



COURTROOM  
1 MUNICIPAL PLAZA  
BEACON, NY 12508

**September 19, 2023  
7:00 PM  
Zoning Board of Appeals Agenda**

**Regular Meeting**

1. Approval of the August 15, 2023, minutes
2. Review and hold a continued public hearing on application submitted by Eva Garcia, 359 Cherry Street, Tax Grid No. 30- 5954-16-876329-00, in the R1-40 Zoning District, to construct a rear addition and covered screen porch, which requires relief from the following: Â Section 223-17.D to allow for a 1.2 ft side yard setback (25 ft required) Section 223-17.D to allow for a 36.1 ft rear yard setback (50 ft required) Â Adjourning at the request of the applicant.
3. Review and hold a continued public hearing on application submitted by 925 Wolcott LLC, 925 Wolcott Avenue, Tax Grid No. 30-5954-44-922633-00, R1-10 Zoning District, for the following:  
Â a. An area variance from Sections 223-10.C and 223-10.D to permit reconstruction of a structure previously containing a non-conforming use; Â or, in the second alternative, for Â b. A use variance from Section 223-17.C to permit a multi-family or single-room-occupancy (SRO) building in the R1-10 Zoning District. Â Any such variances are to be considered subsequently, and pursuant to Section 223-55.C of the City Code.

**City of Beacon Zoning Board of Appeals Agenda**  
**09/19/2023**

**Title:**

Approval of the August 15, 2023, minutes

**ATTACHMENTS**

**City of Beacon Zoning Board of Appeals Agenda**  
**09/19/2023**

**Title:**

Review and hold a continued public hearing on application submitted by Eva Garcia, 359 Cherry Street, Tax Grid No. 30- 5954-16-876329-00, in the R1-40 Zoning District, to construct a rear addition and covered screen porch, which requires relief from the following:

1. Section 223-17.D to allow for a 1.2 ft side yard setback (25 ft required)
2. Section 223-17.D to allow for a 36.1 ft rear yard setback (50 ft required)

***Adjourning at the request of the applicant.***

**ATTACHMENTS**

[359 Cherry ZBA 8.15.23 app.pdf](#)

[359 Cherry denial ltr 8.2.23.pdf](#)

[359 CherryZBA 8.15.23 - Sheet 1\\_Site Plan\\_230725.pdf](#)

[359 Cherry ZBA 8.15.23 - Sheet 2\\_Existing Conditions and Demo Plan\\_230725.pdf](#)

[359 Cherry ZBA 8.15.23 - Sheet 3\\_Floor Plan and Elevations\\_230725.pdf](#)

**ARYEH SIEGEL**  
ARCHITECT

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**Amanda Caputo**  
Planning Board Secretary  
City of Beacon  
One Municipal Plaza  
Beacon, NY 12508

**Re: 359 Cherry Street**  
*Zoning Board Variance Application*

July 25, 2023

Dear Amanda,

Please find enclosed:

- (3) sets of Sheets 1 through 3, dated July 25, 2023
- ZBA Application Form for Area Variance Request
- I & I Form
- Individual Disclosure Form
- Checks for Zoning Board Application Fee and Escrow
- Electronic files to be forwarded to you

Thank you. Please let me know if you have any questions.

Sincerely,



Aryeh Siegel  
*Aryeh Siegel, Architect*

84 Mason Circle  
Beacon, New York 12508

[ajs@ajsarch.com](mailto:ajs@ajsarch.com)  
[www.ajsarch.com](http://www.ajsarch.com)

Tel 845 838 2490  
Fax 845 838 2657



**ZONING BOARD OF APPEALS**

City of Beacon, New York

**APPLICATION FOR APPEAL**OWNER: Eva GarciaADDRESS: 359 Cherry StreetBeacon, NY 12508TELEPHONE: 917 593 0956E-MAIL: namssilat@gmail.comAPPLICANT (if not owner): Eva GarciaADDRESS: 359 Cherry StreetBeacon, NY 12508

TELEPHONE: \_\_\_\_\_

E-MAIL: namssilat@gmail.comREPRESENTED BY: Aryeh Siegel ArchitectADDRESS: 84 Mason CircleBeacon, NY 12508TELEPHONE: 845-838-2490E-MAIL: ajs@ajsarch.comPROPERTY LOCATION: 359 Cherry StreetZONING DISTRICT: R-40TAX MAP DESIGNATION: SECTION 5954BLOCK 16 LOT 876329

Section of Zoning Code appealed from or Interpretation desired:

Side yard setback, rear yard setback. as further described on Sheet 1 of the drawings submitted with this application.

Reason supporting request:

The existing house is closer to the property line than zoning allows. The addition follows the existing setback as closely as possible.

Supporting documents submitted herewith: Site Plan, Survey, etc. as required:

Site Plan, Site Plan, Building Plans and ElevationsDate: July 21, 2023**Fee Schedule**

|                 |        |
|-----------------|--------|
| AREA VARIANCE   | \$ 250 |
| USE VARIANCE    | \$ 500 |
| INTERPRETATION: | \$ 250 |

  
 \_\_\_\_\_  
 Owner's Signature  
  
 \_\_\_\_\_  
 Applicant's Signature
**SIGN HERE****SIGN HERE*****\*\*escrow fees may apply if required by Chairman\*\****

# APPLICATION PROCESSING RESTRICTION LAW

## Affidavit of Property Owner

Property Owner: Eva Garcia

If owned by a corporation, partnership or organization, please list names of persons holding over 5% interest.

List all properties in the City of Beacon that you hold a 5% interest in:

Applicant Address: 359 Cherry Street

Project Address: 359 Cherry Street

Project Tax Grid # 5954-16-876329

Type of Application Zoning Board of Appeals Variance Request

Please note that the property owner is the applicant. "Applicant" is defined as any individual who owns at least five percent (5%) interest in a corporation or partnership or other business.

I, Eva Garcia, the undersigned owner of the above referenced property, hereby affirm that I have reviewed my records and verify that the following information is true.

1. No violations are pending for ANY parcel owned by me situated within the City of Beacon ☒
2. Violations are pending on a parcel or parcels owned by me situated within the City of Beacon ☐
3. ALL tax payments due to the City of Beacon are current ☒
4. Tax delinquencies exist on a parcel or parcels owned by me within the City of Beacon ☐
5. Special Assessments are outstanding on a parcel or parcels owned by me in the City of Beacon ☐
6. ALL Special Assessments due to the City of Beacon on any parcel owned by me are current ☒

**SIGN HERE**

Signature of Owner

Title if owner is corporation

### Office Use Only:

Applicant has violations pending for ANY parcel owned within the City of Beacon (Building Dept.)

ALL taxes are current for properties in the City of Beacon are current (Tax Dept.)

ALL Special Assessments, i.e. water, sewer, fines, etc. are current (Water Billing)

NO YES Initial

\_\_\_ \_\_\_ \_\_\_  
\_\_\_ \_\_\_ \_\_\_  
\_\_\_ \_\_\_ \_\_\_



# City of Beacon New York

## *Certificate of Inspection Application*

Parcel Address 359 Cherry Street

Tax ID Number 5954-16-876329

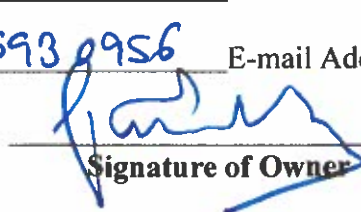
**Property Owners Information:**

Name Eva Garcia

Mailing Address 359 Cherry Street

Business Phone # \_\_\_\_\_ Home Phone # \_\_\_\_\_

Cell Phone # 917 593 9956 E-mail Address namssilat@gmail.com

  
Signature of Owner

**SIGN HERE**

***For office use only:***

|                     | Connected<br>to sanitary sewer | Disconnected | Waiver<br>Requested | Waiver<br>Approved |
|---------------------|--------------------------------|--------------|---------------------|--------------------|
| Roof Leaders        | _____                          | _____        | _____               | _____              |
| Sump Pump           | _____                          | _____        | _____               | _____              |
| Yard drain          | _____                          | _____        | _____               | _____              |
| Other<br>(describe) | _____                          | _____        | _____               | _____              |

\_\_\_\_\_  
Signature of Inspector

Inspection Date \_\_\_\_\_

Expiration Date \_\_\_\_\_

**FEE: \$50.00**

**FOR OFFICE USE ONLY**

Application #

**CITY OF BEACON**  
**1 Municipal Plaza, Beacon, NY**  
**Telephone (845) 838-5000 • <http://cityofbeacon.org/>**

**INDIVIDUAL DISCLOSURE FORM**

(This form must accompany every land use application and every application for a building permit or certificate of occupancy submitted by any person(s))

Disclosure of the names and addresses of all persons) filing a land-use application with the City is required pursuant to Section 223-62 of the City Code of the City of Beacon. Applicants shall submit supplemental sheets for any additional information that does not fit within the below sections, identifying the Section being supplemented.

**SECTION A**Name of Applicant: EVA GARLAAddress of Applicant: 359 Cherry StreetTelephone Contact Information: 917 593 0956**SECTION B.** List all owners of record of the subject property or any part thereof.

| Name      | Residence or Business Address | Telephone Number | Date and Manner title was acquired | Date and place where the deed or document of conveyance was recorded or filed. |
|-----------|-------------------------------|------------------|------------------------------------|--------------------------------------------------------------------------------|
| EVA GARLA | 359 Cherry St.                | 917 593 0956     | Sep 1. 2016                        | Paul Supple Beacon, NY                                                         |
|           |                               |                  |                                    |                                                                                |
|           |                               |                  |                                    |                                                                                |

**SECTION B.** Is any owner of record an officer, elected or appointed, or employee of the City of Beacon or related, by marriage or otherwise, to a City Council member, planning board member, zoning board of appeals member or employee of the City of Beacon ?



YES

NO

If yes, list every Board, Department, Office, agency or other position with the City of Beacon with which a party has a position, unpaid or paid, or relationship and identify the agency, title, and date of hire.

| Agency | Title | Date of Hire, Date Elected, or Date Appointed | Position or Nature of Relationship |
|--------|-------|-----------------------------------------------|------------------------------------|
|        |       |                                               |                                    |
|        |       |                                               |                                    |
|        |       |                                               |                                    |

**SECTION C.** If the applicant is a contract vendee, a duplicate original or photocopy of the full and complete contract of purchase, including all riders, modification and amendments thereto, shall be submitted with the application.

**SECTION D.** Have the present owners entered into a contract for the sale of all or any part of the subject property and, if in the affirmative, please provide a duplicate original or photocopy of the fully and complete contract of sale, including all riders, modifications and amendments thereto.

☐

YES

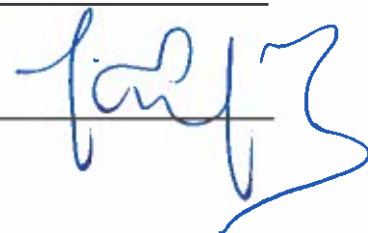
☒

NO

I, EVA GARCIA being first duly sworn, according to law, deposes and says that the statements made herein are true, accurate, and complete.

(Print) EVA GARCIA

(Signature)





# CITY OF BEACON

## New York

### Building Department

Bruce Flower  
Building Inspector

845-838-5020  
Email: [bflower@beaconny.gov](mailto:bflower@beaconny.gov)

August 2, 2023

Eva Garcia  
359 Cherry St  
Beacon, NY 12508

Dear Ms. Garcia,

I have received your application for a proposed rear addition and covered screen porch for your home located at 359 Cherry Street (Grid #5954-16-876329) which is in the R1-40 Zoning District. The application is being denied at this time due to insufficient side and rear yard setbacks. The required setback for the side yard is 25' and the rear yard is 50'. As per the proposed plan only 1.2' is being provided on the side yard and 36.1' proposed in the rear yard.

#### 223-17. D Schedule of Dimensional Regulations

##### Side Yard

Required side yard setback 25'

Proposed side yard setback 1.2'

The requested variance is 23.8'

##### Rear Yard

Required side yard setback 50'

Proposed side yard setback 36.1'

The requested variance is 13.9'

You have the right to appeal this decision with the Zoning Board of Appeals. If you wish to appeal this decision, please contact the Zoning Board of Appeals Secretary regarding the application and instructions.

