COURTROOM
1 MUNICIPAL PLAZA
BEACON, NY 12508

October 17, 2023
7:00 PM
Zoning Board of Appeals Agenda

The Zoning Board of Appeals will meet on Tuesday, October 17, 2023, at 7:00 PM, in the Municipal Center courtroom, located at One Municipal Plaza, Beacon, New York.

Regular Meeting

1. Approval of the September 19, 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 8.7 ft side yard setback (25 ft required) Section 223-17.D to allow for a 4.0 ft rear yard setback (50 ft required)
3. Review and hold a public hearing on application submitted by Dana Hochberg, 60 Verplanck Avenue, Tax Grid No. 30-5955-84-880039, in the R1-7.5 Zoning District, to remedy an error in the foundation layout, which requires relief from the following: Â Section 223-17.D to allow for a 9.6 ft side yard setback (10 ft required)
4. ***ADJOURNED AT THE REQUEST OF THE APPLICANT TO THE NOVEMBER 21, 2023, MEETING***Â Â 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
10/17/2023

Title:

Approval of the September 19, 2023, minutes

ATTACHMENTS

City of Beacon Zoning Board of Appeals Agenda
10/17/2023

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 8.7 ft side yard setback (25 ft required)
2. Section 223-17.D to allow for a 4.0 ft rear yard setback (50 ft required)

ATTACHMENTS

359 Cherry ZBA 10.17.23 Project Narrative 230926.pdf

359 Cherry ZBA 10.17.23 Sheet 1_Site Plan_Zoning Board Submission 2_230926.pdf

359 Cherry ZBA 10.17.23 Sheet 2_Existing Conditions & Demo_Zoning Board Submission 2_230926.pdf

359 Cherry ZBA 10.17.23 Sheet 3_Floor Plans_Zoning Board Submission 2_230926.pdf

Project Narrative
359 Cherry Street
Beacon, NY

September 26, 2023

Summary
359 Cherry Street is an existing single-family property with a house and detached garage. The Applicant proposes to connect the existing house and garage with an addition in order to create an office on the 1st floor.

The house is currently used as a full-time residence for the applicant and her daughter when she comes to visit from college, and occasional Airbnb use (total number of bookings in 2023: 10). The applicant has a permit issued by the City of Beacon as an owner-occupied Airbnb property. No increase in the number of Airbnb bookings is anticipated.

The applicant works from home and requires a home office space. She would like to remain on the first floor, both as her living space and for her professional practice and have the second floor for her daughter and extended family. The proposed relocation of one of the bedrooms from the 2nd floor to the 1st floor, and the new 1st floor bathroom accomplishes this goal.

Proposed Work and Requested Variances

This revised proposal addresses comments received at the previous Zoning Board hearing in order to reduce the intensity of the requested variances:

- Setbacks
    - The requested side yard setback has been significantly reduced from the initial proposal. The new side wall is 8.7’ feet from the side yard. Although 25 feet is the currently required rear yard setback, the newly proposed setback is related to the existing house, which has an 8.0’ setback and predates the current zoning. It was suggested at the

previous ZBA hearing that meeting or exceeding the existing side yard setback would likely be an acceptable improvement over the previous proposal.

  - The requested rear yard setback of 4.0’ is created by attaching the existing garage to the house. The garage is an existing feature of the property, and this proposal does not change its position or affect how it relates to the property line.

- Storm Water
  - A neighboring property owner expressed concern about storm water management, and the need to avoid directing storm water to the adjacent properties. The Applicant plans to address this while construction drawings are being developed to ensure that stormwater from impervious surfaces is managed and controlled to eliminate negative impacts on neighboring properties. The stormwater will be controlled with gutters and leaders leading to daylight on the property or to drywells, as determined to be required to keep stormwater from the subject property from affecting the adjacent neighbors.

- Bilco Door
  - The existing Bilco door is in the only feasible location based on the layout of the partial basement below the house. A significant portion of the foundation is crawlspace, which does not allow relocation of the Bilco door.

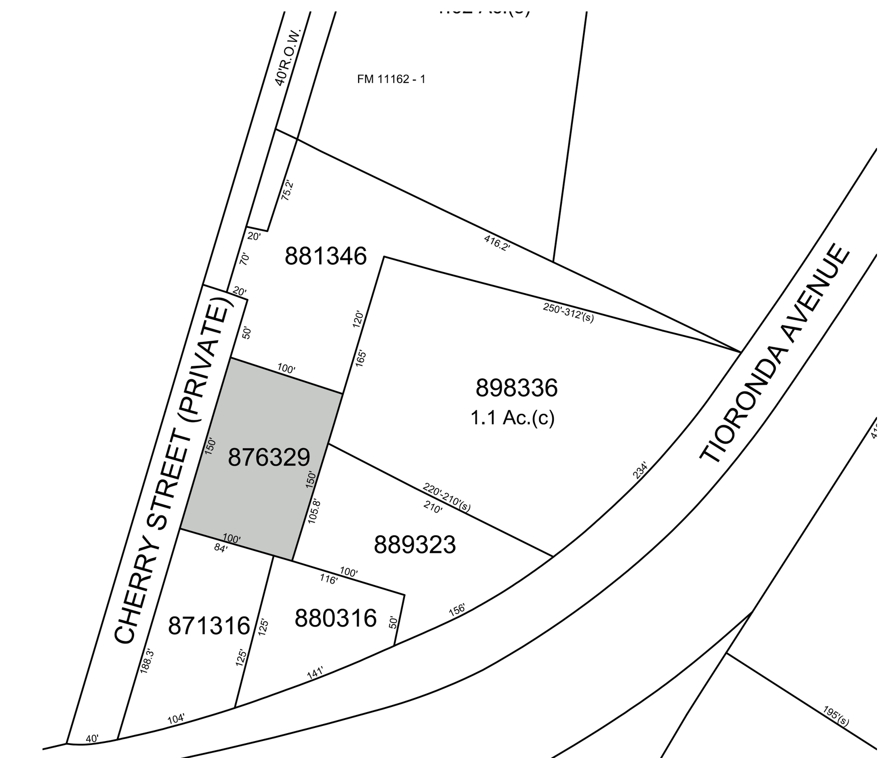
- Septic & Leach Field
  - The existing septic tank and leach field are located on the other side of the existing concrete retaining wall and will remain in place. The location of these items doesn’t allow for construction of buildings or driveways above without significant relocation. The Applicant discussed the septic requirements with the Building Inspector. He let her know that the septic system is based on the number of bedrooms. Since one of the bedrooms on the 2nd floor is being eliminated, and one bedroom is being added on the 1st floor, the bedroom count does not change and the septic will remain as is.

