

**Zoning Board of Appeals
May 16, 2017**

The Zoning Board of Appeals met for a scheduled meeting on Tuesday, May 16, 2017 at 7:00 p.m. in the Municipal Center courtroom, One Municipal Plaza, Beacon, New York. Chairman Jack Dunne and Members Neil Sullivan, Robert Lanier, Judy Smith, and Jordan Haug; Deputy Building Inspector Dave Buckley; and Board Attorney Eric Gordon were present.

Mr. Dunne outlined the format of the Board's proceedings for the benefit of the public. He noted five members were present and three votes would be needed to take action on a variance request. The meeting was then opened on a motion made by Ms. Smith, seconded by Mr. Lanier. All voted in favor. Motion carried.

Mr. Dunne called for corrections/additions or a motion to approve the minutes of the April 18, 2017 meeting. Mr. Haug pointed to the second to last paragraph on Page 6 which said "Ms. Haug" rather than "Mr. Haug" and Board Attorney Eric Gordon reported the minutes reflected that he was in attendance. However Attorney Ed Phillips from Keane & Beane, P.C., was actually present for the meeting and that should be amended. Mr. Sullivan made a motion to approve the minutes of the April 18, 2017 meeting as amended, seconded by Mr. Lanier. All voted in favor. Motion carried.

ITEM NO. 1 CONTINUE PUBLIC HEARING ON APPLICATION SUBMITTED BY MY FOUR DGHTR'S REALTY CORP., 123 ROMBOUT AVENUE, TAX GRID NO. 30-5954-35-794799-00, R1-5 ZONING DISTRICT, SEEKING RELIEF FROM SECTION 223-17(C) FOR A USE VARIANCE TO ALLOW MULTI-FAMILY APARTMENTS (10 UNITS) IN A SINGLE FAMILY ZONING DISTRICT

Mr. Dunne reported this public hearing is a continuance from last month where information was provided by the applicant at the meeting and members asked for an opportunity to further review the financial information provided.

Attorney Taylor Palmer, Cuddy & Feder, LLC, reported they responded to comments from last meeting, worked with Board Attorney Ed Phillips, and addressed public hearing comments in a letter dated April 25, 2017. They listed points to justify the request for a Use Variance and demonstrate why development of three residential lots is not economically viable. Mr. Palmer explained the proposal for a 10-unit apartment development is the minimum use that will allow the owner to achieve a reasonable return on the property. There are no changes to the initial proposal; however additional economic information was provided in correspondence from Cuddy & Feder, LLP dated May 12, 2017 which included information from development consultants RPBNY, Inc. Mr. Dunne read the following letter from Jon Car Realty into the record:

This report is issued in furtherance of my previous testimony before the Board supporting a use variance for the above property. I am a real estate broker specializing in sale of properties in Beacon for the last 20 years. In my professional opinion, after reviewing comparable sales and rentals, the owner cannot realize a reasonable return on the property as it is presently zoned. A

single family development of the property will not generate a reasonable return. In this area, the average sale price of homes developed would be approximately \$400,000. However, the size and shape of the lot are not conducive to a lot-layout that would maximize sales, and actual sale prices could be lower than this amount. A conceptual layout showing three single family homes is shown on the annexed sketch, showing the effect of the lot size and shape on the potential layout of single family home. Additionally taking into consideration the considerable cost of demolition of existing structures, engineering on the lots, and construction of the houses, this would not yield a reasonable return, in my opinion. The other uses permissible for this site are a church, a public school, library, museum, private club, firehouse, hospital, and private school. It is my professional opinion, that none of these would provide a reasonable return to the owner. The accompanying letter of RPBNY, INC establishes this fact in terms of costs of development. Equally persuasive is the fact that there is simply no market demand for any of these uses. I have not had any demand or inquiries for the above listed uses and I feel that it would be nearly impossible to rent or sell such uses to prospective clients. Accordingly, I believe that a use variance is warranted based upon the unique circumstances applicable to this particular property. The proposed one story 10-unit apartment building to be built in a place of existing commercial structures, in the smallest number of units that would support the investment of rehabilitating the buildings and improving the site. In my professional opinion this is the minimum variance necessary to provide a reasonable return. The fact that the units are centrally located, and walking distance to the train station will make these units extremely desirable and easily rentable. This use provides a reasonable return to the owner. Should you have any questions, please do not hesitate to contact me.

