve a use that is compatible with surrounding residential area.

It should also be noted that the concept of “uniqueness” does not require property which is the subject of a use variance application to be the only property which suffers from the particular hardship. [See McKinney’s Practice Commentaries to Town Law 267-b)]. The uniqueness can depend on the degree to which a more generalized difficulty affects the subject Property. For example, in Rothenberg v. Board of Zoning Appeals, 232 AD2d 568 (2d Dept 1996), the Court upheld a use variance for a commercial use in a residential zone, even though other properties in the area shared some of the difficulties. The Court found that the subject site still possessed the required “uniqueness” of hardship, because it was the only undeveloped parcel located on a major intersection. In Supkis v. Town of Sand Lake Zoning Board of Appeals, 227 AD2d 779 (3d Dept. 1996), the Court found the required “uniqueness” in the “cumulative negative factors” of proximity to an undesirable land use, poor soil, and extensive costs of removal of storage tanks. Though some other properties possessed some of these factors, only the applicant’s property possessed the combination of factors in this degree.

Here, the high-density development surrounding the Property, accessed off of Eliza Street, together with the pre-existing non-conforming commercial use of the lot, render the hardship on this Property unique.

3. The requested use variance, if granted, will not alter the essential character of the neighborhood.

The granting of this use variance will not change the essential character of the neighborhood. The existing building is immediately adjacent to and abutting a seventy (70)-unit multi-story apartment building to the south, as well as an eight (8)-unit multi-story apartment use immediately adjacent to and abutting the Property to the north. The Property is only a few hundred feet from Main Street and the former Beacon High School, and adjacent to many other multi-family apartment developments and townhomes. See **Exhibit A**. The proposed buildings will make the Property appear part of the local landscape. The Applicant plans to locate the proposed buildings generally in the place of the former commercial buildings at the street



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frontage and to the rear of the Property, and featuring residential elements with similar architectural style and materials to properties in the neighborhood. The project will significantly improve the appearance of the entire Property. See enclosed Site Plans, dated August 28, 2018, including elevations and renderings.

Additionally, the use of the property for a nine (9) apartments will be more compatible with the surrounding zone than the existing commercial use is or would be. The residential use will be compatible with residential uses adjacent to the property and on Eliza Street and Fishkill Avenue.

If this variance is granted, the development of the Property will still also be subject to a thorough review and approval of the Planning Board during site plan review, and the Architectural Review Committee. This will be further assurance of compatibility with the existing neighborhood.

4. The alleged hardship has not been self-created.

The hardship has not been self-created. The hardship exists because the neighborhood has changed greatly since the original commercial zoning classification on the Property; because commercial uses are drawn to Main Street in the City of Beacon; because the existing buildings and the existing lot are very large; and because the zoning is simply no longer congruent with neighboring land uses and the City's own future plans for its development.

5. This is the smallest possible variance that will overcome the economic difficulties, and preserves protects the character of the neighborhood.

In addition to the four (4) criteria discussed above, NY General City Law Section 81-b(3)(c) requires that a Zoning Board should assure itself that it is granting the minimum variance necessary to address the hardship. Submitted with the application is a Financial Report from McAlpine Construction Co., Inc., and Gate House Realty, which establishes that the requested variance, to allow nine (9) apartments in place of the existing commercial structures, is the smallest number of units that would support the investment of demolishing the existing building fronting on Eliza Street, rehabilitating the building in the rear of the Property and improving the site. The Financial Analysis shows that the minimum required is a nine (9)-unit apartment building. In the context of the size and scale of the existing buildings, and the undisputed proof of economic costs of development inherent in restoring this commercial site with residential units meeting contemporary building codes, the Zoning Board is justified in determining that the variance seeking approval of the proposed nine (9)-units is the smallest possible variance that will overcome the economic difficulties.



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

It is respectfully submitted that the requested variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. In addition, the requested relief will not adversely impact the environment. The relief requested constitutes an Unlisted Action, for Uncoordinated Review pursuant to the State Environmental Quality Review Act ("SEQRA"). A Full Environmental Assessment Form ("EAF") is enclosed as **Exhibit D**.

As noted above, the proposed residential multi-family units are consistent with the existing character of the residential development abutting the Property. The proposed residential use will be a less intense use than the existing commercial use, and will have no adverse effects of noise, vibrations, odor, traffic, or impact on public services. Accordingly, the proposed redevelopment of the Property for a residential use consisting of nine (9) units, will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

SUMMARY:

For all the foregoing reasons, the Applicant respectfully submits that, under the test provided by the law, the issuance of the use variance is justified. The Applicant respectfully submits that there is no harm to the community that weighs against the benefit to the Applicant, and that the proposed variance is the minimum variance that meets the Applicant's needs and at the same time fully protects the character of the neighborhood and the health, safety and welfare of the community. We look forward to appearing before this Board on September 18th for the Public Hearing regarding this Application for a Use Variance.

To facilitate review of this Application, we respectfully submit a check payable to the City of Beacon of \$500.00, representing the ZBA Variance Application filing fee, together with seven (7) sets of the instant letter and the following documentation:⁹

- Exhibit A:** Images of the Property and Surrounding Properties and Zoning Map Excerpts;
- Exhibit B:** Financial Analysis of the Proposed Development on the Property, Prepared by McAlpine Construction Co., Inc., and Gate House Realty, Including the 3-Lot Maximum Subdivision Alternative;
- Exhibit C:** Building Department Existing Use Determination, dated August 26, 1999;

⁹ A CD-ROM containing the enclosures referenced herein is also enclosed.



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Exhibit D: Full Environmental Assessment Form; and

Exhibit E: Zoning Board of Appeals Application Form.

In further support of this Application, we respectfully submit site plans and renderings entitled "Site Plan Application – 53 Eliza Street", prepared by Aryeh Siegel, Architect, and Hudson Land Design Professional Engineering, P.C., dated August 28, 2018, numbered and titled as follows:

- Sheet 1 of 5 – Site Plan;
- Sheet 2 of 5 – Existing Conditions & Demolition Plan
- Sheet 3 of 5 – Elevations;
- Sheet 4 of 5 – Grading and Utility Plan; and
- Sheet 5 of 5 – Erosion and Sediment Control Plan.

Should the ZBA or City Staff have any questions or comments with regard to the foregoing, please do not hesitate to contact me. Thank you for your attention to and consideration of this matter.

Very truly yours,



Taylor M. Palmer

Enclosures;

Cc: Lt. Timothy P. Dexter, Building Inspector (1 full hard copy)
Drew V. Gamils, Esq.
Aryeh J. Seigel Architect
Michael A. Bodendorf, P.E. – Hudson Land Design Professional Engineering, P.C.
PIE Development Company, Inc.