REVISIONS:			
NO.	DATE	DESCRIPTION	BY
1	09-26-23	REVISED PER ZBA COMMENTS	AJS

Bulk Zoning Regulations Table

	Minimum Lot Size (Required)			Minimum Lot Size (Proposed)			Minimum Yards (Required)			Minimum Yards (Proposed)			Allowable Building Height	Proposed Building Height	Lot Coverage (Maximum)	Lot Coverage (Proposed)	Proposed Building Footprint
	Area	Width	Depth	Area	Width	Depth	Front	Side	Rear	Front	Side	Rear					
Zoning District																	
R1-40 (One Family District)	40,000 SF	150'	150'	15,000 SF (Existing)	150'	100'	35'	25'	50'	6.8' (Existing)	8.7' *	4.0' *	35'	28'	15%	12%	1,846 SF

* Variance Required



Location Map

Scale: Not to Scale

Zoning Summary

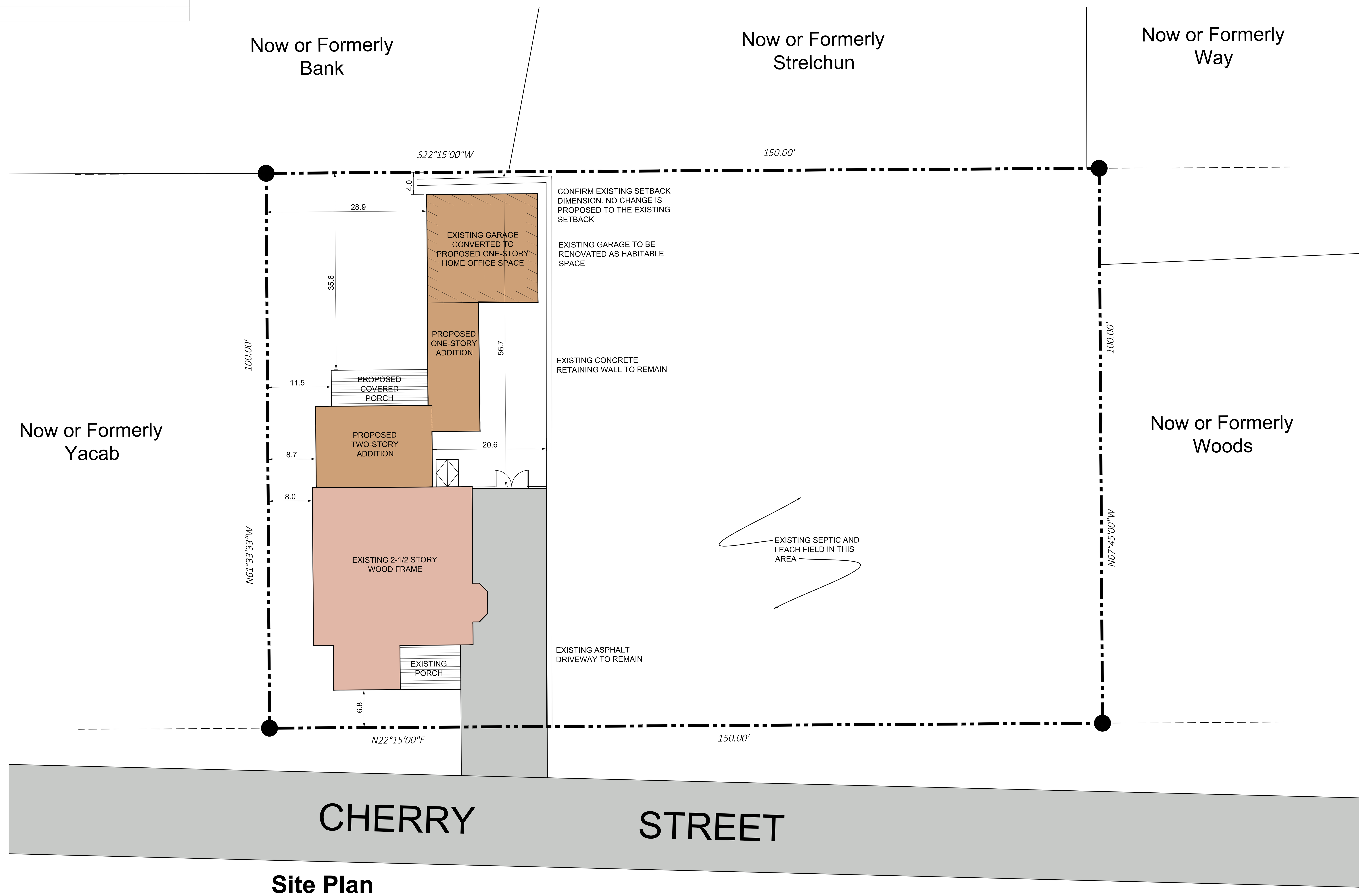
Zoning District: R1-40 (One Family)
Tax Map No.: 5954-16-876329
Lot Area: 0.34 Acres (Total combined lot area)
Building Footprint: 1,846 sf
Historical Overlay District: No
Parking Overlay District: No
Existing Use: Residential (Single Family)
Proposed Use: Residential (Single Family) – No change of use proposed