Sincerely,

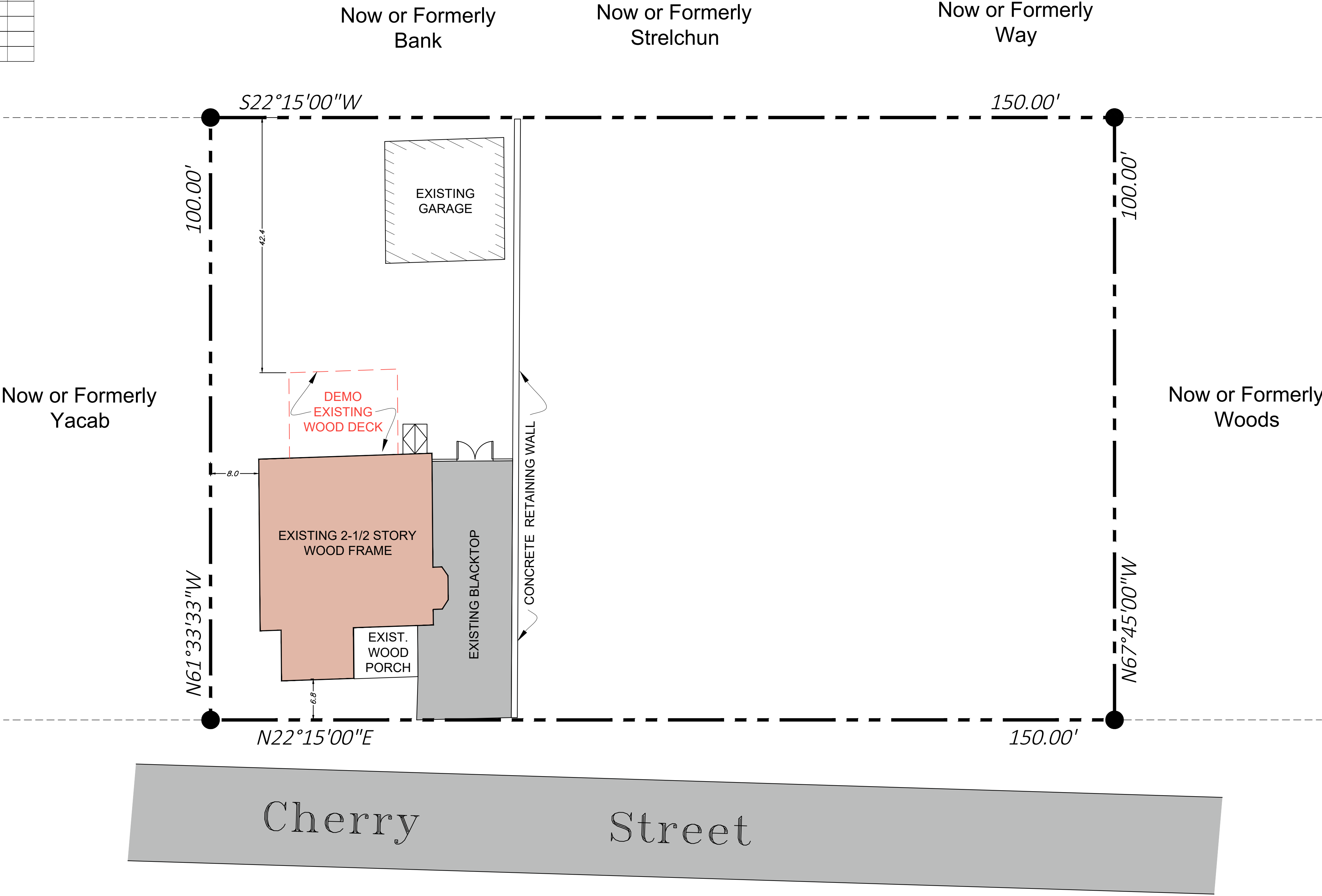
Bruce Flower  
Building Inspector



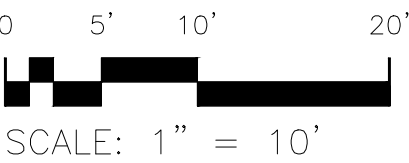
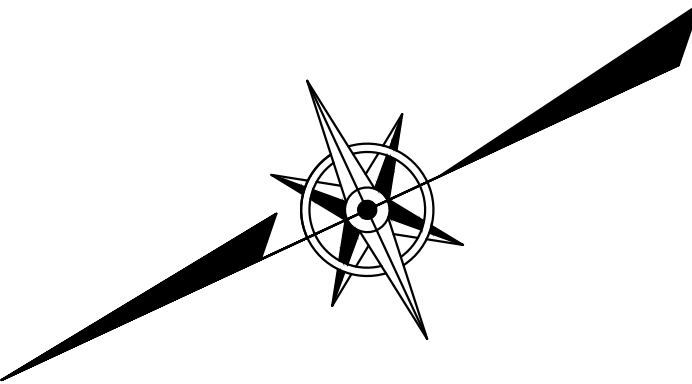




| REVISIONS: |      |             |    |
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**Existing Conditions and Demo Plan**  
Scale: 1" = 10'



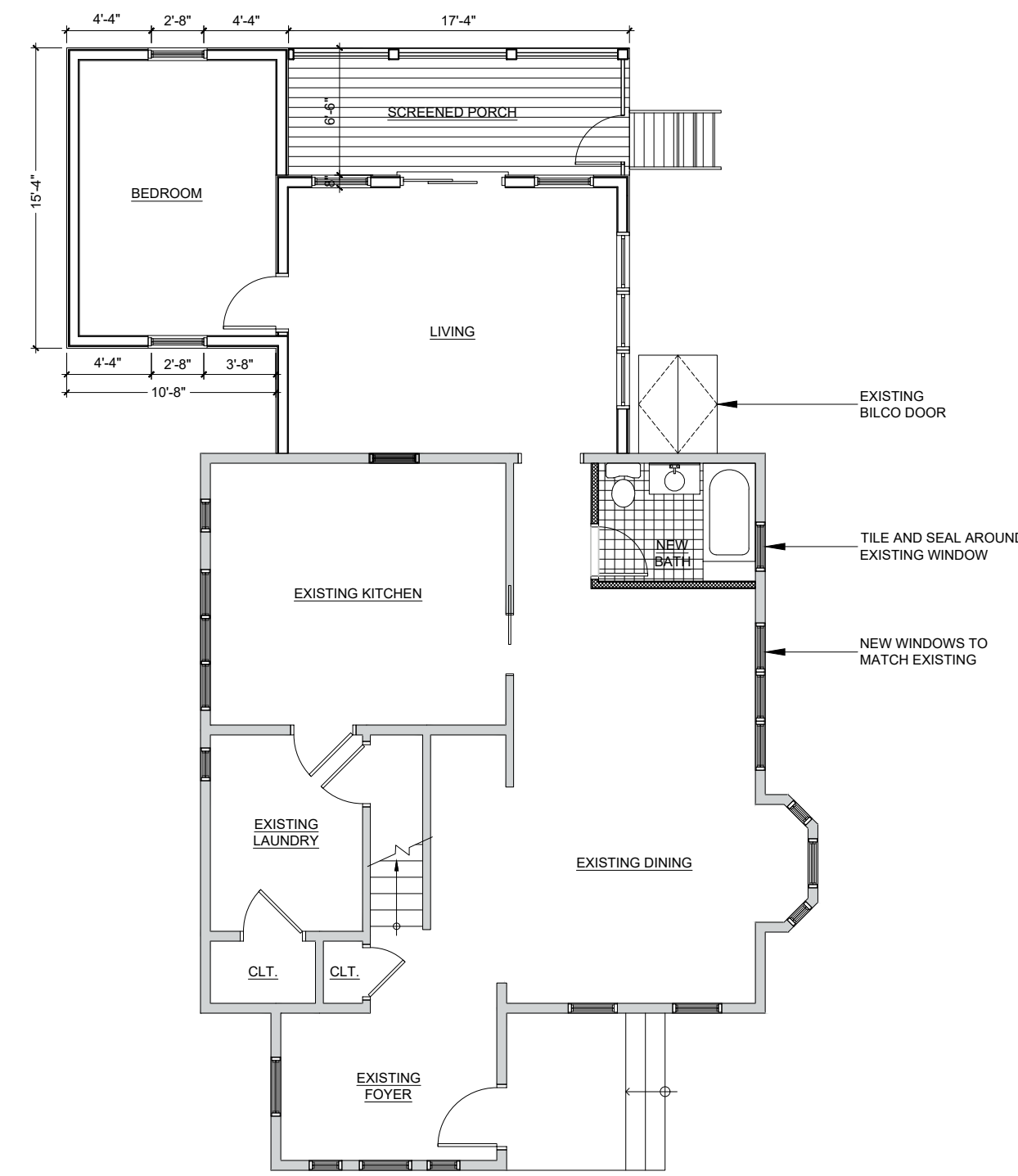
**Zoning Board Application**  
Sheet 2 of 3 - Existing Conditions and Demo Plan

Owner:  
**Maria Eva Garcia Rodriguez**  
359 Cherry Street  
Beacon, NY 12508

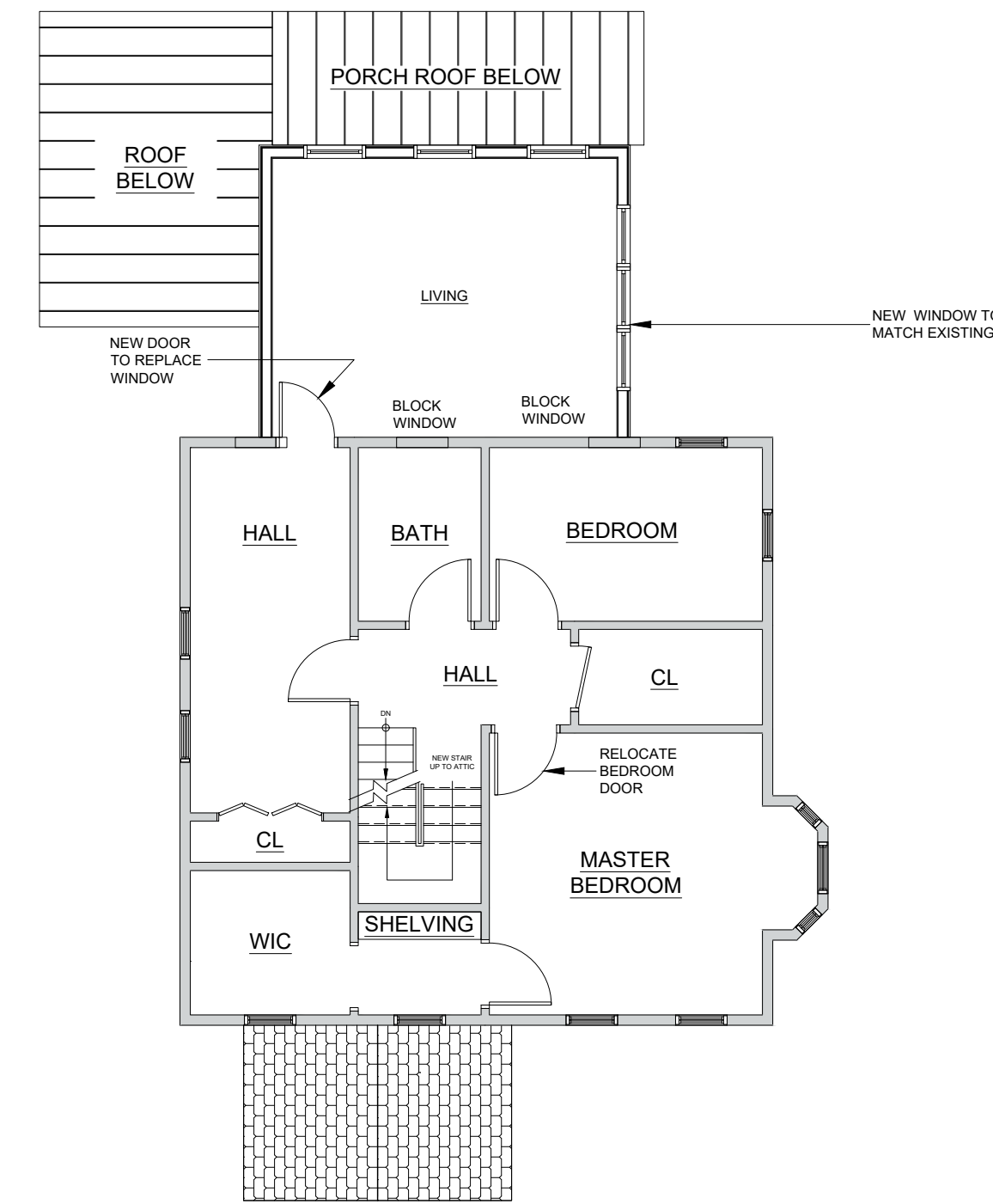
Architect:  
**Aryeh Siegel, Architect**  
84 Mason Circle  
Beacon, New York 12508

**359 Cherry Street**  
Beacon, New York  
Scale: 1" = 10'  
July 25, 2023





1 **Proposed 1st Floor Plan**  
1/8" = 1'-0"



2 **Proposed 2nd Floor Plan**  
1/8" = 1'-0"



