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December 14, 2018

VIA FEDERAL EXPRESS
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: Supplemental Submission – Responses to Additional Comments
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”), we respectfully submit this letter in furtherance of the above-referenced application for variance relief to replace the existing legal non-conforming commercial use on the residentially zoned Property with multi-family apartments consisting of nine (9) units (the “Project”).

This letter supplements our correspondence to the Board, dated November 28, 2018, and provides additional information and responses to comments raised in a letter from your Counsel pertaining to the Applicant’s Financial Analysis, dated November 30, 2018 (the “November 30 Letter”).

RESPONSES TO COMMENTS IN THE NOVEMBER 30 LETTER FROM THE BOARD’S COUNSEL

We are submitting this letter in furtherance of the Applicant’s Financial Analysis that was initially submitted in the Applicant’s August 28th Variance Application package, and was updated in response to comments from this Board through the Applicant’s September 25, October 30 and November 28 supplemental submissions.

The November 30 Letter indicates that the Board is requesting additional information regarding the Applicant’s calculations provided in its Financial Analysis. We note that the applicable standard for the Applicant seeking a Use Variance is for that the Applicant to establish that “no



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permissible use will yield a reasonable return.”¹ The Courts have upheld a variety of factors that a Board may consider as part of its financial review, often noting that no set of factors is exhaustive and nor is an Applicant required to satisfy each one in every case. Indeed, it is well established that there is not a “hard and fast rule as to what constitutes a reasonable rate of return [and that] [e]ach case turns on facts that are dependent upon individualized circumstances.”²

Fortunately, in this matter the Applicant has presented evidence addressing most, if not all of the variety of financial factors contemplated, as well as providing detailed answers to additional questions from the Board. At the same time, the facts in this case are unique – the Applicant has owned the Property for more than two (2) decades; the Applicant purchased the Property in order to conduct his commercial business; he improved the Property where he would operate his business for twenty (20) years without an eye on developing multi-family residences; and now the surrounding community has come out in support of the Applicant’s proposed re-development of the Property for the proposed residential use. There also has been an obvious shift in character in the area from 1998 to 2018, and as shown in the Applicant’s detailed Financial Analysis the existing legal non-conforming commercial use of the Property is simply no longer viable or consistent with the community character.

We believe that the record before the Board, inclusive of this response letter, contains a complete and accurate Financial Analysis that fully supports a finding by the ZBA that the Applicant cannot realize a reasonable return. The Applicant’s Financial Analysis, including the additional details set forth herein, provides dollars and cents proof that none of the permitted uses in the Zoning District, including the pre-existing legal non-conforming commercial use, could result in a reasonable return on the Property.³ Further, 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.

Given the above, and incorporating the Applicant’s prior submission by reference, the Applicant provides the following additional responses to the comments in the December 30 Letter:

¹ See Edwards v. Davison, 94 A.D.3d 883, 884, 941 N.Y.S.2d 873, 873 (2d Dept. 2012) (quoting Village Board of the Village of Fayetteville v. Jarrold, 53 N.Y.2d 254, 258, 440 N.Y.S.2d 908, 909, 423 N.E.2d 385, 386 (1981)).

² Soho Alliance v. New York City Bd. of Standards and Appeals, 264 A.D.2d 59, 69 (1st Dept. 2000) (citations omitted), *aff’d*, 95 N.Y.2d 437 (2000).

³ 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.



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1. *As the Applicant owns the property, why are land costs factored into the Financial Analysis?*

Applicant Response: As noted above, there is no hard and fast rule regarding what constitutes a reasonable rate of return. In most cases where use variances have been issued and/or upheld the applicant provided only a portion of the type and amount of information that the current Applicant has provided to the Board. For example, in the case of Crossroads Recreation Inc. v. Broz,⁴ the Court listed a long list examples of types of proof that a landowner *could* provide to establish their inability to realize a reasonable return.⁵ The leading commenter on land use and planning in New York State, Patricia E. Salkin, provides that the documentary proof should include any “[o]ther facts relevant to the particular circumstances of the case.”⁶ Indeed, the Applicant’s Financial Analysis in this matter considers among other details submitted to this Board, the amount paid for the property; the present value of the parcel; expenses and carrying charges for the Property; taxes on the Property; mortgages on the Property; the income realized by the business (including prospective tenants) and the economic viability of each permitted uses under existing zoning, including the pre-existing legal non-conforming use, and provided evidence of costs, as well as prior unsuccessful attempts to market the Property. Accordingly, land costs were calculated in the Financial Analysis as more detailed therein because, whether owned or not the land is owned, there is a cost associated with the land.

2. *Please provide legal authority for the Applicant’s consultant to use current fair market values for the land cost in lieu of actual acquisition costs?*

Applicant Response: Please see the response to comment number 1 above. Additionally, the Court in the Crossroads Recreation decision held that: “[a]n estimate as to what a reasonable return on the entire parcel of property or any part thereof should be based on the initial investment of Crossroads **or** the present

⁴ Crossroads Recreation, Inc. v. Broz, 4 N.Y.2d 39 (1958).

⁵ Note: Some of these types of proof include (but are not limited to):

- 1) The amount of purchase price paid for the entire parcel of property;
- 2) present value of the entire parcel of property or any part thereof;
- 3) The expenses and carrying charges in connection with the maintenance of the entire parcel of property or any part thereof;
- 4) The amount of taxes on the entire parcel of property or any part thereof;
- 5) The amount of any mortgages, liens or other incumbrances, if any, on the entire parcel of property or any part thereof; and
- 6) Income from the land in issue.