Parking & Loading

Use & Parking Requirements	Proposed Area	Current Parking Requirement
Residential		
(2) space per dwelling unit	(1) dwelling unit	2 parking spaces
Total Required		**2 parking spaces**
Total Provided		**2 parking spaces**

Notes:

1. The Applicant proposes to build an addition between the existing house and the existing garage. The existing garage will be renovated as habitable space.
2. The Applicant requests a Variance for the Side Yard Setback where 25 feet is required and 8.7 feet minimum is proposed, per § 223-17. Schedule of Dimensional Regulations
3. The Applicant requests a Variance for Rear Yard Setback where 50 feet is required and 4 feet is proposed, per § 223-17. Schedule of Dimensional Regulations. Note that the 4 foot setback is the existing setback of the existing garage structure.
4. Applicant does not believe an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of this variance.
5. The benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than setback variances.
6. The applicant does not believe the requested variances is substantial.
7. The applicant does not believe the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
8. The applicant does not believe the difficulty was self-created. However, if the Zoning Board finds that the difficulty was self-created, the consideration shall be relevant to the decision of the board of appeals but shall not necessarily preclude the granting of the area variance.
9. The Applicant will review and incorporate storm water measures during the construction document phase to ensure that storm water from impervious surfaces on the subject property is not directed towards neighboring properties

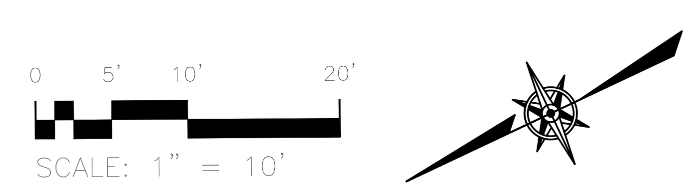


Site Plan

Scale: 1" = 10'

Index of Drawings

Sheet 1 of 3	Site Plan
Sheet 2 of 3	Existing Conditions and Demo Plan
Sheet 3 of 3	Floor Plans & Elevations



Zoning Board Application

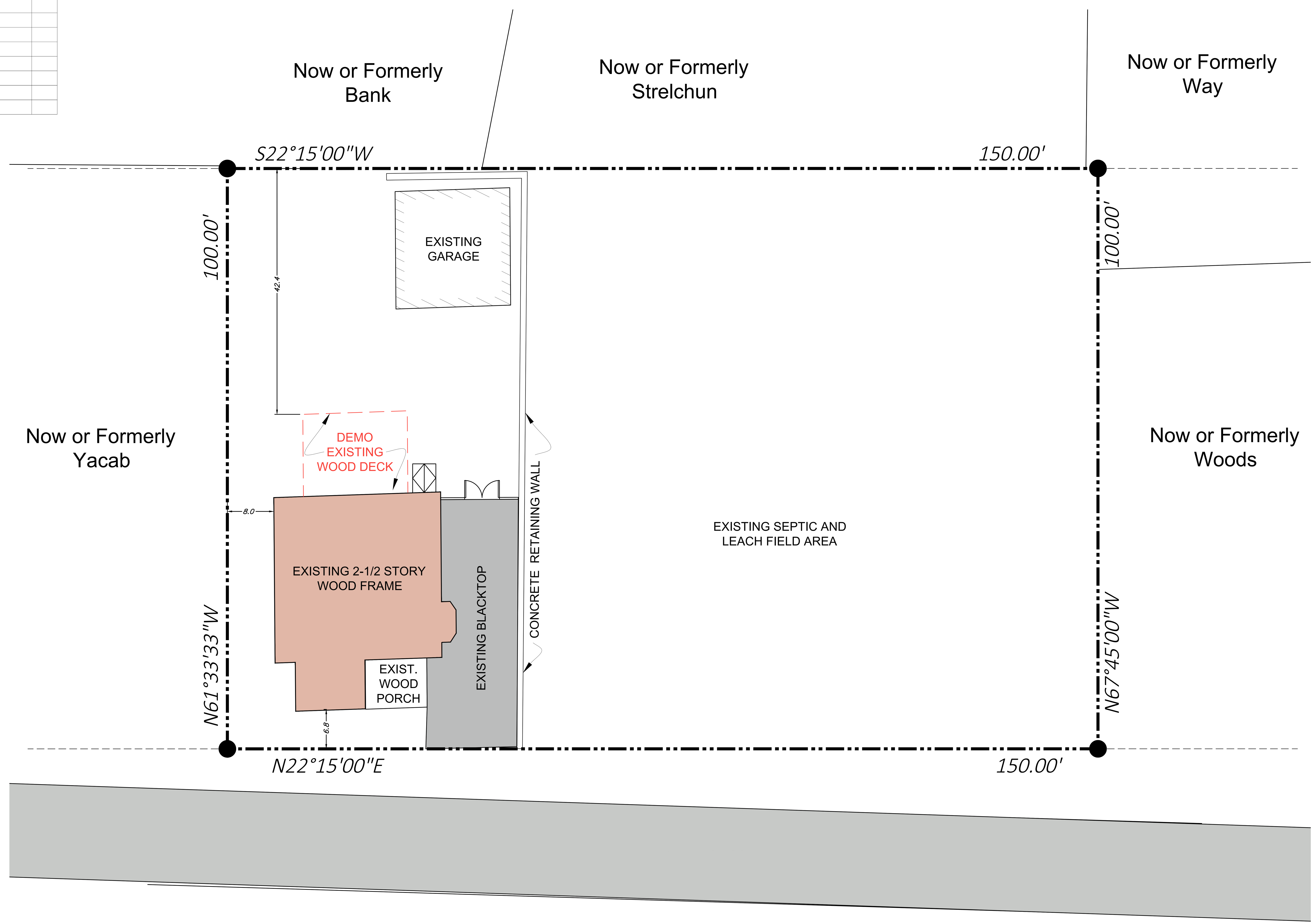
Sheet 1 of 3 - Site Plan

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

REVISIONS:			
NO.	DATE	DESCRIPTION	BY
1	09-26-23	REVISED PER ZBA COMMENTS	AJS



Existing Conditions and Demo Plan

Scale: 1" = 10'