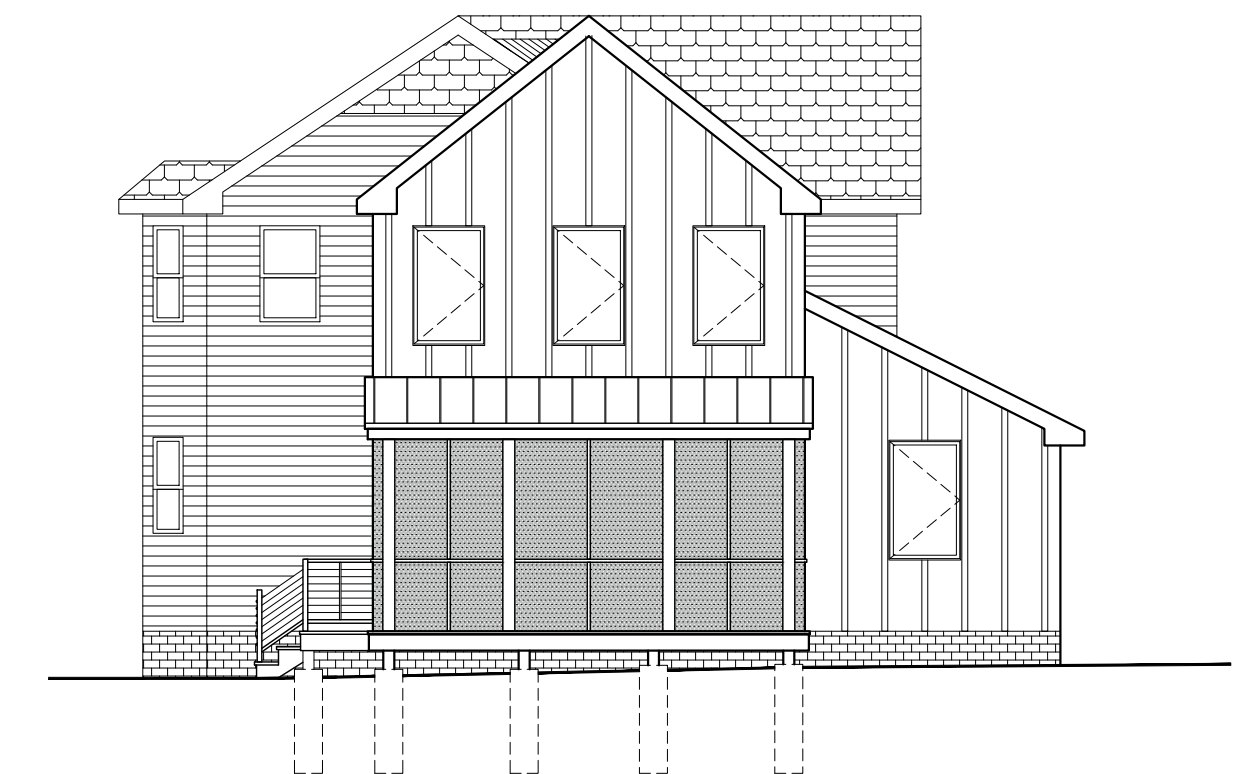
1 **West Elevation**  
1/8" = 1'-0"



1 **South Elevation**  
1/8" = 1'-0"



1 **North Elevation**  
1/8" = 1'-0"



1 **East Elevation**  
1/8" = 1'-0"

# Zoning Board Application

Sheet 3 of 3 - Floor Plans and Elevations

Owner:  
**Maria Eva Garcia Rodriguez**  
359 Cherry Street  
Beacon, NY 12508

Architect:  
**Aryeh Siegel, Architect**  
84 Mason Circle  
Beacon, New York 12508

**359 Cherry Street**  
Beacon, New York  
Scale: 1/8" = 1'-0"  
July 25, 2023

**City of Beacon Zoning Board of Appeals Agenda**  
**09/19/2023**

**Title:**

Review and hold a continued public hearing on application submitted by 925 Wolcott LLC, 925 Wolcott Avenue, Tax Grid No. 30-5954-44-922633-00, R1-10 Zoning District, for the following:

a. An area variance from Sections 223-10.C and 223-10.D to permit reconstruction of a structure previously containing a non-conforming use;

or, in the second alternative, for

b. A use variance from Section 223-17.C to permit a multi-family or single-room-occupancy (SRO) building in the R1-10 Zoning District.

Any such variances are to be considered subsequently, and pursuant to Section 223-55.C of the City Code.

**ATTACHMENTS**

[925 Wolcott ZBA 9.19.23- Supplemental Submission with Exhibits A-D Attached\(5793149.1\).pdf](#)

[925 Wolcott ZBA 9.19.23 public comment Mustakas.pdf](#)

[925 Wolcott ZBA 9.19.23 public comment Oakes.pdf](#)

[925 Wolcott ZBA 9.19.23 petition against 9.17.23.pdf](#)



Taylor M. Palmer, Esq.  
[tpalmer@cuddyfeder.com](mailto:tpalmer@cuddyfeder.com)

August 29, 2023

**VIA HAND DELIVERY AND EMAIL**

Chairman Jordan Haug  
and Members of the Zoning Board of Appeals  
City of Beacon  
1 Municipal Plaza  
Beacon, New York 12508

Re: 925 Wolcott LLC  
Supplemental Submission in Support of a Request for an Area Variance, and in the  
Alternative a Use Variance, in Order to Reconstruct a Destroyed Building on the Premises  
Premises: 925 Wolcott Avenue, Beacon, New York (Tax Parcel ID: 5954-44-922633)

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

On behalf of 925 Wolcott LLC (the "Applicant"), the owner of the above-referenced Premises, we respectfully submit this letter and the referenced enclosure in furtherance of the Applicant's pending application for an Area Variance – and in the alternative, a Use Variance – so that the Applicant may reconstruct the long-existing multi-family, single-room occupancy ("SRO") use at the above-referenced Premises, which was destroyed in a fire caused by a former tenant.

As will be more fully discussed at the continued public hearing on this matter, the purpose of this letter is to respond to comments received at the Board's public hearing held on August 15, 2023. In addition, it highlights that a similarly situated property and matter that is consequential for the instant request. Specifically, this matter involved an existing non-conforming autobody shop located at 50-52 South Chestnut Street in the R1-5 single-family zoning district (commonly known as Antalek's Chevron/Antalek's Autobody and is presently known as Ed's Auto Repair/Ed's Service Center), which autobody shop was destroyed in a snowstorm, before the property owner would later obtain a Use Variance from this Board in order to reconstruct said shop.

**THE APPLICANT'S REQUEST TO VARY THE DIMENSIONAL/PHYSICAL REQUIREMENT IN  
ZONING CODE SECTION 223-10(D) IS PROPERLY CHARACTERIZED AS  
A REQUEST FOR AN AREA VARIANCE**

Pursuant to Section 223-10(D) of the Zoning Code, which is entitled "restoration of damaged buildings," "[i]f any nonconforming building shall be destroyed by any means to an extent of more than 50%, no repairs or reconstructions shall be made unless every portion of such building is made to conform to all the regulations of this chapter...". This provision was cited by the Building Inspector in prohibiting the re-establishment of the long-existing multi-family, single-room



occupancy use on the Premises. On June 21, 2023, this Board upheld the Building Inspector's determination that Section 223-10(D) prevented the re-establishment of the use. At the August 15, 2023 public hearing on the requested Area Variance and Use Variance, the Board inquired if a variance from this provision was an Area Variance or a Use Variance. Notwithstanding the fact that the Applicant retains all of their rights to challenge this Board's June 21, 2023 Determination regarding the application of this provision, it is noted that under New York Law, the request to vary such a provision is properly considered an Area Variance.

Specifically, case law has highlighted that the variance request is one related to the reconstruction "volume" permitted - a clear dimensional requirement. See Bobandal Realities, Inc. v. Worthington, 21 A.D.2d 784 (2d Dep't 1964) (characterizing the request for a variance to permit the reconstruction of a building which was more than 50% destroyed as a variance from the limit of "50% of 'volume'"). Indeed, courts have previously noted that in requesting relief for limitations on the reconstruction of a nonconforming use, one is to seek an area variance. See Warner v. Town of Kent Zoning Board of Appeals, 144 A.D.3d 814 (2d Dep't 2016) (holding that an Applicant should have applied for an area variance from supplemental regulations limiting the reconstruction for a non-conforming use destroyed over 75% of its bulk or square footage to a one-year period). Characterizing relief from Section 223-10(D) as one for an Area Variance also complies with a plain reading of General City Law Section 81-B, which contains the following definitions of "Use Variance" and "Area Variance":

- (a) *'Use variance' shall mean the authorization by the zoning board of appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.*
- (b) *'Area variance' shall mean the authorization by the zoning board of appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.*

Clearly, the intent here is to permit a reconstruction over "50%" which is a "Dimension or physical requirement[]" and not a land use "purpose." This is a mathematical standard.

**THE RECONSTRUCTION OF THE MULTI-FAMILY USE WILL NOT BE A DETRIMENT TO THE COMMUNITY CHARACTER, AS IT HAS EXISTED FOR DECADES ON THE PREMISES**

As discussed at the August 15, 2023 public hearing, the question of impact on community character is relevant to the requests for both the Area Variance, and in the alternative, the Use Variance. Pursuant to the Building Inspector's supplemental determination dated March 20, 2023, the multi-family use on the Premises has existed since at least 1965. Clearly, its establishment will not impinge on the community character, as said use is a fundamental part of such character, having existed on the Premises since at least 1965. Courts consider how long a use has existed to consider its impact on community character. See Cacsire v. City of White Plains Zoning Board of Appeals, 87 A.D.3d 1135 (2d Dep't 2011) (citing the fact that a building had been used for a non-conforming purpose for over 50 years as fundamental in defining impact on the community character). Moreover, pursuant to the New York Department of Environmental Conservation's Full Environmental Assessment Form Workbook (the "EAF Workbook"), community character is defined by those buildings have existed in the neighborhood; and the removal of a structure can be



a detriment to community character.<sup>1</sup> The goal here is to reconstruct the building that was a part of the community character for nearly a century. Indeed, in the Use Variance Resolution Approval granted by this Board for 50-52 South Chestnut Street, the Board noted that the restoration of a use that was destroyed (in that case, an autobody shop) did not harm community character “as the property has been used as an automobile repair shop for at least 30 years.” See November 15, 2011 Approval Resolution for 50-52 South Chestnut Street at **Exhibit A**; and **Exhibit B** - Historic Aerials and Photographs Showing Destroyed and Rebuilt Building/Use at 50-52 South Chestnut Street.

Additionally, as is more fully detailed in the Applicant's prior submissions, there are several multi-family uses in the immediate proximity of the Premises, including the same multi-family use located directly across the street at 916 Wolcott Avenue, which is improved by a 12-unit multi-family use, which building has existed for nearly a century as well (see **Image 1** below and photographs of nearby multi-family uses at **Exhibit C**). Moreover, it is noted that the proposed reconstruction and the associated sprinkler system, kitchenette and bathroom improvements, which was previously approved by the Building Department on December 12, 2022, would have resulted in a reduction of density from 16 units to 9 units – reducing the non-conformity.



### Image 1: Multi-Family Uses in Proximity to Premises

<sup>1</sup> See EAF Workbook at <https://www.dec.ny.gov/permits/91813.html>.



**THE APPLICANT WILL NOT BE ABLE TO REALIZE A REASONABLE RETURN AS A RESULT OF  
CONSTRUCTING A SINGLE-FAMILY HOME ON THE PREMISES**

As noted in the Applicant's economic analysis dated May 18, 2023, submitted to the Board on May 19, 2023 in regard to the Applicant's request for a Use Variance (the "Zoning Feasibility Analysis"), construction and selling or renting out of a single-family home on the Premises would be economically infeasible for the Applicant. As noted in the Zoning Feasibility Analysis, a single-family home erected on the Premises could generate an expected rental income of \$2,400 to \$3,850 a month, compared to the potential gross income of \$17,550 per income expected by the Applicant when the reduction from 16 units to 9 units was approved by the Building Department. Similarly, a single-family home that could sell at the top of the market at \$1,200,00 would be significantly under the Premises' appraised value of \$1,700,000<sup>2</sup> at the time of the Applicant's purchase of the Premises. Based on this dollar and cents evidence, any return would be non-existent.

In response to comments from the August 2015, 2023 public hearing, the Applicant has provided a supplemental analysis, enclosed at **Exhibit D**, illustrating that the Applicant cannot realize any financial return, but only a financial loss, through the construction and sale of a single-family home on the Premises. Construction costs would range from \$577,500 to \$1,388,021, depending on the square footage of the home (which is based on surveyed square footages ranging from 2,000 square feet to 4,807 square feet, with a median of 2,470 square feet). When combined with the purchase cost of \$650,000, this new construction would represent an approximate total cost in the range of \$1,296,800 to \$2,204,584 with developer profit incorporated, and \$1,227,500 to \$2,038,021 without developer profit incorporated. These costs are higher than any of the surveyed home sale prices, as shown in the analysis enclosed, resulting in a loss in any scenario for the Applicant.<sup>3</sup> It is noted that while the Zoning Feasibility Analysis and the supplemental analysis enclosed listed a survey median price of \$747,000, a single-family home on the Premises would likely sell for less, given the character of the area, the premises' location on two streets, etc. In addition, the Applicant has paid approximately \$62,000 in carrying costs since its purchase of the Premises, including taxes and insurance premiums, and has had other burdensome costs related to securing and cleaning up the Premises following the fire, increasing the financial loss to be experienced by the Applicant.

It is notable that this projected loss is much lower than the return presented by the applicant who applied for and was granted a Use Variance to permit the reconstruction of an autobody shop at 50-52 South Chestnut Street. The applicant in that matter showed that they would realize a return of 8% if no variance was granted and they had to devote the property to residential use. See November 15, 2011 Approval Resolution for 50-52 South Chestnut Street at **Exhibit A**. In the

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<sup>2</sup> See Appraisal report of 925 Wolcott Avenue, Beacon, New York, 12508, prepared by Colliers International Valuation and Advisory Services, Colliers File #JFK220556 (dated May 16, 2022).

<sup>3</sup> *Note: "A landowner is unable to realize a reasonable return if the zoning regulations prohibit the uses of land that are economically feasible...An applicant may be able to satisfy their burden of proof of an inability to realize a reasonable return by establishing that if they use the land in the permissible manners, they would incur a financial loss."* See Patricia E. Salkin, New York Zoning Law & Practice, Section 29:7 "Lack of Reasonable Return" (October 2022).



instant matter, the Applicant would face a loss if forced to build and rent out or sell a single-family home.