Jonathan Miller, Principal Broker
Jon Car Realty
451 Main Street
Beacon, New York 12508

Mr. Dunne opened the floor for public comment. No members of the public wished to speak. Mr. Dunne verified with the Board secretary that no additional correspondence had been received regarding this appeal. Mr. Lanier made a motion to close the public hearing, seconded by Ms. Smith. All voted in favor.

After a detailed review of the draft resolution with Board counsel, Eric Gordon and careful consideration, Mr. Haug made a motion to grant the variance subject to the applicant returning to the Planning Board for Site Plan Approval. The motion was seconded by Mr. Lanier. All voted in favor. Motion carried; 5-0. Variance granted.

ITEM NO. 2 APPLICATION SUBMITTED BY JOSE SANTOS, 9 DEPUYSTER AVENUE, TAX GRID NO. 30-6054-40-383634-00, R1-10 ZONING DISTRICT, SEEKING RELIEF FROM SECTION 223-10(C)(1) TO CONSTRUCT A TWO STORY ADDITION ON A PRE-EXISTING NON-CONFORMING USE, AND SECTION 223-17(C) TO CONSTRUCT AN ENTRANCE HALL WITH A 17 FT. FRONT YARD SETBACK (35 FT. REQUIRED)

Mr. Lanier made a motion to open the public hearing on the application submitted by Jose Santos, 9 DePuyster Avenue, seeking relief from Section 223-10(C)(1) to construct a two story addition on a pre-existing non-conforming use, and Section 223-17(C) to construct an entrance hall with a 17 ft. front yard setback, seconded by Ms. Smith. All voted in favor. Motion carried.

Jose Santos described his proposal for an addition to his two-family house which is located in the R1-10 Zoning District. He purchased the house 15 years ago and now his children are getting older and the home is becoming too small for them. The house is a pre-existing non-conforming use in a neighborhood which only allows single family homes and it was noted that several other two-family homes exist in the same neighborhood. The structure can't be enlarged without a variance from Section 223-10(C)(1) due to its pre-existing non-conforming use. The two-story rear addition will increase their living space by 1,200 sq. ft., which will make the structure similar in size to the adjacent two-family house which is 2,300 sq. ft. The entrance hall would provide them a separate entry to their unit from the front rather than the rear of the dwelling. The addition will only increase the size of their unit and will not add any additional units to the building. Mr. Buckley reported if this were a single family house the addition could be constructed without a variance and only a front yard setback for the entrance way would be required.

Board Attorney Eric Gordon questioned whether this should be a Use or Area Variance because it is an expansion of an existing non-conforming use. Mr. Buckley reported the Building Department is of the opinion that it is an area variance. Board Attorney Eric Gordon requested that he be given an opportunity to review the case law to make certain that this does not constitute a use variance.

Steve Rossi, 15 DePuyster Avenue and adjoining neighbor, voiced his support for the variance even though it will bring the structure closer to his house. He reported Mr. Santos and his family take care of their property and are great neighbors.

Jeff Gallagher, 10 Garden Street, Cold Spring, asked to speak on the Use vs. Area variance. He felt that the applicant was not asking for a change in use therefore the use remains the same, it's just an expansion of the space.

There were no further comments from the public and Mr. Dunne verified with the Board secretary that no correspondence had been received regarding this appeal. Ms. Smith made a motion to close the public hearing, seconded by Mr. Lanier. All voted in favor.

Board Attorney Eric Gordon advised members that they could vote on the variance however if it is determined that a use variance is required, the area variance would be nullified and the applicant would need to submit an application for a use variance.

After a detailed review of the draft resolution and careful consideration, Ms. Smith made a motion to grant the variance pending confirmation from counsel, seconded by Mr. Haug. All voted in favor. Motion carried; 5-0. Variance granted.