⁶ Crossroads Recreation, Inc. v. Broz, 4 N.Y.2d 39 (1958).

value of the property.”⁷ Indeed, the Court in Village Bd. of Village of Fayetteville v. Jarrold was critical of a Petitioner that *failed* to include the land’s current value and the market value in the area.⁸

3. *Is the pertinent fair market value of the value that reflects the property’s current non-conforming use, or is it the value of the property if used in conformity with current zoning requirements? The Board would like the Applicant to provide the basis for its analysis and legal authority supporting its conclusion.*

Applicant Response: As noted above, the Applicant’s Financial Analysis confirms that none of the permitted uses in the Zoning District, including the pre-existing legal non-conforming commercial use, could result in a reasonable return on the Property. Additionally, the Applicant’s October 30, 2018 supplemental submission to this Board included Hudson Land Design’s analysis that this large Property could only be subdivided into three (3) developable lots, each of which could be improved by a single-family home (for a theoretical total of three (3) single family homes). The Financial Analysis included therein confirmed that subdividing the very large lot into two (2) and even three (3) lots and improving each with a single-family detached house “for rent” or “for sale” development will result in significant losses in either scenario. Indeed, the proposed Project is respectful of this concept by only proposing three (3) buildings with nine (9) total residential units. The proposed layout also centralizes or clusters development in a way that will preserve more open space on the property. It also internalizes parking on the site and allows for the adaptive reuse of the rear building as compared to single-family development involving three (3) single-family homes on the large irregularly shaped lot that would not achieve these goals or provide similar benefits.⁹

As noted above, the standard for the Applicant seeking a Use Variance is for that the Applicant to establish that “no permissible use will yield a reasonable return.”¹⁰ If property is being utilized as a non-conforming use, such as the Applicant’s legal non-conforming commercial use on the residentially zoned Property, the analysis for a Use Variance must also demonstrate that a reasonable return cannot be obtained if the property is used for such non-conforming use as well as for each of

⁷ Crossroads Recreation, Inc. v. Broz, 4 N.Y.2d 39 (1958) (bold emphasis added).

⁸ See Village Bd. of Village of Fayetteville v. Jarrold, 53 N.Y.2d 254, 440 N.Y.S.2d 908 (1981).

⁹ Note: Zoning Code Section 223-12(D) concerning “irregularly shaped lots” provides that “[w]here a question exists as to the proper application of any of the requirements of this chapter to a particular lot or parcel because of the peculiar or irregular shape of the lot or parcel, the Board of Appeals shall determine how the requirements of the chapter shall be applied.”

¹⁰ See Edwards v. Davison, 94 A.D.3d 883, 884, 941 N.Y.S.2d 873, 873 (2d Dept. 2012) (quoting Village Board of the Village of Fayetteville v. Jarrold, 53 N.Y.2d 254, 258, 440 N.Y.S.2d 908, 909, 423 N.E.2d 385, 386 (1981)).



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the permitted uses in the zone.¹¹ Notably, proof of a lack of reasonable return from permitted public uses is not required.¹² Similarly, 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.¹³ Nonetheless, the Applicant's Financial Analysis considered these uses, and demonstrates 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.¹⁴

4. *Please provide documentation (or other support) for the "Site costs" that are cited in its financial projections. The Board would like an additional breakdown of these costs and clarification as to where this number comes from.*

Applicant Response: Please see the attached letter dated December 7, 2018, including the referenced enclosures, prepared by the Applicant's consultant McAlpine Construction Co. Inc., annexed hereto as **Exhibit A**, providing additional documentation regarding site costs.

5. *Provide documentation (or other support/explanation) for the "Soft Costs" it cites in its projections. What is the basis for the percentages set forth? Did the Applicant obtain any bids or estimates for the architectural, engineering, and construction management costs that will actually be needed?*

Applicant Response: Please see the attached letter dated December 7, 2018, including the referenced enclosures, prepared by the Applicant's consultant McAlpine Construction Co. Inc., annexed hereto as **Exhibit A**, providing additional documentation regarding soft costs. Additionally, caselaw confirms that in considering what may result in a reasonable return, evidence "includes such items as the ... costs of demolishing the old structure and erecting a new one, the costs of obtaining the necessary area variance ... and the projected income from the proposed use..."¹⁵

¹¹ See Crossroads Recreation v. Broz, 4 N.Y.2d 39, 172 N.Y.S.2d 129 (1958); Khanuja v. Denison, 203 A.D.2d 679, 610 N.Y.S.2d 364 (3d Dept. 1994); Rostlee Associates v. Amelkin, 121 A.D.2d 725, 503 N.Y.S.2d 902 (2d Dept. 1986), appeal denied, 69 N.Y.2d 603, 512 N.Y.S.2d 1026, 504 N.E.2d 396 (1987).

¹² See Village Board of the Village of Fayetteville v. Jarrold, 53 N.Y.2d 254, 440 N.Y.S.2d 908 (1981); Grimpel Associates v. Cohalan, 41 N.Y.2d 431, 393 N.Y.S.2d 373, 361 N.E.2d 1022 (1977); Muller v. Williams, 88 A.D.2d 725, 451 N.Y.S.2d 278 (3d Dept. 1982).

¹³ See Muller v. Williams, 88 A.D.2d 725, 451 N.Y.S.2d 278 (3d Dept. 1982).

¹⁴ See also "Rathkopf's The Law of Zoning and Planning", § 58:10 ("Amount of Hardship Required") (4th ed.), Edward H. Ziegler, Jr. (providing in relevant part that: "... it is important that the 'present value' used be the value of the parcel as *presently zoned*, and not the value that the parcel would have if the variance were granted") (emphasis added).

¹⁵ Miltope Corp. v. Zoning Bd. of Appeals of Town of Huntington, 184 A.D.2d 565 (2d Dept. 1992).



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6. *What are the specific properties that were considered in the valuation that Valuation Consultants, Inc. prepared? Did this valuation consider the costs (if any) that were needed to prepare these other properties for further use?*

Applicant Response: Please see the attached letter prepared by the Applicant's financial consultant, Valuation Consultants, Inc., dated December 14, 2018, annexed hereto as **Exhibit B**, which includes sales comps considered.