**GRANTING THE REQUESTED USE VARIANCE OR AREA VARIANCE WILL NOT ESTABLISH A  
NEGATIVE PRECEDENT, BUT CONTINUE THE BOARD'S APPROACH OF PROTECTING OWNERS  
WHOSE BUILDINGS ARE UNINTENTIONALLY DESTROYED, AS SEEN WHEN THIS BOARD  
GRANTED A USE VARIANCE FOR THE RECONSTRUCTION OF AN AUTOBODY SHOP AT 50-52  
SOUTH CHESTNUT STREET**

The destruction of the building that housed the existing non-conforming uses at 925 Wolcott property was not an intentional act by the Applicant who purchased the Premises with the legal existing non-conforming use located thereon. At the same time, the plain reading of the Zoning Code Section 223-10(D) is not designed to punish a property owner because of a natural disaster – or in the case of the instant 925 Wolcott matter – because of the intentional destruction of a building that was maliciously caused by another. Accordingly, by approving the limited relief sought herein, this Board is by no means setting a precedent. Instead, by granting the requested relief this Board is remaining consistent with its existing precedent regarding when a non-conforming use is destroyed by an act/event outside of the control of the property owner themselves.

As referenced above, on February 25-26, 2011, an autobody shop at 50-52 South Chestnut Street was destroyed in a blizzard. On or about September of 2010, the owner of that premises applied for a Use Variance to permit the reconstruction of the use, which was granted by this Board on November 15, 2011. The fact patterns between the 50-52 South Chestnut Street matter and the 925 Wolcott matter have key similarities, specifically as it relates to the Board's precedent of granting Use Variances to re-establish long-existing nonconforming uses when they are destroyed by causes that are no fault of the property owner. This Board has previously granted such a Use Variance, and should do so again in the instant matter. Notably, counsel for the owner of the 50-52 South Chestnut Street may not have been aware of the opportunity to seek an area variance for that approval, although the use variance may have been sought at that time as the use would have ceased in that separate matter for more than one (1) year, which would have related specifically to the use.

We would also note that the issuance of the Use Variance here will have even less of an impact than the Use Variance that was issued for the property at 50-52 South Chestnut Street, as the use to be re-established at 925 Wolcott Avenue (at a lesser intensity than previously existing) is residential in nature, surrounded by other residences; while the use re-established at 50-52 South Chestnut Street was a commercial autobody use proximate to family residences in a similarly situated single-family zoning district. Indeed, the 50-52 South Chestnut Street property is just a few thousand feet away from the 925 Wolcott Avenue property. See **Exhibit B** - Historic Aerials and Photographs Showing Destroyed and Rebuilt Building/Use at 50-52 South Chestnut Street.

As noted previously, this Board also has a track record of approving Use Variances to permit similar less non-conforming multi-family uses on similarly situated properties classified within the City's single-family residential zones. Indeed, this Board recently approved a joint Area Variance and Use Variance to permit a nine (9)-unit multi-family development in multiple buildings at 53 Eliza Street and a Use Variance to permit a 10-unit multi-family building at 123 Rombout Avenue. The Board determined that said variances would not negatively impact the character of the single-family



residential zoning district that the properties were classified in, which is very similar in character to the single-family residential district that 925 Wolcott Avenue is classified in.

Accordingly, by approving the limited variance relief sought herein, this Board is remaining consistent with its existing precedent regarding when a non-conforming use is destroyed by an act/event outside of the control of the property owner themselves.

**THE REQUESTED VARIANCE RELIEF SHOULD BE GRANTED IN ITS ENTIRETY AS THE USE DID NOT CEASE FOR MORE THAN ONE (1) YEAR:**

Section 223-10(C)(4) of the Zoning Code states:

*Any nonconforming use of a building ceases for any reason for a continuous period of more than one year or is changed to a conforming use or if the building in or on which such use is conducted or maintained is moved for any distance whatever for any reason, then any future use of such building shall be in conformity with the standards specified by this chapter for the district in which such building is located.*

A plain reading of this provision clearly identifies the need to conform to the provisions of the City's Zoning Code one year after a use ceases "for any reason." Here, the structure on the Premises was illegally destroyed on January 3, 2023, and the Zoning Board of Appeals application was filed March 20, 2023, staying any applicable time limits pursuant to General City Law. In light of this timely appeal, this restrictive provision of the Zoning Code does not apply, and in light of the Applicant's speedy efforts, the relief requested herein should be granted. Indeed, the above-referenced approach has been adopted in the codes of other municipalities in New York, which allow timeframes for the re-establishment of non-conforming uses/structures:

- Village of Mamaroneck Zoning Code Section 342-66:
  - "Nothing in this chapter shall prevent the restoration of a nonconforming use which is accidentally destroyed, in whole or in part, by fire, explosion or other cause or prevent the continuance or resumption of such nonconforming use as it existed at the time of such damage, but without extension or enlargement of such structure or use; provided, however, that such restoration shall be limited to exactly the same location and shall comply with the then prevailing building and housing codes in effect in the Village; provided, further, that the work of restoration must be completed within a period of 12 months of such damage or destruction. If restoration is not completed in full compliance with the foregoing conditions, any structure thereafter erected or repaired or completed and any use of such structure shall conform to all the regulations of this chapter for the district in which it is located."
- Village of Fishkill Zoning Code Section 171-16:
  - "Nothing in this chapter shall prevent the restoration or reconstruction of a building damaged or destroyed by fire or other casualty, provided that such restoration is reviewed and approved by the Planning Board, does

*not extend the nonconformity and is commenced within eight months after the date of the fire or other casualty and is completed within two years after such date, which periods may be extended by the Code Enforcement Officer for good cause shown. Nothing in this chapter shall prevent the strengthening or restoring to a safe condition of any wall declared to be unsafe by the Code Enforcement Officer.”*

**INDEX OF ENCLOSURES AND CONCLUSION**

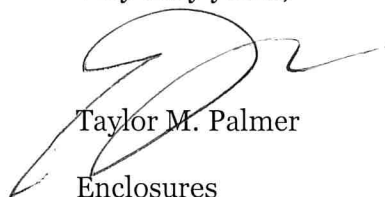
For the reasons set forth herein and included in the Applicant's prior submissions and presentations to this Board, the Applicant requests that this Board grant the requested variance relief so that the Applicant may reconstruct the long-existing multi-family use at the above-referenced Premises.

In furtherance of the Applicant's request, please find enclosed copies of the following Exhibits:

- Exhibit A:** Zoning Board of Appeals November 15, 2011 Use Variance Approval Resolution for 50-52 South Chestnut Street;
- Exhibit B:** Historic Aerials and Photographs Showing Destroyed and Rebuilt Building/Use at 50-52 South Chestnut Street;
- Exhibit C:** Photographs of multi-family uses near 925 Wolcott Avenue; and
- Exhibit D:** Memorandum from Hudson Property Advisors, LLC dated August 28, 2023.

The Applicant looks forward to reappearing before the Board in regard to this matter at its September 19, 2023 Regular Meeting Agenda. In the meantime, should this Board or City Staff have any questions or comments with regard to the foregoing, please do not hesitate to contact me.

Very truly yours,



Taylor M. Palmer

Enclosures

cc: Bruce Flower – City of Beacon Building Inspector (via e-mail)  
Keane & Beane, P.C. – ZBA Attorney (via e-mail)  
Maximillian R. Mahalek, Esq. (via e-mail)  
925 Wolcott LLC (via e-mail)

# Exhibit A

2011-14

OF BEACON  
ZONING BOARD OF APPEALS

**RESOLUTION**

**WHEREAS**, application has been made to the Zoning Board by **Mr. Andrew Antalek** for relief from Section 223.10(D) of the City of Beacon Zoning Code in the form of a use variance to allow the reconstruction of a pre-existing non-conforming building that was destroyed to an extent of more than fifty-percent (50%), on property located at **50 South Chestnut Street**, in an R1-5 zoning district, said premises being known and designated on the tax map of the City of Beacon as **Section 5954, Block 36, Lots 912788 and 905793**; and

**WHEREAS**, the Board has reviewed the following application materials:

1. Zoning Board of Appeals Application Form, undated by received August 18, 2010;
2. Letter from James P. Horan, Esq. Attorney for Applicant, dated March 1, 2011, enclosing (1) Property Survey, undated; (2) letters in support from Mary Lynn Greenough, 771 Wolcott Avenue, Rosalie Nicholls, 51 South Chestnut Street, Ellen L. Riccardi, 64 South Chestnut Street, and Robert Pine, 76 South Chestnut Street; (3) letter from Chris Bopp Real Estate, dated December 6, 2011; (4) Proposal from Millers Minutemen Construction; (5) Proposal from Vassalo Landscape Management, dated November 2, 2010; (6) Proforma Income Statement by James Pagliaro, CPA;
3. Short Environmental Assessment Form, dated March 1, 2011;
4. Letter from James P. Horan, Esq., Attorney for Applicant, dated April 14, 2011, enclosing (1) Deed; (2) Certificate and Report of Title; (3) Residential Contract of Sale between NMA Realty Corp and Andrew J. Antalek;
5. Letter from Barger & Miller Engineering and Land Surveying, dated June 23, 2011;
6. Letter from James P. Horan, Esq., Attorney for Applicant, dated October 4, 2011, enclosing (1) Tax Map; (2) Dutchess County Parcel Access Residential Sales Search; (3) Schedule of Costs for Hypothetical 2 Lot Subdivision; (4) Schedule of Costs for Construction of One House; (5) RS Means Construct Cost Estimates; and (6) Subdivision Plat No. 579 filed September 11, 1902.

**WHEREAS**, a duly advertised public hearing was held on September 21, 2010, March 15, 2011, July 19, 2011 and October 18, 2011 at which time all those wishing to be heard were given such opportunity; and



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**WHEREAS**, public comments were received by the Board in favor and in opposition to the application; and

**WHEREAS**, public comments were received regarding visual impacts of the property and treatment of stormwater, however the construction of a new automobile repair garage is subject to site plan review and these issues along with issues regarding landscaping are within the purview of the Planning Board; and

**WHEREAS**, the proposed action is an Unlisted action pursuant to the New York State Environmental Quality Review Act and the Zoning Board hereby adopts a Negative Declaration because the proposed action will not have a significant adverse impact on the environment since the existing character of the neighborhood will not be adversely impacted, no substantial adverse change in the existing traffic or noise levels, air quality, or demand on services will result, and site plan review and approval is required for the proposed construction of a new garage for the automobile repair shop at which time issues such as stormwater and landscaping will be addressed; and

**WHEREAS**, the Board, based upon a review of the application, after viewing the premises and neighborhood concerned, and upon considering each of the factors set forth at Section 81-b(3)(b)(i)-(iv) of New York General City Law, finds:

- 1) The Applicant has demonstrated by competent financial evidence that he cannot realize a reasonable return by using the property for residential purposes (the highest and best use) as permitted by the City of Beacon Zoning Code in the R1-5 Zoning District. In this regard, the Applicant submitted a Schedule of Costs for a Hypothetical 2 Lot Subdivision on the subject premises which demonstrates a reasonable rate of return (8%) for use of the property as a 2-lot residential subdivision, as permitted by the City of Beacon Zoning Code, could only be realized if both houses sold for at least \$411,000. Further evidence was submitted which demonstrated that a sales price of \$411,000 is unreasonable in today's economy. The highest home sales price received for single family dwelling with up to 2,000 square feet on a lot of 0.5 acres or less in the City of Beacon since August 2010 was \$342,500 and that home has a pool, a detached garage and is larger than the proposed homes in the 2-lot subdivision. Receiving no evidence to the contrary and believing such evidence to be accurate and sufficient, the Board finds the Applicant has sufficiently demonstrated through competent financial evidence that he cannot realize a

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reasonable return by using the property for residential purposes as permitted by the City of Beacon Zoning Code.

2) The hardship relating to the property, namely the steeply sloped topography occupying a portion of the lots owned by the Applicant and the bifurcation of Lots 912788 and 905793 (which are the subject of this application) and the adjacent properties owned by the Applicant (Lots 906777 and 900780) by an unimproved paper street as per Filed Map #579 and #847, is unique to the property and does not apply to a substantial portion of the district or neighborhood;

3) The requested variance will not negatively affect the character of the neighborhood as the property has been used as a automobile repair shop for at least 30 years; and

4) The Applicant's hardship is not self-created but rather is a product of the physical constraints of the property; and

**NOW, THEREFORE, BE IT RESOLVED**, that the said application is hereby granted on the following conditions:

- 1) The unimproved paper street shall not be used for any purpose.
- 2) Prior to the issuance of a building permit, the applicant and/or his successors shall remove all automobiles, parts, trailers, etc. from the paper street such that the land shall be free of all debris to the satisfaction of the Building Inspector.
- 3) Lots 906777 and 900780 shall not be used for accessory storage related to the automobile repair shop authorized by this variance, or for any other purpose not permitted by the City of Beacon Zoning Code, as those lots were not included in the Applicant's request for a use variance.
- 4) Prior to the issuance of a building permit, the applicant and/or his successors shall remove all automobiles, parts, trailers, etc. from Lots 906777 and 900780 to the satisfaction of the Building Inspector.
- 5) Use of Lots 912788 and 905793 shall be limited to an automobile repair shop.
- 6) Lots 912788, 905793, 906777 and 900780 shall be brought into compliance with the requirements of the City of Beacon Code and the Property Maintenance Code of the State of New York to the satisfaction of the Building Inspector.
- 7) This variance shall be null and void if the Applicant and/or his successors does not comply with the following deadlines,

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however, the Zoning Board of Appeals may grant extensions of up to 90 days upon written request by the Applicant and/or his successors upon a showing of good cause:

- i. Within 90 days from the date of this Resolution a site plan application shall be submitted;
  - ii. Within 1 year from the date of the Planning Board's approval of a Site Plan for the subject premises a Certificate of Occupancy shall be obtained.
- 8) This variance shall be null and void if the Applicant and/or his successors fail to obtain site plan approval from the Planning Board.