0 5' 10' 20'
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'
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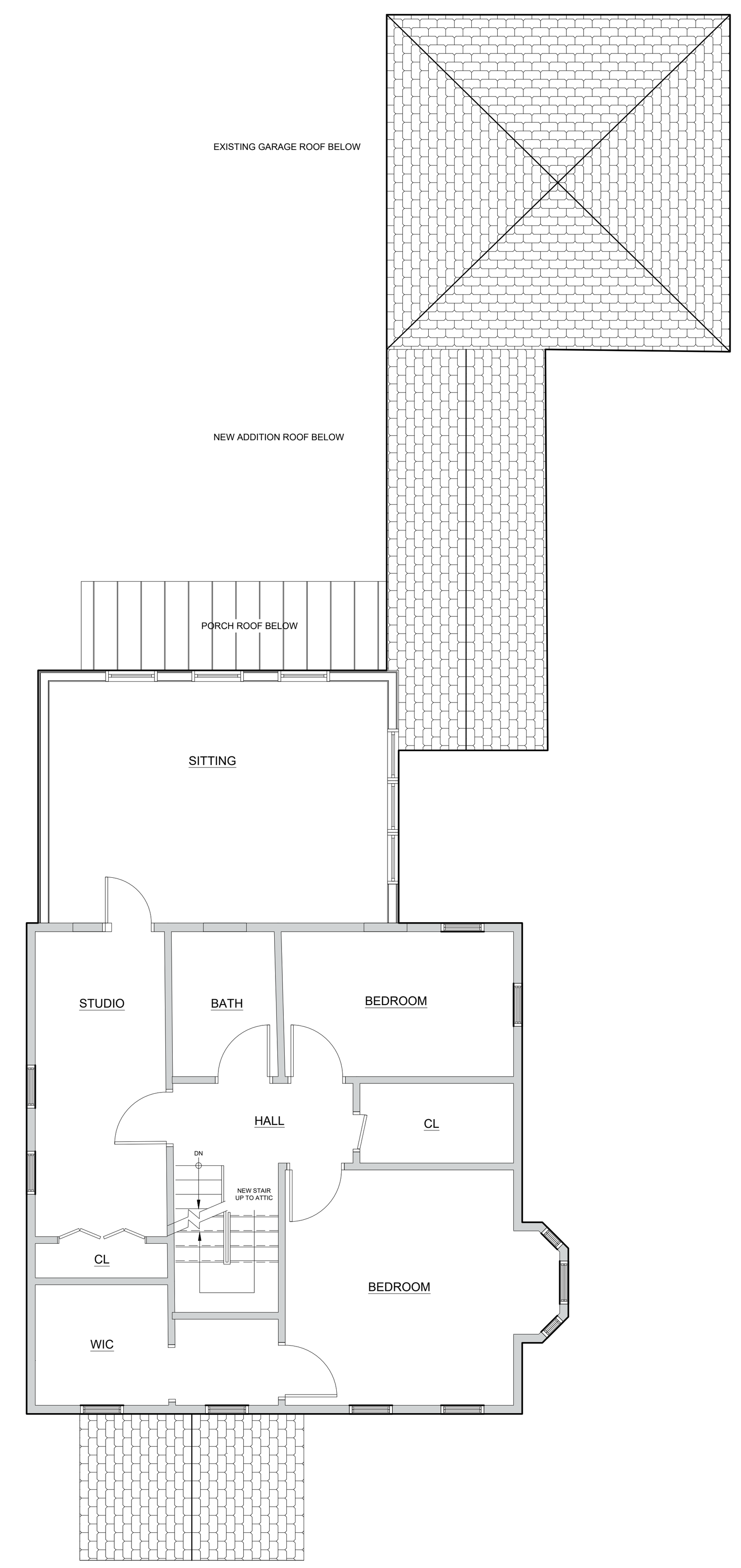
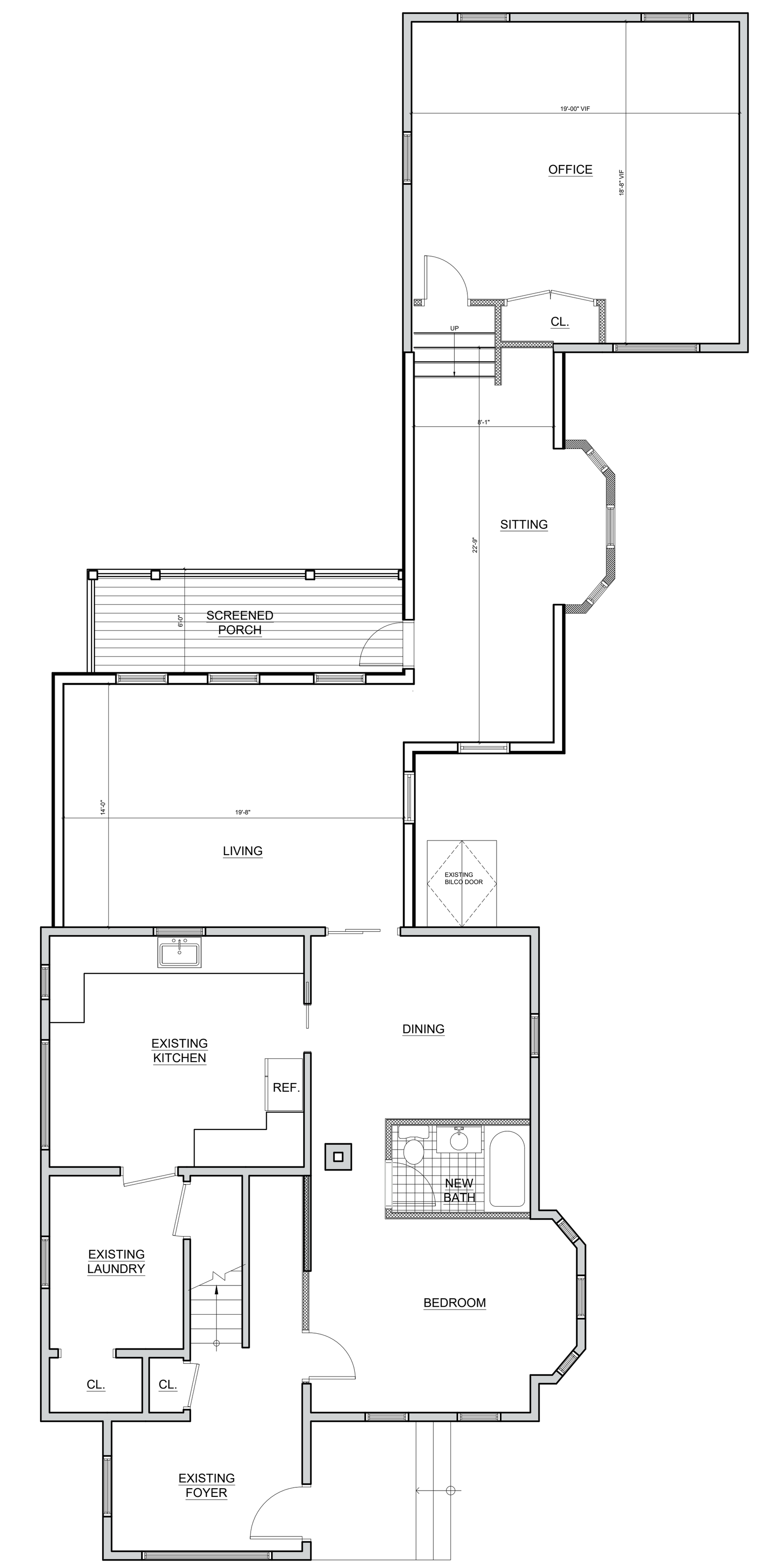