7. *Was a purchase offer ever made on the Property? If so, when and how much was the offer? Was the Property ever formally listed for sale? If so, where was it listed?*

Applicant Response: As more fully detailed in the Applicant's October 30, 2018 supplemental submission (enclosed as **Exhibit E** therein), correspondence from the Applicant's real estate expert Gate House Realty was provided, referencing the Applicant's 2014 Office Exclusive Listing Agreement with Gate House Realty, including the listing price, as well as the Applicant's prior correspondence with a potential purchaser, Hudson River Healthcare, who did not ultimately make an offer on the Property. Additionally, case law confirms that "[t]he inability of a landowner to sell the property for a permitted purpose evinces a lack of reasonable return."¹⁶

8. *In the Financial Analysis, the Applicant provides a chart to show that the continued operation of the site as a legal nonconforming use would lead to an annual loss of \$12,456. This chart includes taxes and insurance. In a commercial lease, it is typical that the tenant would pay taxes and insurance. Please explain why this analysis does not make that assumption.*

Applicant Response: Please see the attached letter dated December 7, 2018, prepared by the Applicant's consultant McAlpine Construction Co. Inc., annexed hereto as **Exhibit A**, which confirms in relevant part that "[c]ommercial leases can be prepared in a variety of ways; however taxes and insurance must be calculated somewhere. If they were to be paid by the tenant, then the rent would be reduced by that amount to \$32,000 annually. Annual loss would remain the same." See **Exhibit A**. Additionally, case law confirms that evidence can include: "the property's purchase price, present value, real property taxes, mortgages and liens or other expenses, if any, or asking price if offered for sale."¹⁷

9. *What is the principle amount due on the \$450,000 property mortgage and when does this mortgage mature?*

¹⁶ *Citizens for Ghent, Inc. v. Zoning Bd. of Appeals of Town of Ghent*, 175 A.D.2d 528 (3d Dept. 1991).

¹⁷ *Conte v. Town of Norfolk Zoning Bd. of Appeals*, 261 A.D.2d 734 (3d Dept. 1999).



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Applicant Response: We understand the remaining principal on the mortgage is \$385,000+/-.

10. *Why are construction management costs calculated based on the land cost? Please explain why these fees are not based on the building costs only.*

Applicant Response: Please see the attached letter dated December 7, 2018, prepared by the Applicant's consultant McAlpine Construction Co. Inc., annexed hereto as **Exhibit A**, which confirms in relevant part that "Construction Management fees are calculated on building costs only." See **Exhibit A**.

SUMMARY:

It is respectfully submitted that the record before this Board, inclusive of these additional clarifications, taken together with the Financial Analysis as updated and previously reviewed with this Board at the Public Hearings, provide competent financial evidence that the Applicant cannot realize a reasonable return under the existing zoning.

For all the foregoing reasons, the Applicant respectfully submits that, under the tests provided by the law, the issuance of the requested variance relief is justified. The Applicant submits that there is no harm to the community that weighs against the benefit to the Applicant, and that the proposed variance relief 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. Further, the adoption of a Negative Declaration and approval of the instant use variance relief would not, of course, end the City's review. The Applicant must also appear again before the Planning Board for Site Plan Review and a Site Plan Public Hearing. The Planning Board has ample authority, under its site plan jurisdiction, as well as under SEQRA, to continue to discuss and evaluate this proposal.

In further support of this Application, we respectfully submit seven (7) sets of the instant letter and the following documentation:

Exhibit A: Letter dated December 7, 2018, including the referenced enclosures, prepared by McAlpine Construction Co. Inc.; and

Exhibit B: Letter dated December 14, 2018, prepared by Valuation Consultants, Inc., including comps considered.

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.



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We look forward to appearing before this Board on December 18 for the continued Public Hearing regarding this Application.

Very truly yours,

A handwritten signature in blue ink, appearing to read "TP", with a long horizontal flourish extending to the right.

Taylor M. Palmer

Enclosures;

Cc: Lt. Timothy P. Dexter, Building Inspector
Drew V. Gamils, Esq.
PIE Development Company, Inc.

EXHIBIT A

December 7, 2018

Cuddy & Feder LLP
445 Hamilton Avenue, 14th Floor
White Plains, NY 10601

Attention: Taylor M. Palmer, Esq.

Project:
53 Eliza Street
Beacon, NY 12508

Dear Sir:

Response to Drew Victoria Gamils' letter of November 30, 2018 is as follows:

Item (4)

Back up provided by various contractors. Cost exceeds budget submitted but with negotiation would be closer to the number submitted to the board.

Item (5)

Documentation of SOFT COSTS

CONSTRUCTION MANAGEMENT will be provided by McAlpine Construction at a cost of 6% of total project construction cost. That is a generally accepted trade practice for a project of this size.

FINANCING backup provided by Rhinebeck Bank

A/E FEES backup provided by Aryeh Siegel

BROKER FEES backup provided by Gatehouse Realty.

Using the 9 condo unit scenario these fees would be:

CM fee.....	\$125,000
Financing.....	\$218,000
A/E fees.....	\$362,000
Broker	\$269,000

Total soft costs per backup.....\$974,000

I would anticipate some negotiation of those numbers to get closer to the budget that was presented to the board.

Item (8)

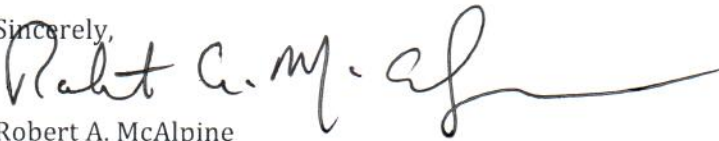
Commercial leases can be prepared in a variety of ways; however taxes and insurance must be calculated somewhere. If they were to be paid by the tenant, then the rent would be reduced by that amount to \$32,000 annually. Annual loss would remain the same.