Jack Dunne

Mr. Jack Dunne, Chairman

**Motion:** Mr. Sullivan

**Second:** Ms. Haug

| <b>Vote:</b>            | <b>AYES</b> | <b>NAYS</b> | <b>ABSTAIN</b> |
|-------------------------|-------------|-------------|----------------|
| Chairman John Dunne     | X           |             |                |
| Member Richard Kish     | X           |             |                |
| Member Claudia Haug     | X           |             |                |
| Member Montos Vakirtzis |             |             | Absent         |
| Member Neil Sullivan    | X           |             |                |
| Member Judith Smith     |             |             | Absent         |
| Member Jose Munoz       |             |             | Absent         |

4 Ayes  
0 Nays  
0 Abstain

Dated: November 15, 2011

Filed: November 16, 2011

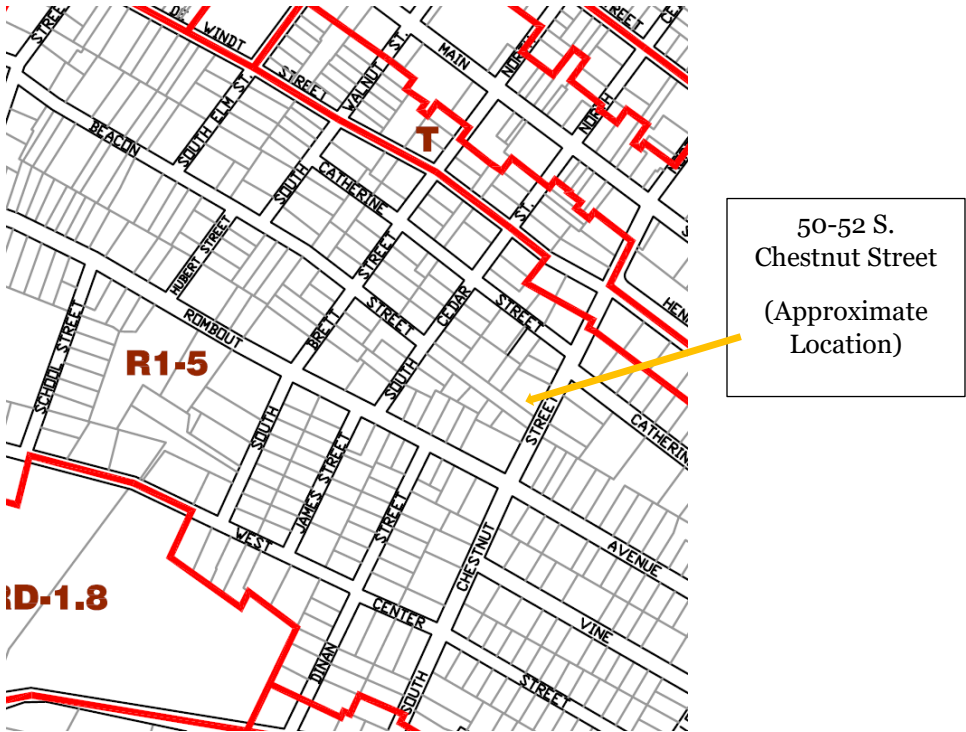
# Exhibit B



**Historic Aerials and Photographs Showing Destroyed and Rebuilt Building/Use at 50-52 South Chestnut Street**



Dutchess County GIS Current Aerial of 50-52 South Chestnut Street Autobody Use



Excerpt of City's Zoning Map Showing 50-52 South Chestnut Street in R1-5 Zoning District



## Historic Aerials and Photographs Showing Destroyed and Rebuilt Building/Use at 50-52 South Chestnut Street



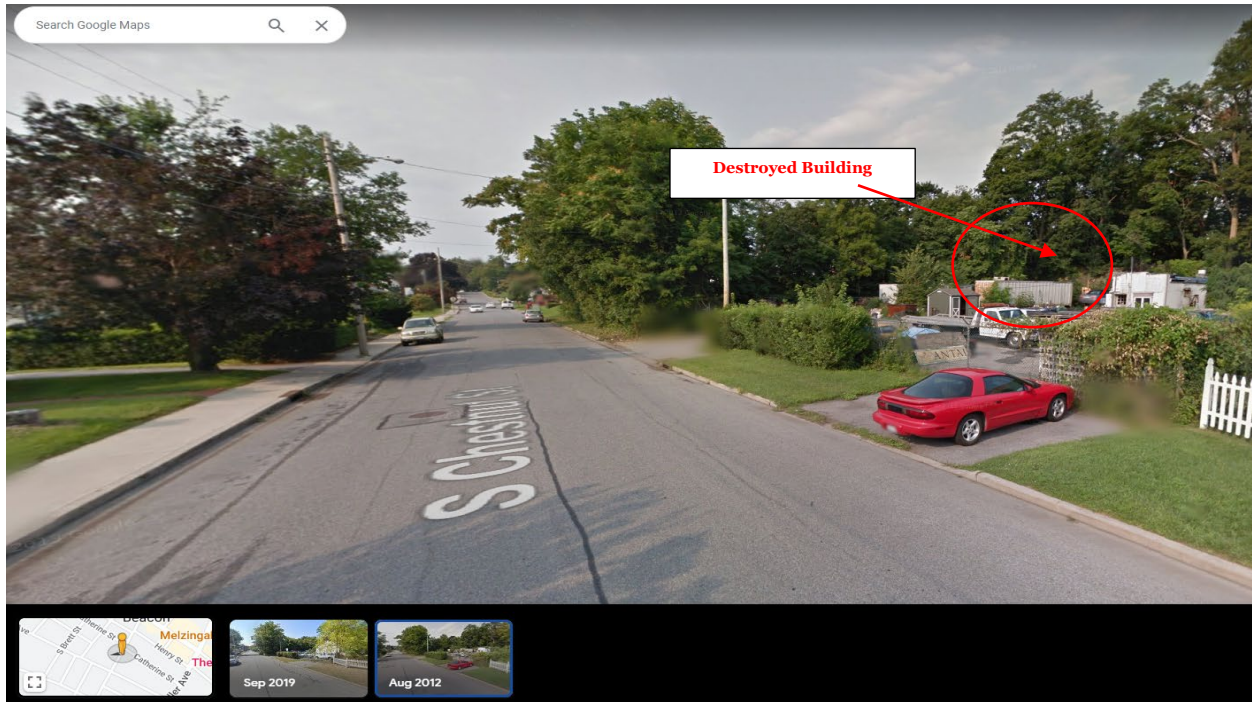
2012 Google Streetview Showing South Chestnut Property After Building Was Destroyed



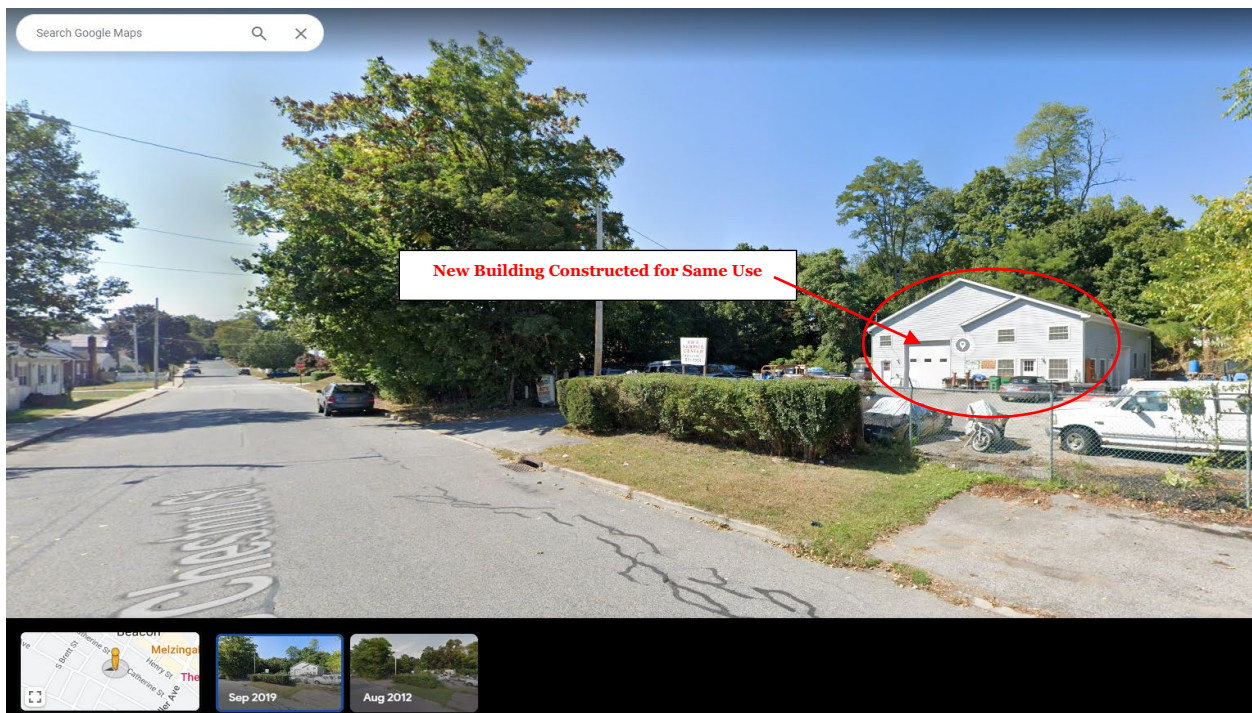
2019 Google Streetview Showing South Chestnut Property After New Autobody Building was Constructed Several Years After Being Destroyed by Snowstorm



## Historic Aerials and Photographs Showing Destroyed and Rebuilt Building/Use at 50-52 South Chestnut Street



Additional 2012 Google Streetview Showing South Chestnut Property After Building was Destroyed



Additional 2019 Google Streetview Showing South Chestnut Property After New Autobody Building was Constructed Several Years After Being Destroyed by Snowstorm