ITEM NO. 3 APPLICATION SUBMITTED BY THE HOSE COMPANY, LLC, 162 MAIN STREET (HUDSON BEACH GLASS), TAX GRID NO. 30-5954-27-781973-00, CB ZONING DISTRICT, SEEKING RELIEF FROM SECTION 223.26(B)(2) TO PROVIDE 4 OFF-STREET PARKING SPACES (28.5 SPACES REQUIRED)

Mr. Lanier made a motion to open the public hearing on the application submitted by The Hose Company, LLC, 162 Main Street (Hudson Beach Glass), for relief from Section 223.26(B)(2) to provide 4 off-street parking spaces, seconded by Mr. Haug. All voted in favor. Motion carried.

Owners John Gilvey and Michael Benzer (The Hose Company, LLC) presented their proposal to construct an addition to the Hudson Beach Glass building at 162 Main Street. The Planning Board had reviewed the Site Plan application and granted approval subject to obtaining a variance for off-street parking. The addition will expand the studio, glass display area, and create additional office space. The existing garage area will be expanded to the lot line with a second floor terrace area overlooking Main Street. Off-street parking requirements are based on the 1964 parking regulations, and this addition triggers the need for more spaces because it exceeds the 1964 requirement by more than 25%.

Mr. Dunne read the following memorandum from the Planning Board into the record.

At their last meeting, the Planning Board reviewed the application for a parking variance at 162 Main Street (Hudson Beach Glass) as submitted by The Hose Company, LLC. This applicant was before the Planning Board for approval to expand the studio, glass display area, and create additional office space. There is no residential component to this property therefore members felt the expansion would in no way affect parking in the area. In addition, a municipal lot is located directly adjacent to the property. Members voted unanimously to send a favorable recommendation to the Zoning Board of Appeals. As always the final decision will be based on your review of the application but the Planning Board felt the aforementioned factors should be offered as an advisory viewpoint.

Mr. Dunne opened the floor for public comment; however no one from the public wished to speak. Mr. Dunne verified with the Board secretary that no additional correspondence had been received regarding this appeal. Mr. Lanier made a motion to close the public hearing, seconded by Mr. Haug. All voted in favor.

After a detailed review of the draft resolution and careful consideration, Mr. Sullivan made a motion to grant the variance as requested, seconded by Ms. Smith. All voted in favor. Motion carried; 5-0. Variance granted.

ITEM NO. 4 APPLICATION SUBMITTED BY JUDY NOVOTNY (WITH MICHAEL NOVOTNY AND JANET GANZER), 3 MILLER STREET, TAX GRID NO. 30-5954-44-931671-00, R1-5 ZONING DISTRICT, SEEKING RELIEF FROM SECTION 223-17(C) FOR AN IN-GROUND POOL WITH 6.1 FT. SIDE YARD SETBACK (10 FT. REQUIRED)

Mr. Haug made a motion to open the public hearing on the application submitted by Judy Novotny, 3 Miller Street, seeking relief from Section 223-17(C) for an in-ground pool with 6.1 ft. side yard setback, seconded by Mr. Lanier. All voted in favor. Motion carried.

Judy Novotny (with Janet Ganzer) described their request for a side yard variance for an existing in-ground pool at 3 Miller Street. Ms. Novotny explained this property has been their family home for over 50 years and her father installed the pool nearly 40 years ago when they were young. She was uncertain of setback dimensions when the pool was installed. Ms. Novotny reported the original pool company is still in business and has performed maintenance on the pool over the years. One side of the pool is the required 10 ft. from the side yard however the other side only has a 6.1 ft. setback. They are now selling the house and trying to get a Certificate of Compliance to legalize the pool. Fencing around the pool was replaced, the gate was upgraded to meet code requirements, a new pool lining and filter were installed, and it passed an electrical inspection. Ms. Novotny pointed out the pool is listed on the City Assessor records as an above ground pool. She was hoping a variance would be granted to allow the pool to remain as the pending sale is conditioned on closure of this issue.

Mr. Dunne opened the floor to public comment. Pam Dieboll, owner of 21 Teller Avenue which backs up to the subject property, reported the pool is 39 inches above her property and is currently surrounded with a cyclone fence. She was not opposed to the variance but asked if more screening could be provided because it is near her house. Alternately, she asked if they would be permitted to attach cedar or bamboo to their fence for more privacy. Discussion took place about the legality of allowing the neighbor to add fencing on the applicant's property. Maintenance would be the burden of the property owner and any additional fencing on the applicant's property would be a civil matter between the property owners. Mr. Haug pointed out the additional 3.9 ft. distance would not necessarily change the appearance of the pool.