Item (10)

Construction Management fees are calculated on building costs only.

I hope the board finds this helpful. Please let me know if I may be of further help or if you have any questions regarding this.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. McAlpine", with a long horizontal flourish extending to the right.

Robert A. McAlpine

McAlpine Construction Co., Inc.
217 Main Street
Beacon, NY 12508



A recipient of numerous landscape design awards!

Paul Kilgallen
505 Kings Highway
Valley Cottage, N.Y. 10989
bluesky.kilgallen@gmail.com
845.268.0585 / 845.353.5114
www.gotoBlueSky.com

ESTIMATE

Estimate: Bob McAlpine Job Location: 53 Eliza St. Beacon, NY 12508	Phone #: 845-765-8369 Date: 12/11/18
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Above agrees to pay Blue Sky Landscape Inc. the amount indicated below plus sales tax for the following services: \$ (25% minimum deposit due at time of signing.)

Pavers:

Installation of 10,000 sq. ft. of Cambridge Permeable Pavers Ledgestone 6 x 9 pavers. Set in a herring bone pattern.

Cost: \$109,000

Fencing:

6 ft. Board on Board Cedar fence with dog ear tops and treated post. 700 linear ft.

Installation of approx. 88 sections of Board on Board fence - set in concrete with 3.5 in. screws.

Cost: \$25,900

Landscaping:

Installation of landscaping and mulch.

Cost: \$50,000

Trash Enclosure:

Installation of trash enclosure.

Cost: \$10,000

Any alteration or deviation from the above specifications involving extra costs will be executed only upon written or verbal consent of Customer or Authorized Representative at job location, and will become an extra charge over and above estimate. Contractor guarantees that it will perform its service in a workmanlike manner. Contractor shall not be liable for any damage due to Acts of God or Nature. Customer's right to repair and replacement are the exclusive remedies and Contractor shall not be liable for damages, whether ordinary, incidental or consequential. Payments shall be made as follows: 25% retainer, 50% midway, and 25% upon completion of job. Any unpaid balance will be subject to 1.75% service charge per month. Should contractor be required to engage the services of an attorney in connection with this agreement or to enforce payment hereunder, Contractor shall be entitled to his reasonable attorney's or collection fees.

Authorized Signature

Print Name Here

Note: This proposal may be withdrawn by us if not accepted within 30 days.

Acceptance of Proposal

The above prices, specifications and conditions are satisfactory and are hereby accepted.
You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____

PROPOSAL

P & D ELECTRIC OF HUDSON VALLEY, INC.

53 Eliza Street Beacon, New York 12508

Telephone: (845) 838-1775 Fax: (845) 838-2184 Email: pdhv@optonline.net

Proposal Submitted McAlpine Construction

Date: 12/7/18

To: 179 Main Street

Beacon, NY 12508

845-765-0061

845-765-0062 (fax)

rmcalpine@mc Alpineconstruction.com

Project Name: 53 Eliza Site Electric

Attention: Bob McAlpine

Site electric for (9) unit development.

Included:

- Inspections.
- 1 - Pad mount transformer (furnished by utility).
- 1 - Primary riser.
- 300' - 4" PVC.
- 450' - 15kv, Central Hudson spec #2 primary.
- 9 - 150amp, single-phase meter pan.
- 3 - 400amp, single-phase, secondary feeder (to bldg. 1, 2, 3).
- 500' - 400amp, secondary conduit & wire.
- Primary riser pole.
- Bonding.

*LIGHTING
INCLUDING SERVICE
TO THE SITE*

Excluded:

- Excavation & backfill.
- CCTV conduits.
- Utility company charges (if applicable).

TOTAL PRICE: Eighty-eight thousand six hundred ten dollars.

\$88,610.00

All material is guaranteed to be as specified. All work to be completed in workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control. Owner may carry fire, tornado, and other necessary insurance. Our workers are covered by Workmen's Compensation Insurance.

If for any reason it becomes necessary for collection of payment, you are hereby responsible for any reasonable attorney's fee in connection with said payment. Unless otherwise noted all terms are net 30 days with 1 1/2 percent late charges per month.

Authorized Signature *Eden*

Note: The proposal may be withdrawn by us if not accepted within 30 days.

Acceptance of Approval

The above specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as specified as above.

Date of Acceptance _____

Signature _____

EP:ma

South Star Construction LLC

EXCAVATION, FOUNDATION, MANSORY

LICENSED & INSURED

3 CORNTASSLE RD

DANBURY CT 06810

PHONE: (203) 9943413

December 12, 2018

*Highview Development
217 Main Street
Beacon, new York 12508*

Proposal & Agreement

*Re: 53 Eliza Street
Beacon, Ny*

We propose to furnish the materials and perform the labor necessary for the completion of:

*600 Lf of concrete curb
Labor and materials \$10,100.00*

*1750 sf of sidewalk
Labor and materials \$9,500.00*

The work will be performed in accordance with the plans and specification submitted for above work and complete in a substantial workmanlike for the sum of \$19,600.00

Payment to be made as follows:

30% beginning of project

40% middle of project

30% upon completion of project

The above prices, specification and condition are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Submitted per South Star Construction LLC

Date

Signature



Joseph's Construction

1 East Main Street #101

Beacon, NY 12508

(845) 831-8026

Terms: Net - After 30 days 2% Service Charge per Month

December 12, 2018

PROPOSAL

Proposal Submitted to:

Job Site Information:

PIE Development	Job Name
53 Eliza Street	Job Location
Beacon, NY 12508	53 Eliza St, Beacon, NY
	Email:

We hereby submit specifications and estimate for:

6" Ductile iron water main installed including all excavation, bedding material, backfilling, all pipe, fittings, fire hydrant, valves, wet tap in Eliza St.

9 - 2" corporations, 9 curb stops and 9 - 2" copper laterals to each lot.

