

Zoning Board of Appeals
December 18, 2018

The Zoning Board of Appeals met for a scheduled meeting on Tuesday, December 18, 2018 at 7:00 p.m. in the Municipal Center courtroom, One Municipal Plaza, Beacon, New York. Chairman John Dunne, Members Robert Lanier, Jordan Haug, and David Jensen; City Attorney Drew Gamils and Building Inspector Tim Dexter were in attendance. Member Judy Smith was absent.

Training Session

City Attorney Drew Gamils presented a training session on Historic Preservation, with specific attention the City Code Chapter 134 Section 9 addressing the appeal procedure. An online course and test were part of the session.

Executive Session

Mr. Lanier made a motion to go into executive session. Mr. Lanier withdrew his motion. Mr. Haug made a motion to go into executive session for advice of counsel, seconded by Mr. Jensen. All voted in favor. Members went into executive session at 7:42 p.m. Mr. Haug made a motion to come out of executive session, seconded by Mr. Lanier. All voted in favor. Motion carried. The regular meeting started at 8:23 p.m.

Regular Meeting

Mr. Haug made a motion to open the meeting, seconded by Mr. Jensen. All voted in favor. Motion carried. Mr. Dunne outlined the format of the Board's proceedings for the benefit of the public, explaining four out of five members were present and three votes would be needed to take action on a variance request.

Mr. Dunne called for corrections/additions or a motion to approve the minutes of the November 20, 2018 meeting. Mr. Lanier made a motion to approve the minutes of the November 20, 2018 meeting as presented, seconded by Mr. Haug. All voted in favor. Motion carried.

ITEM NO. 1 CONTINUE PUBLIC HEARING ON APPLICATION SUBMITTED BY PIE DEVELOPERS, 53 ELIZA STREET, TAX GRID NO. 30-6054-29-031870-00, R1-5 ZONING DISTRICT, SEEKING RELIEF FROM SECTION 223-17(C) FOR A USE VARIANCE (AND POSSIBLE AREA VARIANCE) TO ALLOW A 9-UNIT MULTI-FAMILY DEVELOPMENT

The public hearing on the application submitted by PIE Developers, 53 Eliza Street, seeking relief from Section 223-17(C) for a Use Variance to allow a 9-unit multi-family development was reopened on a motion made by Mr. Jensen, seconded by Mr. Haug. All voted in favor. Motion carried.

City Attorney Drew Gamils reported correspondence was sent to the applicant requesting additional information on the financial analysis and raising the issue that an area variance would be needed for three additional units above the six that would be permitted if a use variance is

granted. Although the applicant questioned the need for an area variance, they submitted the appropriate application materials, mailed and posted the required public hearing notices for an area variance.

Attorney Taylor Palmer felt an area variance for the number of units was not needed because the use variance would include the increased density. After some discussion, City Attorney Drew Gamils reported her office, with the support of the Zoning Administrator, determined both an area and use variance are needed for this project. Discussion took place amongst members with regard to the need for an area variance and a lengthy debate took place about case law cited in Cuddy & Feder's correspondence. Ultimately members determined an area variance would also be required for this project.

Mr. Haug made a motion to simultaneously open the public hearing on the application for an area variance, seconded by Mr. Lanier. All voted in favor. Motion carried. Discussion took place as to which variance should be considered first and it was agreed that they would both be considered concurrently.

Attorney Taylor Palmer was joined by applicant Ed Pietrowski, Architect Aryeh Siegel, Engineer Mike Bodendorf, Robert McAlpine of McAlpine Construction, and Gregory Langer of Valuation Consultants. Mr. Palmer reported the application was referred to Dutchess County Planning and Development and was declared a local matter with no additional comments which also applies to the area variance. Mr. Palmer summarized the proposal to convert the commercial use into residential units, presented revised elevations of the project, and noted additional financial information was submitted for review. He reported they obtained information on other use variances issued for a florist shop and funeral home in addition to a similar variance granted for 123 Rombout Avenue where a commercial property was converted into a residential use and did not require an area variance. He went through criteria for area variances as related to the project at 53 Eliza Street and summarized the traffic report. Mr. Dunne opened the floor for public comment.

Ray Cleary, 27 Eliza Street, provided members with correspondence outlining his concerns and recommended the variance be denied. As a compromise he suggested the applicant create three two-family buildings so an area variance would not be necessary. Mr. Cleary said a compromise would make him and the neighborhood happy.

Greg Langer, president of Valuation Consultants, a Real Estate appraisal business established in the 70's, explained his company did the appraisal for the initial consultation. He explained it was a restricted appraisal which can only be done for a buyer or an owner. The appraisal results in the same valuation but background details are left out of the report. The initial report did not include the four sales in Beacon that were used to value this unusual property. The date of sales used as comparable values ranged from February 2016 to November 2017. It was noted that when the property was listed by Gatehouse Realty the only party that showed interest did not make a purchase offer. The applicant's representatives were not sure what means or approaches Gatehouse Realty used to market the property. A lengthy discussion took place with regard to valuation of the property, square footage, and whether the method of valuation was based on square footage of the building space.

Robert McAlpine responded to questions regarding site construction costs outlined in cost projections previously provided to the board. His original budget was established on construction experience and a database he created based from previous projects his company completed. To update and confirm those figures, Mr. McAlpine went to various contractors with the actual proposal in order to establish construction costs based on today's values. A very lengthy discussion took place with regard to soft costs related to development of the project. Mr. McAlpine felt his projections were solid based on the site plan and quotes of current development costs.

Discussion took place with regard to hiring an independent party of behalf of the board to examine the economic analysis provided by the applicant in an effort to determine that nine units are needed to gain financial reward. Further debate took place about the value of the property as marketed for sale or lease. Mr. Palmer referred to other use variances granted, and to all factors that are to be measured for the variance which include public support, financials, compliance with the comprehensive plan, consistency with the neighborhood, etc. and pointed out more than one factor needs to be considered. Discussion took place about precedence, the uniqueness of this property and its location.

Mr. Haug made a motion to go into executive session for advice of counsel, seconded by Mr. Lanier. All voted in favor. Motion carried. Members went into executive session at 9:46 p.m. Mr. Haug made a motion to come out of executive session, seconded by Mr. Jensen. All voted in favor. Motion carried. The regular meeting reconvened at 10:07 p.m.

A very lengthy discussion took place over the applicant's financial analysis, marketability of the property in both its current state and proposed use, the accuracy of the presented property value of \$900,000, the amount of money invested by the applicant in the last 20 years, the value of constructing three houses as-of-right, and whether the use variance or area variance should be considered first.

There was no further discussion and Mr. Haug made a motion to continue the public hearings at the January 2019 meeting, seconded by Mr. Lanier. All voted in favor. Motion carried. After some discussion, Mr. Haug made a motion to allow the applicant to submit supplemental submissions no later than January 7, 2019 for the January 15, 2019 meeting, seconded by Mr. Lanier. All voted in favor. Motion carried.

Members thanked retiring Building Inspector Tim Dexter for his years of guidance and dedication to the City of Beacon. There was no further business to discuss and the meeting was closed on a motion made by Mr. Haug, seconded by Mr. Lanier. All voted in favor. Motion carried. The meeting adjourned at 10:35 p.m.