Debbie DiRubio, 5 Miller Street, had no objection and supported the request. She reported the property is and has always been well maintained.

Dean DiRubio, 5 Miller Street, explained they live next door and was in favor of the variance. He enjoys looking at the pool, has met the prospective owner, and will take pleasure in watching them enjoy it.

There were no further comments from the public and Mr. Dunne verified with the Board secretary that no additional correspondence had been received regarding this appeal. Mr. Haug made a motion to close the public hearing, seconded by Ms. Smith. All voted in favor.

After a detailed review of the draft resolution and careful consideration, Mr. Lanier made a motion to grant the variance as requested, seconded by Ms. Smith. All voted in favor. Motion carried; 5-0. Variance granted.

ITEM NO. 5 APPLICATION SUBMITTED BY HALVEY FUNERAL HOME (PATRICK HALVEY C/O CROSSIX, LLC), 2 BEEKMAN STREET, TAX GRID NO. 30-5954-33-610763-00, R1-10 ZONING DISTRICT, TO CHANGE AN EXISTING USE VARIANCE FROM A RESTAURANT INTO A FUNERAL HOME

Mr. Haug made a motion to open the public hearing on the application submitted by Halvey Funeral Home (Patrick Halvey c/o Crossix, LLC), 2 Beekman Street, to change an existing Use Variance from a restaurant into a Funeral Home, seconded by Ms. Smith. All voted in favor. Motion carried.

Joe Guarneri (Crossix, LLC) described their proposal to modify the existing Use Variance permitting a restaurant use in the R1-10 residential zoning district to operate a funeral home. The site has been vacant for over two years and is in foreclosure. They are in contract to purchase the property contingent on obtaining a variance. Patrick Halvey reported he is third generation operating Halvey's Funeral Home in Beacon. He explained many changes and trends are taking place in the funeral industry over the last ten years. Families are looking for larger more modern facilities and the traditional residence turned into a funeral home is no longer desirable. Mr. Halvey felt Beacon does not have a funeral facility that can meet the needs of large families and has a responsibility to provide more for the citizens of this community. He toured other facilities and believes this will become one of the nicest in funeral homes in Dutchess County.

Architect Aryeh Siegel presented renderings of modifications they plan to do to the building. The existing outdoor deck will be removed and a new standing seam roof installed to tie in various portions of the building. The exterior walls would be flat stucco with brick piers, and a new entry portico would be created. Site work includes new paving, lighting and landscaping.

Mr. Guarneri explained he is simply asking for a revision to the existing use variance by adding three words "and funeral home". He outlined several reasons why the funeral home use would be less invasive to the neighborhood than a restaurant. A restaurant is open seven days a week where a funeral home is typically used 30-40 hours a week, funeral homes are much quieter, and no police presence would be required. It is a unique application that will improve zoning in two neighborhoods as the Willow Street location will return back to a more conforming single family house. Parking was discussed and Mr. Guarneri reported they have 45 parking spaces, and the similar sized funeral homes in Wappingers Falls and Fishkill have 30 and 28 spaces. He explained people typically come and go, and the majority of funerals take place at church. Mr. Dunne opened the floor to public comment.

Maria Celi, Dia Art Museum's Director of Visitor Experience, reported they have a café therefore do not support a restaurant. They have concern about traffic at the funeral home and had over 120,000 visitors last year. She reported only 7-10% of those visitors take Metro North, the remaining drive to the museum. Ms. Celi expressed concerned about overflow parking when there are large funerals and do not want people using their parking area.

Alfred Arcielo, 1065 Wolcott Avenue and directly above the building, was in favor of the funeral home use. The restaurant has been vacant and they see a lot of illegal activity at night. He believed they would be good neighbors and the funeral home use would reduce the number of problems experienced with a restaurant.

Nicholas Chivattoni, 84 West Willow Street, is a commuter therefore passes by the site nearly every day. He said it would be nice to see the building renovated.