**Historic Aerials and Photographs Showing Destroyed and Rebuilt Building/Use at  
50-52 South Chestnut Street**

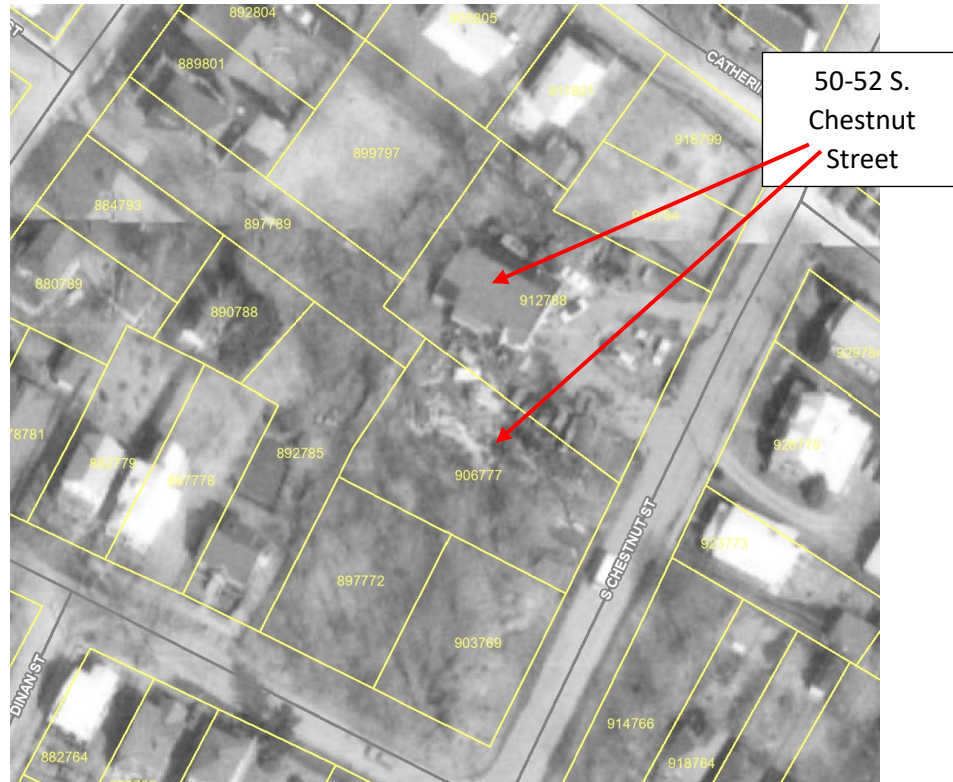


Google Streetview of Residences to East of 50-52 South Chestnut Street

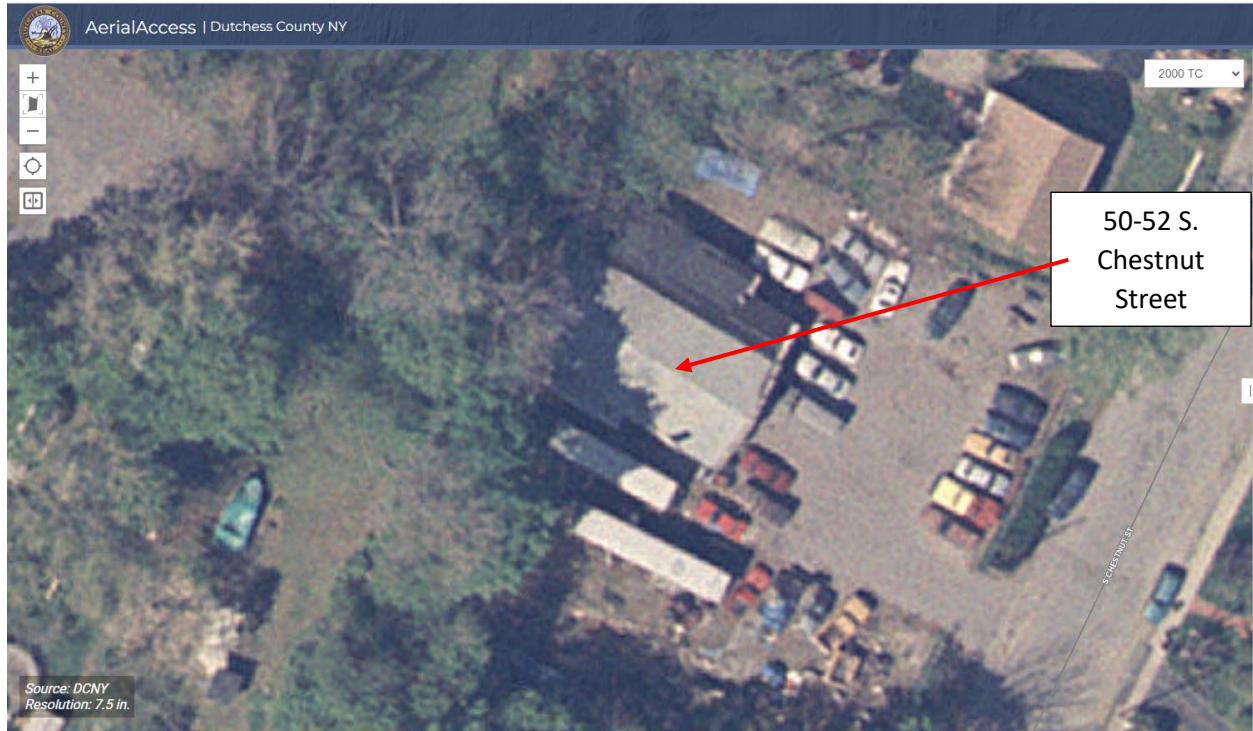


Google Streetview of Residences to South of 50-52 South Chestnut Street

## Historic Aerials and Photographs Showing Destroyed and Rebuilt Building/Use at 50-52 South Chestnut Street



1970 Dutchess County GIS Aerial of 50-52 South Chestnut Street



2000 Dutchess County GIS Aerial of 50-52 South Chestnut Street



## Historic Aerials and Photographs Showing Destroyed and Rebuilt Building/Use at 50-52 South Chestnut Street



2009 Dutchess County GIS Aerial of 50-52 South Chestnut Street

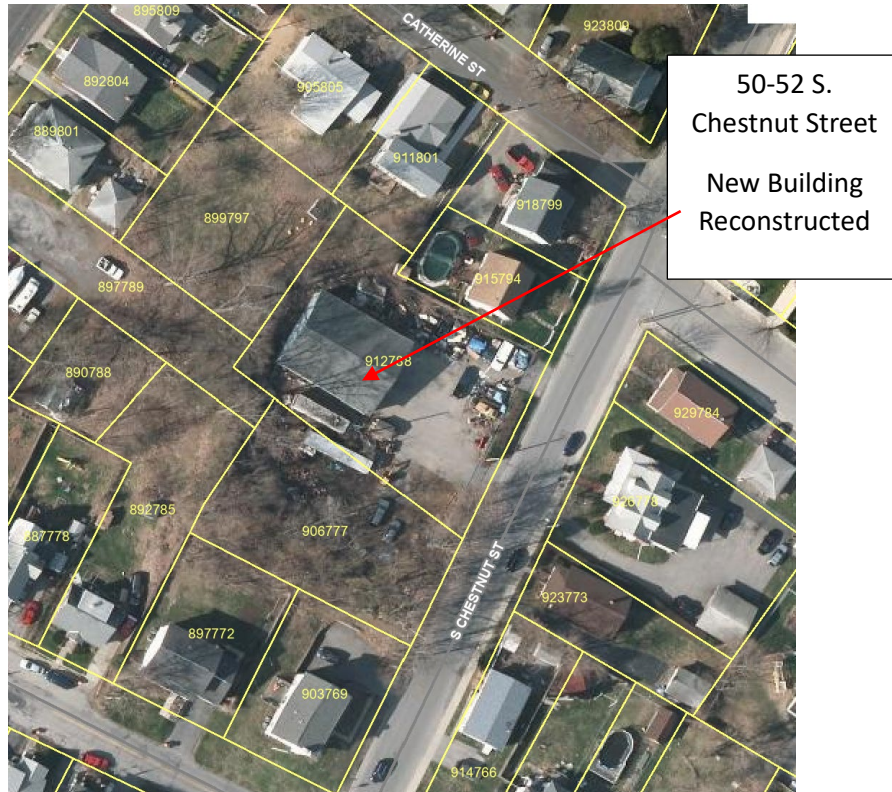


2013 Dutchess County GIS Aerial of 50-52 South Chestnut Street

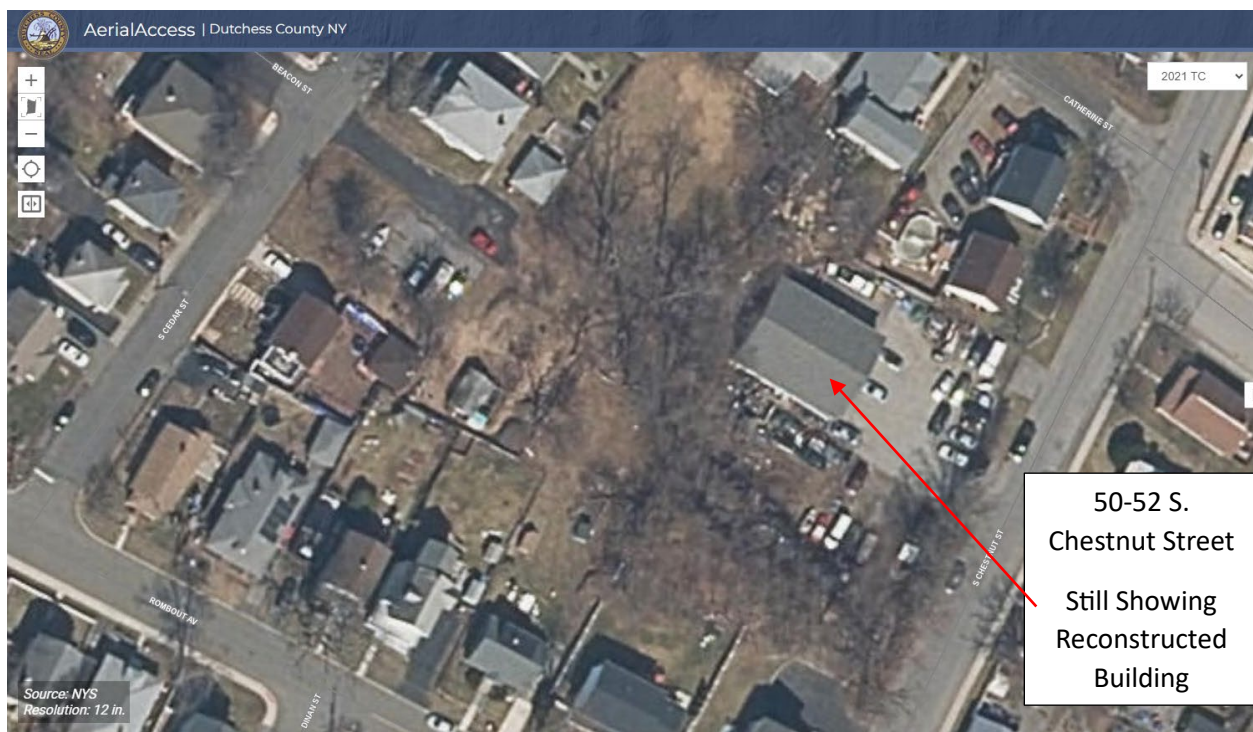
34



## Historic Aerials and Photographs Showing Destroyed and Rebuilt Building/Use at 50-52 South Chestnut Street



2014 Dutchess County GIS Aerial of 50-52 South Chestnut Street



2021 Dutchess County GIS Aerial of 50-52 South Chestnut Street



# Exhibit C

**Multi-Family Uses in Proximity to 925 Wolcott Avenue (Google Streetview)**



**Multi-Family Uses in Proximity to 925 Wolcott Avenue (Google Streetview)**





# Exhibit D

# HUDSON PROPERTY ADVISORS, LLC

★ ★ ★ ★ ★  
10 SOUTH MOGER AVENUE, MOUNT KISCO, NEW YORK 10549  
WWW.HUDSONPROPERTYADVISORS.COM  
TEL. 914-244-3400

## M E M O

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To: Maximillian R. Mahalek, Esq., Cuddy & Feder LLP

From: J. Bernz, MAI, Hudson Property Advisors, LLC

Date: August 28, 2023

Re: 925 Wolcott LLC  
925 Wolcott Avenue, City of Beacon, Dutchess County, New York *(HPA File No. 2023.04019)*

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This memorandum has been prepared at the request of the Applicant's Counsel as a supplement to the May 18, 2023 report prepared by this office. It has been prepared in response to comments from the City of Beacon Zoning Board of Appeals at its August 15, 2023 public hearing regarding the above-referenced matter.

The purpose of this memorandum is to demonstrate, through conventional financial analysis, whether the Applicant can realize a reasonable return by using the Project Site for single-family residential purposes as permitted in the City of Beacon's "R1-10 One-Family Residence" ("R1-10 District") zoning district.

The Applicant acquired the property in July 2022; the purchase price was \$650,000. As reported in the May 18, 2023 report prepared by this office, at the time of sale, the Project Site was improved with a 16-unit structure that was destroyed by fire January 3, 2023. If the property is required to be used as the site of a single-family residence, it would put the Applicant in the position of effectively acquiring a single-family lot for \$650,000 which is not only incongruous with the current market but would not allow for a reasonable return to the land. In fact, it would result in a loss.

On the following page is a dollars and cents analysis (Profitability/Financial Feasibility Analysis) demonstrating the financial loss that would be incurred if the site were to be developed with single-family residence use. In order to determine profitability (or loss), total development costs (including hard and soft construction costs and site acquisition) for low, high, average and median house sizes (detailed in the May 18, 2023 report prepared by this office) are calculated. These total development costs are then compared to current low, high, average and median house sale prices (detailed in the May 18, 2023 report prepared by this office).

The Applicant indicated that the hard construction costs for a detached single-family residence (actual structure with foundation and other items) could reach close to \$300 per sq. ft. Though the Applicant

indicated that hard construction cost “could reach” \$300 per sq. ft., a more conservative figure (\$275 per sq. ft.) is used in the analysis for demonstrative purposes.

In addition to the fact that all four scenarios (low, high, average and median) demonstrate losses (negative return), ranging from -13.8% to -73.8%, there are additional factors that warrant consideration.

First, if construction costs do reach \$300 per sq. ft., an even larger loss would be incurred compared to the more conservative figure used. This is true under all four scenarios (low, high, average and median).

Second, the Profitability/Financial Feasibility Analysis includes a category for developer profit which is typically required. Routinely, a developer would only take on a project such as this if sufficient profit can be realized. In the following analysis (Schedule 1), only a relatively modest figure is included for this category. Even if developer profit were to be excluded completely from the analysis, each of the four scenarios would nevertheless continue to demonstrate a financial loss ranging from -6.8% to -72.3% (see Schedule 2).

Third, since the time of acquisition, the Applicant has undergone carrying costs (which have not been factored into the Profitability/Financial Feasibility Analysis). If these additional carrying costs were to be included, the analysis would demonstrate an even larger net loss.