2 Proposed 2nd Floor Plan
1/8" = 1'-0"



1 Proposed 1st Floor Plan
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
10/17/2023

Title:

Review and hold a public hearing on application submitted by Dana Hochberg, 60 Verplanck Avenue, Tax Grid No. 30-5955-84-880039, in the R1-7.5 Zoning District, to remedy an error in the foundation layout, which requires relief from the following:

Section 223-17.D to allow for a 9.6 ft side yard setback (10 ft required)

ATTACHMENTS

60 Verplanck ZBA 10.17.23 app.pdf

60 Verplanck ZBA 10.17.23 public comment Mayeski.pdf

ZONING BOARD OF APPEALS

City of Beacon, New York

APPLICATION FOR APPEAL

OWNER: DANA HOCHBERG

ADDRESS: PO BOX 721
BEACON NY 12508

TELEPHONE: 845-559-3187

E-MAIL: DHOCHBERG@MAC.COM

APPLICANT (if not owner): ____________________

ADDRESS: ____________________

TELEPHONE: ____________________

E-MAIL: ____________________

REPRESENTED BY: ____________________

ADDRESS: ____________________

TELEPHONE: ____________________

E-MAIL: ____________________

PROPERTY LOCATION: 60 VERPLANCK AVE.

ZONING DISTRICT: R1 - 7.5

TAX MAP DESIGNATION: SECTION 5955 BLOCK 84 LOT 880039

Section of Zoning Code appealed from or Interpretation desired:

§ 223-17 SCHEDULES OF REGULATIONS, ATTACHMENT § 223-17C SCHEDULE OF REGULATIONS FOR RESIDENTIAL DISTRICTS

Reason supporting request:

CONTRACTOR ERROR IN FOUNDATION LAYOUT; SOUTH FRONT YARD AND WEST SIDE YARD ARE 28.8' AND 9.6' RESPECTIVELY IN LIEU OF REQUIRED 30' AND 10'.

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

FOUNDATION SURVEY PREPARED BY BADEY & WATSON DATED SEPT. 19, 2023

Date: 9/25/2023

Owner's Signature

____
Applicant's Signature

Fee Schedule

AREA VARIANCE	$ 250
USE VARIANCE	$ 500
INTERPRETATION:	$ 250
ESCROW FEE:	$1000
I & I INSPECTION:	$50

APPLICATION PROCESSING RESTRICTION LAW

Affidavit of Property Owner

Property Owner: DANA HOCHBERG

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: PO BOX 721

Project Address: 60 VERPLANCK AVE.

Project Tax Grid # 1314

Type of Application AREA VARIANCE

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, DANA HOCHBERG, 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 ✓

Signature of Owner

Title if owner is corporation

Office Use Only:	NO	YES	Initial
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)	___	___	_____

FOR OFFICE USE ONLY
Application #

CITY OF BEACON

1 Municipal Plaza, Beacon, NY

Telephone (845) 838-5000 • http://beaconny.gov/

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: DANA HOCHBERG

Address of Applicant: PO BOX 721, BEACON NY 12508

Telephone Contact Information: 845-559-3187

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.
DANA HOCHBERG	PO BOX 721 BEACON NY 12508	845-559-3187	6/17/2019 PRIVATE SALE	6/17/2019 VIA EMAIL
BRAD HOCHBERG	5900 PAT AVENUE WOODLAND HILLS CA 91367	818-469-5689		

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.