\$ 72,500.00

6" SDR 35 sanitary sewer main installed including all excavation, bedding material, backfilling, all pipe, fittings, manholes, connection to sewer in Eliza St.,

9 - 4" SDR 35 lateral to each lot.

37,000.00

15" ADS N-12 storm storm sewer including all excavation, bedding material, backfilling, all pipe, catch basins, connection to storm sewer in Eliza St.

8" SDR 35 roof leader header pipe, all fittings to connect to storm sewer.

24,000.00

Excavation and backfilling for all curbing.

7,200.00

Grading entire site including sub-base preparation for pavers.

75,000.00

TOTAL

\$ 215,700.00

We hereby propose to furnish material and labor - complete in accordance with the above specifications for Two hundred fifteen thousand dollars and 00/100 plus tax (if applicable) \$215,700.00 plus tax (if applicable).

Payment to be made as follows:



Joseph's Construction

1 East Main Street #101

Beacon, NY 12508

(845) 831-8026

Terms: Net - After 30 days 2% Service Charge per Month

All matter is guaranteed to be as specified. All work to be completed in a workman like manner according to standard practices. Any alteration or deviation from the above specifications involving extra cost will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond Our Company. Owner is to carry necessary insurance. Our Company workers are fully covered by Workman's Compensation Insurance

Authorized Signature

X _____

Note: This proposal may be withdrawn by us if not accepted within _____ Days

Acceptance of Proposal. The above prices and specifications are satisfactory and hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

X _____

Signature

Date of Acceptance _____

X _____

Signature

Proposal for Architectural Services

For work at:

53 Eliza Street

Beacon, New York

December 3, 2018

ARYEH SIEGEL, ARCHITECT
84 MASON CIRCLE
BEACON, NEW YORK 12508
845 838 2490

Scope of Work

Summary: Renovation of existing building for 2 condominium apartments. New construction of 7 condominium apartments in 2 buildings.

1. Apartments

- A. Approximately 2,400 square foot multi-story apartments with 2 bedrooms each.
- B. Garage below 6 apartments

2. General Work

- A. Lighting and electrical layout
- B. Plumbing fixture layout
- C. HVAC coordination

3. Items Excluded from the Architectural Scope of Work

- A. Landscape design
- B. Site /Civil Engineering

The above services are assumed to be provided on a design / build basis by the Contractor hired by the Owner to perform the work. The Architect will design lighting, electrical, and plumbing location layouts and coordinate with the Contractor as required for interface with architectural work.

Phases of Work

A. Schematic Design

1. Review the program furnished by the Owner to ascertain the requirements of the Project and review the understanding of these requirements with the Owner
2. Review with the Owner alternative approaches to design and construction of the Project. A maximum of 2 design alternates are included in this proposal. Additional design alternates will be provided at the Owner's request, and billed at the hourly rates described herein as an additional service.
3. Prepare, based on mutually agreed upon program and Project budget requirements, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.
4. Submit to the Owner, if requested in writing by the Owner, an estimated Statement of Probable Construction Cost. The Architect does not warrant or represent that bids or negotiated prices will not vary from any estimates of the Cost of the Work or evaluation agreed to or prepared by the Architect. The Cost of the Work does not include compensation of the Architect, his consultants, the cost of financing or other costs that are the responsibility of the Owner.

No fixed limit of Construction Cost shall be established as a condition of the Agreement by the furnishing, proposal, or establishment of a Project budget, unless such fixed limit has been agreed upon in writing and signed by the parties hereto.

B. Design Development

1. Based on the approved Schematic Design Documents, and any adjustments authorized by the Owner in the program or Project budget, the Architect shall prepare Design Development Documents consisting of drawings to fix and describe the size and character of the entire Project as to architectural, mechanical and electrical systems, materials and such other elements as may be appropriate.
2. The Architect shall prepare the Design Development drawings in anticipation of compliance with the Building Code as described in Section C.3. below. It is not the intent of the Design Development drawings to describe technical compliance with Building Codes.

C. Construction Documents

1. Based on approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the Project budget authorized by the Owner, prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for construction of the Project.

Phases of Work *(continued)*

C. Construction Documents

2. Assist the Owner in connection with the Owner's responsibility for filing documents required for approval of authorities having jurisdiction over the Project.
3. The Architect shall review laws, codes and regulations applicable to the Architect's services. The Architect shall respond in the design of the project to requirements imposed by governmental authorities having jurisdiction over the Project. The Architect shall prepare the Construction Drawings to conform with applicable Building Codes in a manner that is normally acceptable to the Building Code authority having jurisdiction over the work; and which are known, published, and in effect as of the date of this Agreement. The Architect shall not be responsible for complying with any conflicting, inconsistent, or revised Building Codes not readily apparent at the time of drawing preparation; but shall make every effort to determine the applicability of any such conflicting Codes to the project, and obtain a determination from the Building Department.

D. Bidding or Negotiation

1. Subsequent to the Client's approval of the Construction Documents, assist the Client in obtaining bids or negotiated proposals from contractors, and assist in awarding and preparing contracts for construction.

E. Construction Administration

1. The construction phase will commence with the award of the Contract for Construction, and will terminate when the final payment to the Contractor is due.
2. Represent the Client during the Construction Phase, and advise and consult with the Client. The Architect shall not have control over and shall not be responsible for construction means, methods, sequences, schedules, or procedures, since these are solely the responsibility of the Contractor under the Contract for Construction.
3. Visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work and to determine in general if the Work is proceeding according to the Contract Documents. Keep the Client informed of the progress and quality of the Work, and endeavor to guard the Client against, and bring to the Client's attention, defects and deficiencies in the Work of the Contractor observed during site visits.
4. Assist the Client in determining the amounts owed to the Contractor based on observations at the site and on evaluations of the Contractor's Application for Payment.

