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January 7, 2019

**VIA FEDERAL EXPRESS  
AND EMAIL**

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

RE: Application for Use & Area Variances – Responses to Board 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 (“Project”).

This letter supplements our most-recent letters to this Board, dated October 30, 2018 and November 28, 2018, and provides additional information and responses to comments that were raised at this Board’s December 18, 2018 meeting.

**THE APPLICANT’S DETAILED FINANCIAL ANALYSIS CONFIRMS THAT THE NUMBER OF UNITS REQUESTED, NINE (9) UNITS, IS THE MINIMUM POSSIBLE VARIANCE RELIEF THAT WOULD PROVIDE A REASONABLE RETURN NECESSARY TO ADDRESS THE HARDSHIP.**

The Applicant appreciates the opportunity to provide this Board with additional details in support of the Applicant’s Financial Analysis.<sup>1</sup> As this Board is aware, at the December 18<sup>th</sup> Public Hearing, the Applicant’s consultants reviewed the “Restricted Report” prepared by Valuation Consultants dated July 5, 2018 (the “Restricted Report”), which used a sales comparison approach to determine a good faith valuation of the Property. During our discussion with the Board, the Board requested additional information regarding the fair market value of the Property in order to confirm that nine (9) units is the minimum possible variance that would provide a reasonable return to the property owner.

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<sup>1</sup> Note: The Applicant’s Financial Analysis incorporates the details contained in the Applicant’s submissions dated August 28, September 25, October 30 and November 28, and includes the details presented by the Applicant’s financial consultants at this Board’s December 18<sup>th</sup> Public Hearing.



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In order to better respond to this question, the Applicant sought additional Financial Opinions from real estate experts that have intimate familiarity with the real estate market in the City of Beacon. As is more fully detailed in the Applicant's Supplemental Financial Analysis annexed hereto as **Exhibit A**, which analysis includes Financial Opinions from two (2) real estate experts, it is respectfully submitted that the fair market value for the Property is between \$400,000 and \$450,000. See **Exhibit A**.

Specifically, the Applicant's Supplemental Financial Analysis (**Exhibit A**) includes correspondence from the Applicant's financial consultant, McAlpine Construction Co., Inc, dated January 7, 2019 (the "Supplemental Financial Analysis"), which references enclosed opinions from CR Properties Group, LLC, dated January 3, 2019 (the "CR Opinion"),<sup>2</sup> and from McGrath Realty Inc., dated January 7, 2019 (the "McGrath Opinion", collectively referred to as "the Financial Opinions").<sup>3</sup> As noted in the Supplemental Financial Analysis, each of the Financial Opinions considered the "Restricted Report" prepared by Valuation Consultants and further assessed the location of the Property; access to the Property; the highest and best use of the Property given its existence as a legal non-conforming commercial use and its marketability as a commercial use given these site conditions and constraints. The Supplemental Financial Analysis considered the fair market value representative of these additional factors that are not otherwise reflected in the sale comparison approach. Accordingly, the Supplemental Financial Analysis confirms that "[i]n my professional opinion, I would agree [with the Financial Opinions] that the fair market value [of the Property] is between \$400,000 and \$450,000." See **Exhibit A**.

Additionally, this Board sought more details regarding the Applicant's cost basis for the Property. As more fully detailed in **Exhibit A**, the Supplemental Financial Analysis provides further support that none of the permitted uses in the underlying zoning, including the pre-existing non-conforming use would result in a reasonable return on the Property. The Supplemental Financial Analysis also shows 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. The infeasibility of these alternatives, including only six (6) units, is supported by the competent financial evidence in the record. Ultimately, nine (9) units are necessary in order to realize a reasonable return with regard to the fair market value and the owner's basis in the Property. It is therefore axiomatic that the benefit sought cannot be achieved by any method other than the requested variance relief.

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<sup>2</sup> See **Exhibit A**, Tab 1.

<sup>3</sup> See **Exhibit A**, Tab 2.



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**WHILE THE APPLICANT REFERS THIS BOARD TO ITS ATTORNEY REGARDING PROCEDURE, IT IS RESPECTFULLY SUBMITTED THAT THE ZONING BOARD OF APPEALS MAY REVIEW THE APPLICANT'S REQUESTS FOR USE AND AREA VARIANCES SIMULTANEOUSLY; IN THE ALTERNATIVE, THE REQUEST FOR A USE VARIANCE MAY BE REVIEWED BY THIS BOARD, FOLLOWED BY THE APPLICANT'S REQUEST FOR AN AREA VARIANCE.**

During the December 18<sup>th</sup> meeting, this Board also considered the Applicant's position that the Application for nine (9) multi-family units did not require an Area Variance because the Applicant's request for a Use Variance for nine (9) multi-family units is inherently inclusive of the proposed density. Following the discussion on this matter, the Board opened the Public Hearing on the Applicant's request in the alternative for an Area Variance, which review would be considered concurrently with the Public Hearing on the application for a Use Variance.

As was discussed with the Board and its Counsel at the December 18<sup>th</sup> meeting, while the Applicant defers to the Board's Counsel as to procedure, it is respectfully submitted that this Board may consider the variance relief sought herein together, reviewing the respective legal standards proscribed for the variances sought in accordance with the Zoning Code and New York General City Law. In the alternative, if the Board sees fit, the Board could first review the criteria for a Use Variance before it considers the criteria and standards applicable to the request for an Area Variance.

#### **CONCLUSION**

As is evidenced by the materials provided in support of the Applicant's Use and Area Variance requests, the requested variances are the minimum variances necessary, and the benefit to the Applicant if the variances are granted outweighs any possible detriment to the health, safety and welfare of the neighborhood or community. For the reasons set forth herein, and which will be further discussed at the Board's January 15<sup>th</sup> meeting, the Applicant respectfully submits that, under the tests provided by the law, the issuance of the Use and Area Variances is justified.

Pursuant to the Applicant's discussions with this Board at its December 18<sup>th</sup> meeting, the Applicant respectfully requests that this Board consider closing the Public Hearings and that this Board also consider adopting a Negative Declaration under SEQRA.

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; Drew V. Gamils, Esq.