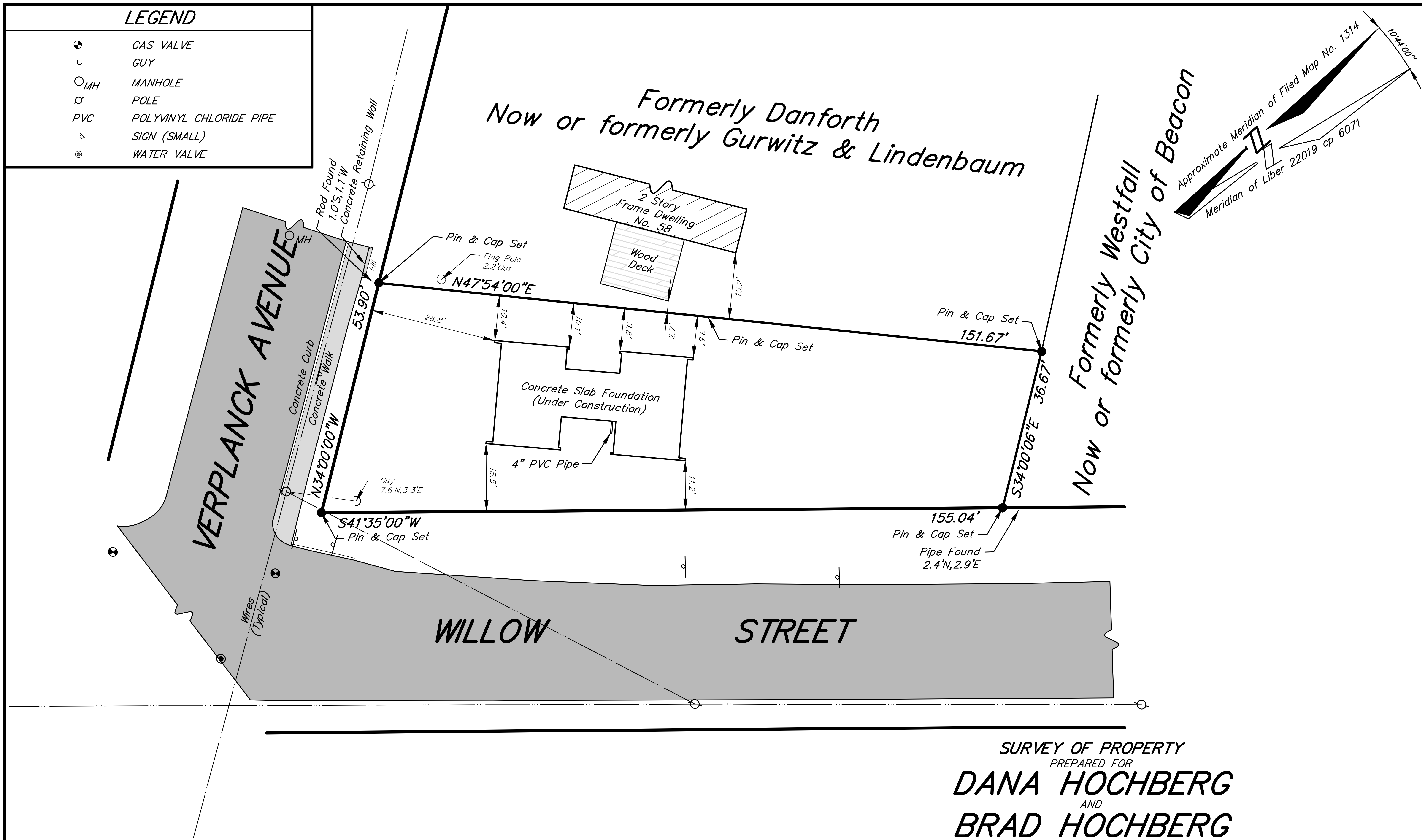
☐ **YES** ☑ **NO**

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

(Print) DANA HOCHBERG

(Signature) [signature]

GEOGRAPHIC INDEX 41-30-37.4 -73-58-20.7



Area = 6,799 Sq. Ft.

This map was prepared for the exclusive use of and is certified only to:

DANA HOCHBERG
BRAD HOCHBERG

Notes

1. COPYRIGHT "2023" by BADEY & WATSON, Surveying & Engineering, D.P.C. All Rights Reserved. Unauthorized duplication is a violation of applicable laws.
2. Unauthorized alteration or addition to a document prepared by a licensed land surveyor is a violation of Section 7209, Subdivision 2 of the New York State Education Law.
3. All certifications are valid for this map and copies thereof only if said map or copies bear the embossed seal of the surveyor whose signature appears hereon.
4. If underground improvements, easements, or encroachments exist and are neither visible during normal field survey operations nor shown in instruments provided to these surveyors, they may not be shown on this map.
5. This property may be affected by instruments which have not been provided to these surveyors. Users of this map should verify title with their attorney or a qualified title examiner.
6. This survey is of property described in the Dutchess County Clerk's Liber 22019 of deeds at page 6071 (Flaherty & Flaherty to Hochberg & Hochberg).

SURVEY OF PROPERTY

PREPARED FOR

DANA HOCHBERG
AND
BRAD HOCHBERG

SITUATE IN THE

CITY OF BEACON
DUTCHESS COUNTY
NEW YORK

SCALE 1 in. = 20 ft. SEPTEMBER 14, 2023

We hereby certify that the survey shown hereon was completed by us on September 14, 2023 ,that this map was completed on September 15, 2023 , and that this survey has been prepared in accordance with the existing Code of Practice for Land Surveys as adopted by The New York State Association of Professional Land Surveyors, Inc.

STATE OF NEW YORK · STEPHEN R MILLER · 49789 · LICENSED LAND SURVEYOR

BADEY & WATSON
Surveying & Engineering, D.P.C.

by

NEW YORK STATE LICENSED LAND SURVEYOR
LICENSE No. 49789

PRINTED
September 19, 2023
BADEY & WATSON
Surveying & Engineering, D.P.C.