Owner's Responsibilities

1. The Owner shall provide full information regarding requirements for the project including a program, which shall set forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, special equipment and systems and site requirements.
2. The Owner shall furnish a legal description and a certified land survey of the site giving, as applicable, grades and lines of streets, pavements, rights of way, restrictions, boundaries and contours of the site, tree locations, and full information concerning available service and utility lines both public and private, above and below grade, including inverts and depths.
3. The Owner shall furnish the services of engineers or other consultants when such services are deemed necessary by the Architect or required by the Contract Documents, or authorities having jurisdiction over the project.
4. The Owner shall furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents, and when such services are deemed necessary by the Architect, or authorities having jurisdiction over the project.
5. The Owner shall furnish all legal, accounting, and insurance counseling services as may be necessary at any time for the Project.
6. The Architect shall be entitled to rely on the accuracy and completeness of the services, information, surveys and reports described above.
7. The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Architect's services and the Work.

Schedule of Fees

The fee structure indicated below is a fixed fee for the work described in this Proposal. The fee is based on a percentage of the estimated construction cost and a review of the work involved in this project. Should the Scope of Work performed by the Architect change significantly the fee will be adjusted accordingly. This shall include revisions required by inconsistencies with approvals or instructions previously given by the Client; required by enactment or revision of codes, laws or regulations subsequent to the preparation of documents; or due to changes required as a result of the Client's failure to render decisions in a timely manner. Any revision to the fee will be preceded by a written proposal by the Architect for approval by the Client. This fee will be either a revised fixed fee, or an hourly fee as described below to cover the additional work.

Architects and MEP Engineering Fee:

\$361,800

Fee Summary by Phase

	% of Construction Cost	Estimated Construction Cost	Fee
Architect's Fee	9%	\$ 4,020,000	\$ 361,800

Phase	%	Fee
Schematic Design	20%	\$ 72,360
Design Development	20%	\$ 72,360
Construction Documents	40%	\$ 144,720
Bidding or Negotiation	5%	\$ 18,090
Construction Administration	15%	\$ 54,270
Total Project Fee	100%	\$ 361,800

Hourly Rates

Architect:	\$145 per hour
Drafting & Technical:	\$85 per hour
Administration:	\$25 per hour

The foregoing fees do not include the following reimbursable expenses:

- + Reproduction of documents at the current rates of Best Blueprint, Cold Spring, NY
- + Cost of express mailing and shipping, postage and handling.
- + Fees for testing agencies, if required.
- + Additional Work required by approval of other authorities (besides the Building Department) having jurisdiction over the project. This includes, but is not limited to, the Planning Board, Zoning Board, Architectural Review Board, and Health Department
- + Fees of cost estimating consultants to provide detailed cost estimates.
- + Cost of renderings, mock-ups, samples, or other methods of presentation.
- + Providing services made necessary by the errors or default of the Contractor or his sub-contractors.
- + Other expenses that may reasonably be inferred and agreed by the Owner and the Architect to be beyond the scope of this agreement.

Miscellaneous Provisions

1. Invoices shall be billed monthly as the Architect's work progresses, and payment shall be due upon receipt of invoice. The Invoices of consultants shall be paid within 10 days after receipt. Payments of fees to the Department of Buildings and other authorities having jurisdiction over the work shall be paid directly by the Owner, or by the Contractor according the Contract for Construction.
2. The retainer given by the Owner to the Architect upon acceptance of the Proposal will be credited to the Architect's final invoices. Should the project be terminated or abandoned by the Owner before the entire retainer has been credited towards invoices, the remainder of the retainer shall not be refundable to the Owner, and any outstanding invoices shall be paid in full, without expectation of credit from the retainer.
3. The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the work.
4. The Drawings, Specifications and other documents are instruments of the Architect's service, and the Architect shall be deemed the author of these documents, and shall retain all rights to these documents, including copyright. Owner agrees to allow photographs and plans to be included in the Architects website and promotional materials.
5. Claims, disputes, and other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by Arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect.
6. This Agreement may be terminated by either party upon not less than seven days written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. Any payments due as of seven days after the receipt of written notice of termination shall be due and payable immediately.
7. This Agreement may be terminated by the Owner upon not less than seven days written notice to the Architect in the event that the project is permanently abandoned. If the project is abandoned by the Owner for more than 60 consecutive days, the Architect may terminate this Agreement by giving written notice.
8. Should the Owner reinstate the project after termination or abandonment as described above, the Agreement may be revised to reflect the Architect's current fee structures. In addition, a start-up fee equal to 15% of the Architect's revised fee shall be paid by the Owner to the Architect prior to beginning work on the project again.
9. The Owner shall provide professional credit to the Architect on a construction sign provided by the Architect located on the roadside edge of the property for the duration of the construction of the project.
10. The terms of this agreement are valid for 60 days from the date of the Agreement. After 60 days, the agreement will be revised to reflect the latest fee structure and other terms indicated herein.

Agreement

made and entered into as of the Third Day of December, Two Thousand Eighteen

Between the Owners:

Ed Petrowski
53 Eliza Street
Beacon, NY 12508

and the Architect:

Aryeh Siegel, Architect
84 Mason Circle
Beacon, NY 12508

For the Project as outlined in this Proposal.

Owner	Ed Petrowski	Date
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Architect	Aryeh Siegel	Date
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Gate House Realty
492 Main St.
Beacon, NY 12508

Date: 12/6/18

Reference: Sales price estimates for 53 Eliza St., Beacon, NY

Thank you for taking the time to reach out to me.

Below is an estimate of market values for the sales at proposed development at 53 Eliza St.

Unit #	Sqft	Sale Price @ about \$270/sqft including 6% sales commission
1	1650	\$440,500
2	1600	\$432,000
3	1872	\$505,440
4	1872	\$505,440
5	1872	\$505,440
6	1872	\$505,440
7	1800	\$486,000
8	2300	\$287,500
9	1800	\$486,000

Total sell out \$4,487,260. Total sales commission \$269,235.60

Please let me know if you have any questions.