Marika Lucker, 8 Kitteridge Place located just above the property, felt a funeral home would be a great improvement because the restaurant never succeeded. They continually experienced noise and problems when the restaurant was in operation. She believed the Halvey's would take good care of the property.

Laura Bazarnick, 3 Kitteridge Place, expressed concerns about chemicals used in the embalming process. Although she was in support of the use, she asked about ventilation of embalming fluids. Mr. Halvey reported the funeral industry is heavily regulated nationally and locally, and there are many rules they must follow. Formaldehyde is one of the most common chemicals used in the embalming process. It is filtered before being vented and they follow all industry regulations.

Reverend James Quinn, 1069 Wolcott Avenue, reported when the restaurant was open they experienced many noisy, loud and disruptive evenings. He felt the funeral home would be a blessing to the community. He believed 48 parking spaces would be adequate considering they only use adjacent streets which is not disruptive to the neighborhood.

Lee Kyriacou, 1076 Wolcott Avenue and owner of 1080 Wolcott Avenue, was informed of this issue from a neighbor, Clarice Jensen (36 Bayview Avenue) who submitted a letter opposing the change. He stated he was only speaking in his individual capacity and not in his capacity as a member of the City Council. Mr. Kyriacou said he had spoken to neighbors via e-mail who were not in support of the variance. He was well aware of the noise issue from the restaurant, but pointed out the first restaurant, Il Giordino, was a quiet and successful. The noise problems from the last restaurant use were more enforcement issues. Mr. Kyriacou felt a funeral home would not be compatible or complementary to the nearby nursery school or Dia Art Museum. The applicant must prove that a funeral home is the only viable financial use to achieve a reasonable return on the property. He feels there is ample demonstration that at least one, if not two, successful restaurants operated on the site. Mr. Kyriacou feels a funeral home does not qualify as the only financially successful use of the property.

Lisa Galina-Alvarez, 23 Hammond Plaza, expressed concerns about overflow parking because no off-street parking is available. She believed a restaurant could be successful without being intrusive to the neighbors and that a funeral home use would not be compatible with the nursery school. Ms. Galina-Alvarez pointed out when the restaurant was successful it was great, and the last owner just ran a poor business. She spoke about the Linkage Zone and felt a restaurant would serve as a welcoming gateway and a more suitable connection to Main Street.

Brian Guarneri, 50 Simmons Lane, works in the restaurant industry and felt the property has gone through three unsuccessful owners and that a restaurant could not operate successfully. He supports his family and believes a funeral home would be an improvement to the area.

Martin Mayeski, 54 Verplanck Avenue, said Halvey's Funeral Home is outdated and parking in that neighborhood is a disaster. Use of this site would allow them to enlarge their facility and remain Beacon. Mr. Mayeski believed funeral homes in general do not take away from any town's function and that a new larger funeral home would be good for the community.

Mr. Dunne read the following letters into the record.

Barbara Sims, 5 Kitteridge Place and adjoining neighbor. I am familiar with the plans to relocate the Halvey Funeral Home in Beacon to this address. I agree that issues of the property with the existing restaurant location to be intrusive with the character of the neighborhood, and support this project. Thank you for your considerations.

Barbara Sims
5 Kitteridge Place

Regarding 2 Beekman Street, Patrick Halvey's plan for a funeral home on this piece of prime real estate at the threshold of Beacon's front door is outrageous. I can't think of a more inappropriate use of this property. Surely with all the new money coming to this city and good management a two-story restaurant with outside decks and dining would be ideal. Who, visiting Beacon and Dia would find a funeral home as an invitation? Do the right thing. Deny this alternate use.