BADEY & WATSON
Surveying & Engineering, D.P.C.
3063 Route 9
Cold Spring, NY 10516
www.Badey-Watson.com
845.265.9217
877. 3.141593 (Toll Free)

On 9-18-2023
Closed by SRM
Drawn by MEY
Spell checked by MEY
Checked by SRM
Layout: SURVEY
Drawing Name: LS27024__R01_V22.DWG

W.O. No. 27024 T.M. : 5955-84-880039 FILE No. 82-101

CITY OF BEACON
New York
Building Department

Bruce Flower
Building Inspector

845-838-5020
Email: bflower@beaconny.gov

September 28, 2023

Dana Hochberg
P.O. Box 721
Beacon, NY 12508

Dear Mr. Hotchberg,

I have received your as built survey of the foundation for your home located at 60 Verplank Ave. (Grid #5955-84-880039) which is in the R1-7.5 Zoning District. The survey shows the foundation does not have a proper side yard setback on the west side which does not conform to the current Schedule of Dimensional Regulations. The required setback for the side yard is 10'. As per the survey only 9.6' is being provided on the west side yard.

223-17. D Schedule of Dimensional Regulations
Side Yard
Required side yard setback 10'
Proposed side yard setback 9.6'
The requested variance is 0.4'

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

From:	Martin Mayeski
To:	Mercedes Perez
Subject:	appeal
Date:	Saturday, October 14, 2023 2:26:30 PM

Hi, my property is 54 Verplanck Ave, I'm sorry that I won't be able to attend the public hearing. I just want to let you know that I am against allowing this setback. It seems that both the builder and the architect should have taken this into consideration when the plans were being drawn up. Asking for relief at this time is like closing the barn door after the horse is out. I am totally against it. Also I was not notified that there would be rock breaking with heavy machinery at this site until I was sitting at my kitchen table and the house started to shake and hot coffee was spilling over my hand. I went over to ask the driver of the machine to stop and was told that he had permission from the builder, but wouldn't give me the name of the builder. I called my insurance company and was told to take pictures of the inside and the outside of my basement in case of cracks. Thank you for listening even though I believe it will not make a difference. Deacon Marty Mayeski.

City of Beacon Zoning Board of Appeals Agenda
10/17/2023

Title:

*****ADJOURNED AT THE REQUEST OF THE APPLICANT TO THE NOVEMBER 21, 2023, MEETING*****

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 10.17.23 - Supplemental ZBA Submission with Exhibits A-C Attached(5828073.1).pdf

925 Wollcott ZBA 10.17.23 public comment Canaan.pdf

925 Wolcott ZBA 10.17.23 public comment Mustakas.pdf

925 Wolcott ZBA 10.17.23 public comment Oakes.pdf

10-17-23 925 Wolcott Request for Adjournment to 11-21-23 ZBA Meeting with Exhibit A Attached(5848864.1).pdf

CUDDY
+FEDER
LLP

445 Hamilton Avenue, 14th Floor
White Plains, New York 10601
T 914 761 1300
F 914 761 5372
cuddyfeder.com

Taylor M. Palmer, Esq.
tpalmer@cuddyfeder.com

September 26, 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 Response to Comments on September 19, 2023 ZBA Meeting
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 enclosures in furtherance of the Applicant's pending Application before this Board, and in response to comments received at the Board's September 19, 2023 continued Public Hearing on the Application.

THE REQUESTED ALTERNATIVE RELIEF IS A REQUEST FOR AN AREA VARIANCE:

As is more fully detailed in the Applicant's August 29, 2023 submission to this Board, and as was further discussed at the Board's September 19th meeting, the requested relief from Section 223-10.D. of the City's Zoning Code in the first instance is properly deemed to be an Area Variance. The Applicant references and restates the arguments incorporated therein.

Furthermore, as a separate justification, the Applicant would also like to highlight that under New York Law, when a multifamily residential use is permitted on a lot, the number of units is a question of an Area Variance. Once a use is legal, a Use Variance is not required for modifications that do not essentially change the nature of said use.[1] This principle has been extended to the number of dwelling units on a property. *See* RATHKOPF'S The Law of Zoning and Planning, Section 72:5 (citing Amzalak v. Incorporated Village of Valley Stream, 220 N.Y.S.2d 113 (Nassau Cty. Sup. Ct. 1961)):

[1] *See* Wilcox v. Zoning Board of Appeals of City of Yonkers, 17 N.Y.2d 249 (N.Y. 1966) (variance relating to a larger multifamily building in an area zoned for multi-family buildings is an Area Variance, not a Use Variance); *see also* Wambold v. Village of Southampton Zoning Board of Appeals, 140 A.D.3d 891 (2nd Dep't 2016); Jacob Realty Property, LLC v. Malcarne, 96 A.D.3d 747 (2d Dep't 2012); Mobile Oil Corporation v. Village of Mamaroneck Board of Appeals, 293 A.D.2d 679 (2d Dep't 2002).

> *Where the use to which a structure was put was a permitted use in the district in which the property was located—although the use was carried on in a converted garage building on the same lot as the principal dwelling, thus lacking conformity with an amendment prohibiting two dwellings on one lot—it was held that a provision requiring the termination of nonconforming uses which had been discontinued for 12 continuous months was not applicable to prevent the resumption of residential use of the rear building after two years of nonuse.*

Additionally, the court in Amzalak, 220 N.Y.S.2d at 115, provides that:

> *...the Court finds that the use to which the building has been put was residential, and that since it is situated in a residential district this use is permitted as of right and not as a non-conforming use. It is unquestionably true that the structure as such does not comply with the area and rear yard requirements of the ordinance, and possibly does not comply with the side yard requirement. However, this renders it only a "non-complying" or a non-conforming building but not a non-conforming use....*

Likewise, here, the number of dwelling units on the Premises is a dimensional question which only requires consideration of a request for an Area Variance. The continued existence of the SRO use is not fundamentally changing the nature of the *residential* use of the Premises.