Charlotte Guernsey
Owner/Broker of Gate House Realty

RHINEBECK BANK
ESTIMATE OF MORTGAGE CLOSING FEES

NAME	
AMOUNT OF LOAN	\$3,000,000.00
ADDRESS OF MORTGAGED PREMISES	
PURPOSE	Purchase/Renovation

Payable to Rhinebeck Bank

Origination Fee (.5%)	\$15,000.00
Appraisal Fee	\$4,000.00
Phase I	\$2,500.00
Credit Report Fee	\$45.00
Income Tax Verification Fee	\$60.00
Flood Hazard Determination Fee	\$19.50
Fidelity Tax Service	\$108.00
Initial Escrow Deposit (2 month cushion)	TBD
Interim Interest (15 days est)	

Payable to County Clerk

Mortgage Tax (Dutchess 1.05%)	\$31,500.00
Recording Fees	\$500.00

Payable to Others:

Title Insurance	TBD
Bank Attorney Fee (.25% x loan amt +\$850)	\$11,000.00

Total, Estimated Fees

\$64,732.50



From: Roy Shemitz <rshemitz@rhinebeckbank.com>
Subject: RE: Not my Project!
Date: December 3, 2018 at 4:23 PM
To: Robert McAlpine <rmcalpine@roundhousebeacon.com>

RS

Prime + 1%. So if you figure that the average usage will be \$1.5 million over 18 months so about \$141,000. The only other thing that I would suggest is that you take in to account that prime will be increasing so I would use approx. \$153,000

Roy Shemitz
VP Commercial Lending
1022 Main Street | Fishkill, NY 12524
Work: 845-896-0110 x 11107 | Mobile: 845-489-2997 | Fax: 845-896-7220

-----Original Message-----

From: Robert McAlpine [mailto:rmcalpine@roundhousebeacon.com]
Sent: Monday, December 3, 2018 2:37 PM
To: Roy Shemitz
Subject: Re: Not my Project!

Roy,

Thanks. What is the current interest rate for a construction loan and over 18 months what would you project the total interest cost to be?

Bob

On Dec 3, 2018, at 2:08 PM, Roy Shemitz <rshemitz@rhinebeckbank.com> wrote:

Bob,

I hope that all is going well for you and your family. I would love to stop by and say hello before the holiday season.

I believe that the attached should be helpful. If you need anything else, please let me know. Also, if an introduction is possible, I would sincerely appreciate it.

Thanks

Roy Shemitz
VP Commercial Lending
1022 Main Street | Fishkill, NY 12524
Work: 845-896-0110 x 11107 | Mobile: 845-489-2997 | Fax: 845-896-7220

-----Original Message-----

From: Robert McAlpine [mailto:rmcalpine@roundhousebeacon.com]
Sent: Monday, December 3, 2018 2:02 PM
To: Roy Shemitz
Subject: Not my Project!

Roy,

I am putting together a budget for a friend of mine in town for a condominium project. The Zoning Board is asking for financing costs.

Site and building cost would be about \$3mm.

What would I project for costs associated with a construction loan including origination and closing fees?

I would appreciate any help you can provide.

Regards,
Bob Mc Alpine

Disclaimer: This message is intended only for the use of the individual or entity to which it is addressed and may contain information which is privileged, confidential, proprietary, or exempt from disclosure under applicable law. If you are not the intended recipient or the person

EXHIBIT B

6 Front Street

Newburgh, New York

12550

Tel. 845-568-0600

Fax. 845-568-0699



December 14, 2018

Mr. Ed Pietrowski
P&D Electric of Hudson Valley Inc.
53 Eliza Street
Beacon, New York 12508

RE: ZONING BOARD VARIANCE APPLICATION
OUR FILE E806059
ED PIETROWSKI
OFFICE/WAREHOUSE BUILDINGS
53 ELIZA STREET DUTCHESS COUNTY
BEACON, NEW YORK

Dear Mr. Pietrowski:

On July 27, 2018 we performed a restricted appraisal report on the above referenced property. We understand that you are currently applying to the City of Beacon for variance relief to re-develop the commercial property, with a residential use.

This letter and enclosures are prepared in response to comment #6 in the letter dated November 30, 2018 from the ZBA's counsel concerning the comparable sales used in our analysis. Attached please find write-ups of those sales.

The sales were compared to the subject building "As Is" and adjustments were made for differences as shown in the grid. The condition of all the sales was taken into account.

Should you have any further questions please feel free to contact me.

Sincerely,

Gregory R. Langer

Improved Sale No. 1



Property Identification

Record ID	11160
Property Type	Office, 465
Address	334 Fishkill Avenue , Beacon, Dutchess County, New York 12508
Location	Beacon, City of
Tax ID	6054-23-280919 (Portion of)
School District	Beacon City

Sale Data

Grantor	Cervone Realty Inc.
Grantee	334 Fishkill Ave LLC
Sale Date	August 16, 2017
Deed Book/Page	22017/6870
Verification	Other sources: County Records, Deed, Real Info, SalesWeb, Confirmed by John Mahon

Sale Price	\$400,000
Cash Equivalent	\$400,000

Land Data

Land Size	0.177 Acres or 7,710 SF
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Improved Sale No. 1 (Cont.)

Front Footage	65 ft Total Frontage: 65 ft Fishkill Avenue;
Zoning	HI, Heavy Industrial
Topography	Level
Utilities	Municipal Water and Sewer
Shape	Generally Rectangular

General Physical Data

Building Type	Single Tenant
Gross SF	3,176

Stories	2-3
Year Built	1900 Circa
Condition	Average

Indicators

Sale Price/Gross SF	\$125.94
Floor Area Ratio	0.41
Land to Building Ratio	2.43:1

Remarks

This is the sale of a 3,176 SF office building that is located on Fishkill Avenue in the City of Beacon. The building was constructed circa 1900, it is in average condition. The building sits on a portion of parcel #6054-23-280919, which has been subdivided into two separate lots. This building is located on Parcel (2), as defined by the new subdivision map. The new lot totals 0.177, with 65 feet of frontage along Fishkill Ave. Municipal water and sewer is connected to the site. There are 5-7 spaces for vehicle parking, which is suitable for the structure. The lot is located close to Interstate 84, Route 9 in Fishkill, and the Newburgh-Beacon bridge.