#### Schedule 1 (Including Developer Profit)

| Profitability/Financial Feasibility Analysis        |             |             |                |               |
|-----------------------------------------------------|-------------|-------------|----------------|---------------|
| Acquisition Cost of Site                            | \$650,000   | \$650,000   | \$650,000      | \$650,000     |
|                                                     | Survey Low  | Survey High | Survey Average | Survey Median |
| Assumed House Size (sq. ft.)                        | 2,000       | 4,807       | 2,776          | 2,470         |
| <u>Construction Costs (New single-family house)</u> |             |             |                |               |
| Construction hard costs/sq. ft.                     | \$275       | \$275       | \$275          | \$275         |
| Construction hard costs                             | \$550,000   | \$1,321,925 | \$763,400      | \$679,250     |
| Soft Costs                                          | 5%          | \$27,500    | \$66,096       | \$33,963      |
| Total Construction Costs                            |             | \$577,500   | \$1,388,021    | \$801,570     |
|                                                     |             |             |                |               |
| Total Costs (incl. site acquisition)                |             | \$1,227,500 | \$2,038,021    | \$1,451,570   |
| Developer Profit (% of Total Const. Costs)          | 12%         | \$69,300    | \$166,563      | \$96,188      |
| Total Development Costs                             |             | \$1,296,800 | \$2,204,584    | \$1,547,758   |
| (Including Developer Profit)                        |             |             |                |               |
|                                                     |             |             |                |               |
| <u>Profit/Return Calculation</u>                    | Survey Low  | Survey High | Survey Average | Survey Median |
| (Cost compared to Surveyed House Sale Price)        |             |             |                |               |
| Surveyed House Sale Price                           | \$340,000   | \$1,900,000 | \$832,009      | \$747,500     |
| Net Gain/(Loss)                                     | (\$956,800) | (\$304,584) | (\$715,749)    | (\$701,298)   |
| Percent Profit (Loss) over Costs                    | -73.8%      | -13.8%      | -46.2%         | -48.4%        |



## Schedule 2 (Excluding Developer Profit)

| <u>Profitability/Financial Feasibility Analysis</u> |    |             |             |                |
|-----------------------------------------------------|----|-------------|-------------|----------------|
| Acquisition Cost of Site                            |    | \$650,000   | \$650,000   | \$650,000      |
|                                                     |    | Survey Low  | Survey High | Survey Average |
| Assumed House Size (sq. ft.)                        |    | 2,000       | 4,807       | 2,776          |
|                                                     |    |             |             | Survey Median  |
|                                                     |    |             |             | 2,470          |
| <u>Construction Costs (New single-family house)</u> |    |             |             |                |
| Construction hard costs/sq. ft.                     |    | \$275       | \$275       | \$275          |
| Construction hard costs                             |    | \$550,000   | \$1,321,925 | \$763,400      |
| Soft Costs                                          | 5% | \$27,500    | \$66,096    | \$38,170       |
| Total Construction Costs                            |    | \$577,500   | \$1,388,021 | \$801,570      |
|                                                     |    |             |             | \$713,213      |
| Total Costs (incl. site acquisition)                |    | \$1,227,500 | \$2,038,021 | \$1,451,570    |
| Developer Profit (% of Total Const. Costs)          | 0% | \$0         | \$0         | \$0            |
| Total Development Costs                             |    | \$1,227,500 | \$2,038,021 | \$1,451,570    |
| (Including Developer Profit)                        |    |             |             | \$1,363,213    |
| <u>Profit/Return Calculation</u>                    |    |             |             |                |
|                                                     |    | Survey Low  | Survey High | Survey Average |
| (Cost compared to Surveyed House Sale Price)        |    |             |             | Survey Median  |
| Surveyed House Sale Price                           |    | \$340,000   | \$1,900,000 | \$832,009      |
| Net Gain/(Loss)                                     |    | (\$887,500) | (\$138,021) | (\$619,561)    |
| Percent Profit (Loss) over Costs                    |    | -72.3%      | -6.8%       | -42.7%         |
|                                                     |    |             |             | -45.2%         |

In summary, the preceding Profitability/Financial Feasibility Analysis demonstrates that the Applicant cannot realize a reasonable return by using the Project Site for single-family residential purposes as permitted in the City of Beacon's "R1-10 One-Family Residence" ("R1-10 District") zoning district. The preceding analysis demonstrates the Applicant's inability to realize a reasonable return. It also demonstrates that the lack of return (loss) is substantial if the property were to be develop with a single-family residence.

###

Brittany Mustakas  
80 Sargent Avenue  
[brittany.mustakas@gmail.com](mailto:brittany.mustakas@gmail.com)

September 12, 2023

Dear Chairperson Jordan Haug and the Members of the Zoning Board of Appeals,

This letter is in response to the 8/15/23 discussion addressing both the pending lawsuit by the 925 Wolcott LLC, and the variance request from this applicant.

I. Part I: Beacon's Zoning Code as it applies to this property

**a. The building was greater than 50% destroyed, therefore only a conforming building with a conforming use may be reconstructed.**

The pending lawsuit is based on the "ambiguity" of Zoning Code 223-10 section D (specifically the bolded sentence) which states:

"Restoration of damaged buildings. **If any nonconforming building shall be destroyed by any means to an extent of more than 50%, no repairs or reconstruction shall be made unless every portion of such building is made to conform to all the regulations of this chapter for the district in which it is located.** Where the destruction of such nonconforming building is less than 50%, it may be restored and the nonconforming use continued, provided that the total cost of such restoration does not exceed the replacement value of the destroyed portion of the building at the time of its destruction and further provided that such restoration is started within a period of six months of such destruction and is diligently prosecuted to completion. Nothing in this chapter shall prevent the strengthening or restoring to a safe condition of any wall declared unsafe by the Building Inspector." (Zoning Code, emphasis added).

The word "use" is not included in this sentence simply because use is encompassed by the words "every portion," which refer to the conformity of the building and the use. The words "such building" refer to the newly constructed building and the use is a feature of this new building. Because this property is located in R1-10 zoning, "all the regulations" are that of a single family zoning. The statement that immediately follows this sentence in question confirms that the opposite applies.

Laws resembling this are very prevalent in city codes and intend to preserve the character and welfare of the community. This intention is clear in Beacon's Zoning Code as there are many significant limitations to nonconformity in single family zones. Nonconforming use immediately ceases in multiple cases; if the building is destroyed (223-10 D), if the building is removed (223-10 C5), if the nonconforming use lapses over 1 year (223-10 C4), and/or if the nonconforming use is determined to be a general nuisance or hazard to the health, safety, welfare and morals of uses or structures within 250 feet of such nonconforming use or uses (223-10 H). Additionally, strict guidelines for changes to these nonconforming structures and uses are posed by requiring that the

nonconforming use may not be increased and renovations may not increase value in excess of 25 percent (223-10 C). These laws do not exist to punish landowners, they commonly exist in cities where nonconforming buildings and uses are scattered throughout residential areas as an effort to protect the character and welfare of the community.

**b. Even with pre-existing SRO occupancy, this home was *intentionally and decidedly* placed in R1-10 zoning.**

Although the year the home that existed on 925 Wolcott Avenue was established remains unclear, likely in the early 1900s, it is known that it operated as a single family residence. The size of this home is comparable to many grand historic homes that continue to exist on Wolcott Avenue, continuing along as it changes to North Avenue. When the City enacted the Zoning Code in 1977 this home had a single room occupancy (SRO) use as a boarding house and was placed in an R1-10 Zoning District as a conforming building with a nonconforming use. This property was not excluded from the zoning of R1-10, which could have been easily done especially with the presence of a neighboring single family residence with SRO use that also existed at that time across the street. It was distinctly intentional to place this existing SRO use in the newly established single family zone. There have been many different types of housing in Beacon throughout its history, especially during the factory era. Many historic homes and buildings had been scattered around the city that were also placed in single family zones at this time. The act of placing these types of buildings and uses in single family zones holds the buildings and uses to the significant limitations of the Nonconforming Use and Structure portion of the Zoning Code as previously discussed. This was a means to preserve the historic buildings and maintain the character of the surrounding neighborhood. Changes to the nonconforming buildings and uses greatly impact the entire neighborhood and, more largely, the qualities of this small city. These limitations are clearly in place to preserve the character and welfare of neighborhoods not only in this instance, but in many cases throughout Beacon. If this was not the intention of the Zoning Board, this property as well as two others in this zone (916 Wolcott Avenue and 895 Wolcott Avenue) could have been separated into a high density residential zone.

**c. The interpretation that a nonconforming use may continue but the nonconforming building may not would declare that nothing other than a boarding house may be reconstructed.**

The previous use was a single room occupancy (SRO) nonconforming use specifically as a boarding house. It has been argued by Mr. Palmer that the sentence in question justifying a lawsuit means to infer that the reconstructed building must be conforming, but the use may continue. Hypothetically if this were the true intention extremely limited potential outcomes would exist as nothing may be reconstructed but a conforming building that may serve as a single family residence with a nonconforming use of a SRO boarding house. To apply this law to other scenarios further reveals the absurdity of such an interpretation. For example if a preexisting nonconforming commercial business or high density residential building were in this or a similar zone, the reconstructed building would have to be a single family home with the use



continuing as a commercial business or high density residential use unless a variance is granted. The absurdity of this inference adds to the clarity of the sentence in question and its consistency with the Zoning Boards determination of the interpretation of this law.

The new nonconforming *building* (a multifamily apartment building) that is being proposed by this applicant would **not** conform to these regulations of a single family residential zone, which violates this code even if the applicant's interpretation is upheld by the courts regarding the use. Because the construction has not been performed to convert this conforming building with SRO use to a nonconforming building with multifamily use, the continuation of building and use must also pertain to the previously standing building and use at the time of the fire. Therefore, no other type of nonconforming building (such as a multifamily residence) may exist other than an SRO use that existed on 925 Wolcott Ave in a conforming building.

**d. The change from SRO to multifamily violates the Zoning Code 223-10 C2 and C3.**

There has been a lot of interchangeability with the terms SRO and multifamily designation in this ongoing case, however these terms are *very* different, need to be defined, and their differences recognized. A plain definition for SRO exists in Merriam-Webster dictionary as a house, apartment building, or residential hotel in which low-income or welfare tenants live in single rooms. An SRO does not have bathrooms, kitchenettes/kitchens, laundry, etc. in *each* separate room whereas a multifamily residence provides these amenities. An SRO can exist in a *conforming building* such as the boarding house on 925 Wolcott Avenue. A multifamily use is a very broad term. A multifamily designation houses individuals/families with separation, such as "units", and amenities in *each* area or "unit." Multifamily use exists beyond single family homes in *nonconforming* buildings ranging from a duplex to apartment building. A change from SRO to multifamily increases the potential occupancy due to increased appeal to couples/roommates/families which in turn increases impact on the neighborhood, need for parking, and traffic in the area. The complete conversion from individual rooms to units is not a reduction in anything, rather it presents an increase in nonconformity with an increased potential occupancy. Furthermore, the change from SRO to multifamily is an *increase* in nonconformity that violates Zoning Code 223-10 C3 which states:

"A nonconforming use of a building may be changed only to a use of less nonconformity, as determined by the Board of Appeals." (Zoning Code 223-10 C3).

Also, increasing the use of this boarding house to a multifamily residence with 9 units would undoubtedly increase the property value over 25% which violates Zoning Code 223-10 C2 which states:

"Such nonconforming building shall not be structurally altered during its life to an extent greater than 25% of its fair market value, as determined by the City Tax Assessor, unless such alterations are required by law or by the

provisions of Subsection H herein; provided, however, that such maintenance and repair work as is required to keep a nonconforming building or structure in sound condition shall be permitted and provided further that any such nonconforming use may be extended throughout any parts of the building which were manifestly arranged or designed for such use at the time of the adoption of this chapter.” (Zoning Code 223-10 C2)

The building permit that the applicant refers to for this property was in violation of these two sections unless a variance was granted based on the Statutory Standard for Use Variance *and* documentation was provided of what cost was dedicated to sound condition versus renovations including but not limited to the addition of amenities, appliances, walls to create different units, and additional parking features.

**e. 925 Wolcott LLC has repeatedly demonstrated disregard and disrespect for our laws and community.**

While our laws are being discussed, it is important to point out that 925 Wolcott LLC blatantly violated our city’s laws by starting construction on the building without a permit. It was acknowledged by the building inspector at the August 15th 2023 Zoning Board of Appeals Meeting that this property owner had started construction on this property without a permit, was caught in the act, and was subsequently required to get a permit. **Ignorance of the law is never an excuse that would apply to any situation**, and the continued deliberate disregard for and attack on our Zoning Laws is disgraceful.

After decades of significant crime and general nuisance that this nonconforming use has posed on this neighborhood, this property owner added to the crime by performing unlawful construction, obtaining an unlawful permit to extensively alter the building and change the use, and unlawfully evicting tenants. This all led to the grand finale of an extremely dangerous fire that was felt from all of us from our homes. No response has been made to the outpouring of concern for safety and wellbeing of the neighborhood or the alleged illegal activity by the property owners themselves. This further demonstrates 925 Wolcott LLC’s lack of regard and respect for our community and our laws.

## II. Part Two: Variance Request

In this section, the use variance request will be discussed. Because an area variance is a roundabout way to obtain a variance that defies the laws and regulations of this city, it will not be discussed. An area variance does not apply to a damaged building and if it is entertained, specific examples should be provided of how its legality has been demonstrated. The similarity of buildings and the concept of area both having mathematical dimensions is not enough.

According to Mr. Palmer's July 25th submission, the use variance request is specifically:

“In the Alternative, the Applicant Requests Use Variance Approval to Permit Multi-Family or SRO Use that Existed on the Premises to Continue.”

Interestingly, the distinction is made between the multifamily designation and the SRO use that existed on the premises in this statement for variance request, contrasting from the interchangeability in other areas of the submissions. In the event a variance is granted, the specific **level of use** needs to be clarified as a multifamily **OR** SRO use. Also, multifamily use with separate units including amenities needs to be acknowledged as an increased level of use and the conflict of granting this use with Zoning Code 223-10 C3 needs to be recognized.

If a multifamily variance is granted, this would present a blank slate with the sky being the limit. It is difficult to believe that the same plans would be submitted if a multifamily building and use is granted. The limit of 25% increased value would not apply and it is unclear what the limitations for a new nonconforming building and nonconforming use would be. It should be required that any change in the previously submitted plans must be presented before the variance request is granted.