Bob Kacur
163 Sargent Avenue

My name is Clarice Jensen and I reside at 36 Bayview Avenue in Beacon. I understand the Planning Board will discuss a request for a use variance for the property at 2 Beekman Street on behalf of Joe Guarneri and the Halvey Funeral Home. I am unable to attend the meeting tomorrow evening because of work, but I hope you will be able to circulate this letter to the members of the Planning Board instead. Joe Guarneri knocked on my door a month ago to notify me that the vacant restaurant next to my house was going to become a funeral home and that work on the building was to begin immediately. He informed me that the Halvey Funeral Home was relocating there, and that they are planning to do extensive work on the building. He also told me that eventually, the new Halvey Funeral Home would be the only funeral home in Beacon. My first concern about this news was regarding traffic. Beekman Street is the only way to access the Beacon Station, and southbound Beekman towards the intersection of 9D is a critical route for commuters going to and coming home from work. This area is also experiencing a large influx of apartment residences (The View and Edgewater), so the vehicular traffic in this area is going to increase greatly, in addition to the existing commuter traffic. Funeral Homes must often disrupt traffic to allow for funeral processions to travel en masse to the cemetery. If the Halvey Funeral Home relocates here, and truly becomes the only funeral home in the city, as Mr. Guarneri explained to me, then very regularly traffic will be disrupted for a very large segment of the population of Beacon. These disruptions will affect peoples' commutes and will also strain city resources in accommodating funeral processions from such a central travel route in the city. In

addition, I have concerns about granting a use variance to a business so near the waterfront that requires the use of strong chemicals. Does the proposed facility include a crematory? Much work and money has been spent cleaning and revitalizing this area to encourage recreation. DIA is directly across the street and the Fjord trail links this area to hiking trails in the area. All of these elements are very exciting for the city, and there are many exciting new restaurants, breweries, distilleries, etc. moving to Beacon. A business such as this would be much better suited for this location, and much better suit the city, both in terms of practicality and in ways that respect the needs of Beaconites (regarding traffic disruptions) and that continue to encourage tourism. (This restaurant is a prime location directly across from DIA and easy walking distance to the train station.) Many thanks for your time and I hope you will respectfully consider my opposition to this proposal.

Clarice Jensen
36 Bayview Avenue

At their last meeting, the Planning Board reviewed the Zoning Board of Appeals agenda and offered an advisory opinion for the application submitted by Halvey Funeral Home to change an existing Use Variance from a restaurant into a funeral home. A lengthy discussion took place about the property and history of 2 Beekman Street. On the positive side, members know Halvey Funeral Home is a respectable generational business that has served Beacon for many years, and will be operational for many years into the future. Additionally the building has been vacant and is an eyesore. Concerns were raised with regard to parking because the street would not be open to off-street parking. However members realize that two other funeral homes in the area have less than the 45 spaces that are available on this site. The applicant polled neighbors who were in favor of the change because it would be a less intense use than a restaurant. After much debate, members were split 3-3 on their recommendation. As always the final decision will be based on your review of the application but the Planning Board felt the aforementioned factors should be offered as an advisory viewpoint.

Board Attorney Eric Gordon asked members if they wanted to request additional financial analysis from the applicant. He explained a modification of an existing use variance would be unprecedented therefore this should be considered as a new use. He advised members that they must consider all four standards of a use variance which are much higher than an area variance. The applicant is required to produce financial evidence that the permitted uses for this property, which include residential and restaurant uses, would not produce a reasonable return. The applicant has provided financial analysis, but the board must determine if it is sufficient to demonstrate that no other permitted use is viable.

Ms. Smith asked why the owner of the property wasn't present and believed financial evidence from the owner should be provided to demonstrate if the property could make a reasonable return. Board Attorney Gordon explained it is up to the owner or future buyer to prove that they cannot make a reasonable return on the property based on existing uses that are permitted. It was not only up to the owner to satisfy this standard. Ms. Smith felt the restaurant was not successful because it is apart from the rest of the City and could not achieve a reasonable return. Board Attorney Gordon reiterated the standards for use variances are very high and actual financial evidence is needed to make a determination that a use variance should be granted.

There were no further comments from the public and Mr. Dunne verified with the Board secretary that no additional correspondence had been received regarding this appeal. Mr. Haug made a motion to close the public hearing, seconded by Ms. Smith. All voted in favor.

Board Attorney Gordon again reviewed each of the standards for granting a use variance with the Board members. After a detailed review of the draft resolution and careful consideration of these standards, Ms. Smith made a motion to grant the variance subject to the applicant returning to the Planning Board for Site Plan Approval. The motion was seconded by Mr. Lanier. All voted in favor. Motion carried; 5-0. Variance granted.

There was no further business to discuss and Mr. Haug made a motion to adjourn the meeting, seconded by Mr. Lanier. All voted in favor. Motion carried. The meeting adjourned at 8:55 p.m.