Improved Sale No. 2



Property Identification

Record ID	10330
Property Type	Warehouse, 700
Address	89 Dewindt Street, Beacon, Dutchess County, New York 12508
Location	Beacon, City of
Tax ID	5954-36-888838
School District	Beacon City

Sale Data

Grantor	Penzetta Ferdinand
Grantee	BE Bhatki LLC
Sale Date	April 10, 2016
Deed Book/Page	22016/3673
Verification	DutMLS#347004; June 21, 2016; Other sources: County Records, Real Info, Confirmed by John Mahon

Sale Price	\$299,900
Cash Equivalent	\$299,900

Land Data

Land Size	0.130 Acres or 5,663 SF
Front Footage	40 ft Dewindt Street; 40 ft Catherine Street;
Zoning	RD-3, Residence District
Topography	Generally Level
Utilities	Municipal water and sewer
Shape	Generally Rectangular

Improved Sale No. 2 (Cont.)

General Physical Data

Building Type	Single Tenant
Gross SF	2,460
Stories	1
Year Built	1965
Condition	Average

Indicators

Sale Price/Gross SF	\$121.91
Floor Area Ratio	0.43
Land to Building Ratio	2.3:1

Remarks

This sale consists of a 2,460 SF warehouse building that is located in the City of Beacon. The building was built around 1965 and is in average to below average condition relative to its age. The building is located on a .13 acre parcel of land and occupies virtually the entire lot. There is no parking lot, although parking is available on-street on S Brett St. Municipal water and sewer is connected to the site as well as gas and electric.

Improved Sale No. 3



Property Identification

Record ID	10331
Property Type	Professional Building, 465
Address	333 Fishkill Avenue , Beacon, Dutchess County, New York 12508
Location	Beacon, City of
Tax ID	6054-23-275938
School District	Beacon

Sale Data

Grantor	Garell, Paul
Grantee	Local 845 LLC
Sale Date	February 25, 2016
Deed Book/Page	22016/1465
Verification	DutMLS#343647; June 10, 2016; Other sources: County Records, Real Info, Confirmed by John Mahon

Sale Price	\$432,000
Cash Equivalent	\$432,000

Land Data

Land Size	0.320 Acres or 13,939 SF
Front Footage	122 ft Total Frontage: 122 ft Fishkill Avenue;
Zoning	R1-7.5, One Family Residential District
Topography	Generally Level
Utilities	Municipal water and sewer

Improved Sale No. 3 (Cont.)

Shape Generally Rectangular

General Physical Data

Building Type Multi-Tenant

Gross SF 2,500

Unit 2

Stories 2

Year Built 1968

Condition Average

Indicators

Sale Price/Gross SF \$172.80

Sale Price/Unit \$216,000.00

Floor Area Ratio 0.18

Land to Building Ratio 5.58:1

Remarks

This sale consists of a 2,500 SF, two story professional building that is located in the City of Beacon. The building was built in 1968 and it is in average to good condition relative to its age. There are currently two tenants that lease the space, a preschool and a medical office. There is a paved parking lot in front of the structure that is adequate for the structures size. Municipal water and sewer is connected to the site as well as gas and electric. The structure has 122 feet of road frontage along Fishkill Avenue.

Improved Sale No. 4



Property Identification

Record ID	11192
Property Type	Warehouse, 700
Address	9 Hanna Lane Unit 12, Beacon, Dutchess County, New York 12508
Location	Beacon, City of
Tax ID	6054-30-197863
School District	Beacon

Sale Data

Grantor	Metal Concepts LLC
Grantee	Niche 12 LLC
Sale Date	November 29, 2017
Deed Book/Page	22018/553
Verification	Other sources: Appraisal Records, Deed, County Records, Real Info, Confirmed by Logan Kurtz
Sale Price	\$785,000
Cash Equivalent	\$785,000

Land Data

Land Size	0.317 Acres or 13,824 SF
Front Footage	Hanna Lane (common area);
Zoning	LI, Light Industrial
Topography	Generally Level
Utilities	Municipal Water and Sewer

Improved Sale No. 4 (Cont.)

Shape Generally Rectangular

General Physical Data

Building Type	Multi-Tenant
Gross SF	6,000
Unit	4
Stories	1
Year Built	1990
Condition	Average

Indicators

Sale Price/Gross SF	\$130.83
Sale Price/Unit	\$196,250.00
Floor Area Ratio	0.02
Land to Building Ratio	50:1

Remarks

Sale of a 6,000 SF warehouse building that is located in the City of Beacon. The complex totals 5.77 acres, of which the unit has 5.5% of the common interest. It is known as Tallix Condominium Complex and consists of several buildings which total 80,168 sf which equates the overall land density to 3.14. The building was constructed in 1990; it is in average condition. Municipal water and sewer is connected to the site. There are a total of 4 units within the warehouse: Unit 1 totals 720 SF, Unit 2 totals 280 SF, Unit 3 totals 3,000 SF, and Unit 4 totals 2,000 SF. There is a paved parking lot and driveway that provides suitable parking for the structure. Hanna Lane is a private road within the complex which is off of Fishkill Avenue. The lot is located close to Interstate 84, Newburgh-Beacon bridge, and Route 9D. The purchaser is a neighboring condominium owner exercising his right to first refusal as per the lease agreement in the complex. He is buying it as an investment and to protect his other investments within the complex