A multifamily use variance violates the Zoning Code 223-10 C3 as previously discussed, however for the purpose of entertaining this variance request, as the Zoning Board is, a review of the conditions for the Statutory Standard for Use Variance is outlined below:

**1. The owner would receive a reasonable return without this variance.**

Although the property owners have not been present at the meetings and were unavailable to answer the question of what would be a reasonable return for them, it is clear that a profit would be made if a single family residence was built and sold. While acknowledging that the fire was unfortunate, the property owner had the freedom to purchase this property granted with nonconforming use and take the risk of purchasing this property and losing this right if the building was destroyed. Fortunately the disaster happened before the renovations were done and the assessment that is suspected to be around the time of insurance coverage is extremely high. Also, fortunately for the applicant, the housing and property market in Beacon currently exists very much in their favor.

**2. This circumstance is not unique in this zone as there are other potential similar circumstances surrounding this property.**

Although the circumstance seems unique, it is not. As previously discussed there are many historic properties through Beacon subject to the same laws and standards including two other properties in this particular zone. If any of these buildings were destroyed for any reason the circumstances would be the same. Again, the preexistence of these types of buildings and uses and their placement

in single family residential zones is why these laws exist in this Zoning Code; to preserve the character and welfare of the community.

**3. A change to the essential character of the neighborhood would be created.**

The two properties with nonconformity in this zone were also both historic buildings that had predated the Zoning Code. The Zoning Board of Appeals has determined that this property reverts back for single family building and use. To allow a variance that constructs a *new* nonconforming building with multifamily residence is unprecedented in this zone, highly contrasts with other nonconforming use, and extremely changes the character of this neighborhood. There is no intention from this applicant to address the affordable housing goals for this city after affordable housing in 16 cases was destroyed on this property. Affordable housing has always provided a valued diversity in this city that is slowly being pushed out of Beacon and replaced with *luxury* – a general term, and though the definition of luxury can be argued, when compared to the boarding house, the proposed building is luxurious. Although many apartment buildings exist in this small city, the examples of apartment buildings in the area including Forrestal Heights (which provides affordable housing) and Creek Drive do not exist in single family residential zoned areas.

**4. This hardship of the fire was not self created, however the situation 925 Wolcott LLC is in now is self imposed.**

This was a risky property to purchase in many aspects including the maintenance of nonconforming use status while performing costly renovations, the risk of losing nonconforming use if the use lapses, the risk of the cessation of nonconformity if the building was destroyed, and the complexity of becoming a landlord to the existing tenants of this boarding house. This applicant recently purchased this property, broke our laws, and imposed true hardship on others. Any hardship that this property owner has faced so far has been financial. It has been implied that a significant benefit was created by suspectedly insuring the building for a large sum, which will provide a more than reasonable return to counter a hardship if a single family residence is constructed and sold.

Mr. Palmer had pointed out in a letter from the August 15th meeting that the board members cannot rely on general opposition from the community. This case has been highly publicized after the fire and there has been a large amount of public comment. If the Zoning Board and City Council's decisions align with the public it is not necessarily simply because of public opposition, but because these are valid arguments and concerns. Also, this is why each case is individually evaluated with consideration of these statutory standards. It is important to remember that a variance approval is granted only if the applicant has met **each and every** element of the statutory standard. It is clear that the applicant meets none.



The Board of Appeals shall preserve and protect the character of the neighborhood and the health, safety, and welfare of the community. In this regard, increasing nonconforming use from single family residence to multifamily will create more noise, light, increased traffic, and parking issues. Also the need for other supporting infrastructure such as safe sidewalks, road crossings, and public services would be increased. There is an apparent lack of police force as evidenced by a poorly enforced speed limit and crosswalk law in this school zone. Also there is a well known lack of first responders in this city. Continuing nonconforming use in residential neighborhoods such as this places a strain on these already reduced services. Not only is this property in a school zone but this school property is home to the Beacon City School District Administrative Building and the community soccer fields. This generates significant amounts of foot traffic and car traffic including many children. There have been significant amounts of various incident reports involving this intersection over the years, which are available at the police department. Included in these incidents are numerous crime reports as well as reports of collisions of cars into homes, telephone poles, the tree on this property, and the statue across the street. Throughout the continuation of this case there have been no proposed remedies from the applicant for supporting increased safety or infrastructure of this area to justify the proposed nonconforming use. These safety concerns are not only for the surrounding neighbors to the property, but also for potential tenants in this residence especially if any of them are small children. To allow a high density residential building and use in the heart of an extremely dangerous intersection with no sidewalks, in a school zone, is apparent neglect for the safety of the tenants and all who access this intersection.

Although widespread opposition has been demonstrated in this highly publicized case, **all** of the surrounding neighbors (apart from 916 Wolcott which is also owned by these property owners) have consistently participated in the public Zoning Board Meetings and written letters in opposition of continued nonconforming use for this property. Pursuant to Zoning Code 223-10 H, a formal complaint will be registered from the surrounding property owners of the nonconforming use for this property. This section of the Zoning Code states:

“General nuisances. Upon a complaint registered by the Building Inspector or 50% of the property owners within 250 feet of a nonconforming use which is considered to be a general nuisance or hazard to the health, safety, welfare and morals of uses or structures within 250 feet of such nonconforming use or uses, the Zoning Board of Appeals shall hold a public hearing and make a finding with respect to the nuisance or hazardous condition which exists and shall determine the necessity of terminating such nonconforming use. Such uses shall be terminated within such reasonable time as shall be determined by the Zoning Board of Appeals as related to the reasonable amortization of the capital investment in such uses.” (Zoning Code 223-10 H)

A complainant from the surrounding neighbors has been drafted and will be registered if nonconforming use is granted in any scenario. Although this complaint has

been sparked by recent events, the nonconforming use for this property has been a general nuisance *and* a hazard to the health, safety, welfare, and morals of the surrounding properties for many years. To allow nonconforming use to continue for this property is in violation of this mission of the Zoning Board. We request that the Zoning Board uphold this section of the Zoning Code, hold a public hearing within 30 days of the determination of any scenario granting nonconforming use, and determine the necessity of terminating the nonconforming use.

Maintaining the nonconforming use of this building within this zone was an effort to protect this historic home, however allowing nonconforming use to continue tragically led to its destruction. The only option is to maintain R1-20 zoning and require that any constructed building must conform to all the regulations in this zone. The only options for this property owner are to either profit by constructing a beautiful single family home for sale, or profit by selling the property as is. In the case of the latter, I would suggest the city purchase this property and incorporate a small park into the pending project to change the entire intersection. Along with sidewalks, a safe intersection, a bus stop, and a home for the statue that is currently in the middle of the intersection, this would provide a greenspace for a major focal point in this small beautiful city. Thank you again for your time and consideration.

Sincerely,

Brittany Mustakas

Meg and Steven Oakes  
 913 Wolcott Avenue  
 Beacon, NY 12508  
 September 17, 2023

Chairman Jordan Haug and Members of the Zoning Board of Appeals

Re. 925 Wolcott LLC

Dear Chairman Haug and the Zoning Board of Appeals

On behalf of the neighbors and residents of the City of Beacon who have lived for decades in proximity to the former nonconforming SRO/multi-family building currently owned by 925 Wolcott LLC we submit our letter of opposition to granting the applicant's request for an Area variance or—in the alternative—a Use variance to establish a multi-unit/SRO building on a parcel zoned single family in a neighborhood of single-family homes.

The argument claiming a reconstruction of a completely destroyed nonconforming building as an Area Variance does not make sense, and also does not fit the description of what an area variance is. It is not an appropriate request.

In regard to a request for a Use variance (use moving from current single family to a multi-unit/SRO) the statement that this would not be a detriment to the neighborhood is a logical absurdity, and simply stating it is so does not make it true. Yes, the nonconformity has been around for decades, but it has been a nightmare for neighbors for decades as well. Moving to my house at 913 Wolcott in 1992—then 419 Wolcott—I quickly learned that the once-impressive home at the corner of Wolcott and Sargent was a source of noise and disturbance—fights, late night car alarms, dumpsters banging in the night, police calls, and even gunshots were “a fundamental part of the community character,” as the plea from Cuddy and Feder states. If a nuclear waste dump had been established 40 years ago, I can't imagine that the argument that it is a 'fundamental part of the neighborhood character' would be persuasive. The reality is that the rules permitting nonconforming structures and uses also included rules that also terminated such uses, as they are incongruous and undesirable.

That there are other multi-family buildings within  $\frac{3}{4}$  of a mile is likewise irrelevant and the claim is misleading—most of them are not 'in the neighborhood' by anyone's measure except one of them: 916 Wolcott, owned by the owner of 925. Forrestal Heights is indeed a multi-unit development, *but it is completely in compliance with the zoning for the area in which it is located.* The Creek Drive project is likewise *completely conforming and is also located nowhere in the 'neighborhood' but is properly part of downtown Beacon.* 895 Wolcott was built in the 1890s as a three-unit row house and continues in precisely that use—the use for which it was designed. Its neighbors are the Elks Club and Sergeant School. 925 Wolcott was a single-family home that has been transformed into a undesirable SRO in the midst of single-family homes The investor's attorneys write at great length about 50-52 South Chestnut Street, complete with color aerial photos from the County's GIS site. However, there are important differences in this scenario. A nonconforming use on two lots was allowed to continue after the roof of the building was caved-in by snow. A big difference here is that the letters submitted by the neighbors of 50-52 South Chestnut were IN SUPPORT of the continuance. The auto shop didn't diminish the neighborhood, whereas 925 Wolcott is the very definition of an incongruous and inappropriate use. In the case of 925 Wolcott, the neighboring property owners are UNIVERSALLY OPPOSED to the granting of a Use or an Area Variance. That is the chief difference—an auto shop without a history of disturbances, set in an area somewhat out of the way on a very large parcel, with a challenging topography, vs. a multi-unit/SRO that has been the site of numerous police calls and

disturbances and is set in a prominent area near an elementary school. As noted in the previous attempts by the owner's attorneys to argue that the Board has allowed Use Variances in the past, those mentioned (Eliza and Rombout) were a) seen by neighbors and the Board as an improvement, not a continuation of a public nuisance, and b) were close in number to the allowed residential use for the zone. These cases also were specifically for the change from a commercial use to a residential use, far more in conformance with the zoning in place there. That is not the case with 925 Wolcott. Again, in all the cases mentioned by the investor's attorneys, neighbors testified in support of the changes, whereas the opposite is seen here, meeting after meeting.

Using language from a DEC Environmental Assessment Form to inform Beacon zoning's definition of 'community character' is meaningless.

Zoning was created to help define the character of a community by, among other things, creating some uniformity and consistency of use in geographic areas to maximize neighborhood desirability. Consideration of the impact on the neighborhood of a variance to permit a permanent multi-unit/SRO is involves far more than simply stating that one was there in the past.

The Zoning Code states with regard to an Area variance that not only the character, but equally importantly the *safety, health and welfare* of the community must be taken into consideration. In each instance, the detriment to the community by granting this request is far greater than the benefit.

The investor's attorneys write several hundred words about a hardship that is claimed but not demonstrated. They were told in the July meeting what documentation they needed to provide and evidently they are unable or unwilling to provide it. They state a purchase price--\$550K for the building and \$100K for the land, according to the records they gave the County—and a claimed \$62K in carrying and cleanup costs for which documentation is not provided. But especially important, was the building insured? Was a claim paid or pending payment? The failure to provide useful information after having been told exactly what documents to provide suggests that there is no hardship. No information but the purchase price and cleanup costs (and no documentation for either) is provided and therefore the claim fails to be persuasive and must be denied. That the owner had hoped to make a lot of money but did not is irrelevant. My lottery ticket wasn't a winner, but I can't claim a hardship. The investor clearly has failed to show that he will experience a hardship if he isn't allowed to get special treatment under the zoning code. His hoped-for unrealized return on a risky purchase of a nonconforming building that could cease to exist with every thunderstorm is not a hardship. The Board has no option but to deny the request as it is not supported by documentation of any relevant sort.

Whether an investor purchasing a nonconforming building can 'expect' a desired return is questionable on its face. The investment was inherently risky, and to gift the owner a return based on a risky investment is an inappropriate transfer to the investor from the city and his neighbors.

That the use did not cease for more than one year is a straw man argument in that the use was terminated by the fire in January.

The nonconforming SRO/Multi-unit building was removed January and the parcel is now restored to its designed single-family status. In summary, we oppose the request for a Use or an Area variance.

Neighbors have clearly voiced their opposition to this variance. The non-conforming status of 925 Wolcott Avenue has ended, and the code requires property must now conform to all the regulations of the zone.

Thank you for your consideration.



Sincerely,

*William Steven Oakes* *Meg Oakes*

William Steven Oakes and Meg Oakes  
913 Wolcott Avenue

RECEIVED  
9/19/23

September 17, 2023

To: City of Beacon Zoning Board  
Re: 925 Wolcott LLC, variance request

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

As concerned neighbors in the vicinity of this property at 925 Wolcott, we support a denial of this request for a variance to build a multiunit/SRO at the 925 Wolcott location.

This would be a detriment to the neighborhood.

Thank you,

Sincerely,

Meg Oakes  
Meg Oakes  
913 Wolcott  
William L. Oakes  
913 Wolcott

Mary Jackson  
Mary Jackson  
12 Fowler Street

Thomas Lee 912 Wolcott Ave

Paul Menchen  
PAUL MENDELSON  
911 WOLCOTT

Lisa Farrell  
Lisa Farrell  
907 Wolcott Ave

Bob Martin  
907 Wolcott Ave