IF A USE VARIANCE IS DETERMINED TO BE REQUIRED, THE APPLICANT HAS MADE IT CLEAR THAT WITHOUT THE REQUESTED RELIEF, A REASONABLE RETURN CANNOT BE REALIZED. THE INSURANCE PAYOUT DOES NOT IMPACT THE QUESTION REGARDING WHETHER THE APPLICANT CAN REALIZE A REASONABLE RETURN, AND EVEN IF IT IS CALCULATED AS A PART OF THE REASONABLE RETURN ANALYSIS, THE APPLICANT UTILIZED ITS INSURANCE PAYOUT TO ADDRESS EXISTING ENCUMBRANCES (LOANS) ON THE PREMISES.

Pursuant to New York General City Law Section 81-b(3)(b)(i), a landowner who seeks a Use Variance must illustrate factually, by dollars and cents proof, an inability to realize a reasonable return under existing permissible uses in a zoning district. The dollars and cents evidence utilized in this analysis, as highlighted by the Court of Appeals in 1958 and subsequent court decisions, includes:

- Amount paid for the property;
- Value of the property;
- Income from the land at issue;
- Expenses attributable to maintenance;
- Amount of taxes paid; and
- Amount of mortgages and other encumbrances.[2]

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[2] *See* Crossroads Recreation, Inc. v. Broz, 4 N.Y.2d 39 (N.Y. 1958); Miltope Corp v. Zoning Bd. of Appeals of Town of Huntington, 184 A.D.2d 565 (2d Dep't 1992).

Importantly, New York courts across the board have held that a financial loss does not equate to a reasonable return.[3] The analyses previously submitted by this Applicant show that the construction and sale or rental of a single-family home on this Premises would result in a loss for the Applicant. This is based on a dollar and cents evidence corresponding to the metrics listed above. Namely, as shown in Hudson Property Advisors, LLC's ("HPA") Zoning Feasibility Analysis dated August 28, 2023, which factored in the purchase price of $650,000, no single-family home comparable to nearby single-family homes could be constructed and sold (even at a conservative construction cost figure of $275 a square foot) that would not result in a loss. Even at a sales price of $1,900,000 – the highest surveyed home price, construction and sale of a single-family home would result in a loss of $138,021. Moreover, as noted in HPA's Zoning Feasibility of Analysis dated May 18, 2023, a single-family home would rent out for a range from $2,400 to $3,800 a month; this is significantly lower than the approximately $17,550 a month the Applicant expected under the Building Permit that was granted – and a major loss in light of the many costs the Applicant has spent in addition to the purchase price, including approximately $62,000 on taxes and mortgage payments and other carry costs; and approximately $40,000 on cleanup following the fire. In fact, pursuant to the enclosed Memorandum prepared by HPA and provided to the Board by the Applicant at the Board's September 19, 2023 meeting (which is enclosed again here at **Exhibit A**), a minimum of at least nine (9) units is required for the Applicant to realize a reasonable return. In short, in no way does a single-family home provide any return for the Applicant, much less a reasonable return.

It is noted that nowhere in the case law discussing this return analysis is insurance payouts mentioned. Nor is it referenced in the Approval Resolution granting the Use Variance requested for the re-construction of a non-conforming automobile repair shop use at 50-52 South Chestnut Street, as previously provided to this Board (a Resolution which stated the applicant could only realize a reasonable return of 8% if two houses were sold at a sufficient price). The relevant test is what return would be realized by the Applicant today based on the uses permitted, as measured through the metrics referenced above. As noted in the Memorandum from HPA attached at **Exhibit B**, the insurance payout is not analyzed in a financial feasibility study of the use of the land, as said analysis determines the rent or sale value necessary to justify *new* construction.

Notwithstanding, even if the insurance payout was to be considered by this Board, it is noted that the Applicant's insurance policy was for a value of $1,086,000 (as listed in the Certificate at **Exhibit C**). Following the public adjuster fee, the insurance payout was $977,400. This amount is less than the encumbrances that were still existing on the property – namely the Applicant's $585,000 acquisition loan and $485,000 construction loan. This payout was utilized to address these encumbrances and in no way would allow the Applicant to realize a reasonable return, particularly in light of the approximately $62,000 paid by the Applicant in taxes and insurance payments, approximately $40,000 in cleanup costs, and the minimum value of the empty land.

In regard to the Board's approval of the Use Variance at 50-52 South Chestnut Street (the Approval Resolution of which was previously provided to this Board), it is notable that a Use Variance was granted for the re-construction of the automobile repair shop use, even when it was re-establishing a commercial use on a parcel surrounded by residences on all sides after being destroyed by more than fifty percent (50%) – a significant difference in land uses; as compared to the instant Application, which is the re-establishment of a long existing multi-family housing building (with a

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[3] *See* Citizens Savings Bank v. Board of Zoning Appeals of the Village of Lansing, 224 A.D.2d 797 (3d Dep't 1996); Jones v. Zoning Board of Appeals of Town of Oneonta, 90 A.D.3d 1280 (3d Dep't 2011).

reduced number of units) in a residential district and bordered by single and other multi-family uses. It is respectfully submitted that the instant proposal and the associated land use is much more consistent with the surrounding neighborhood than that approved at 50-52 South Chestnut Street.

THE APPLICANT'S HARDSHIP IS NOT SELF-CREATED:

The Applicant's burden here is not self-created. The long-existing SRO use was destroyed as a result of an illegal arson. In fact, this Board recognized such in its July 18, 2023 Decision, stating that there was no intentional abandonment of the use. The fact that this hardship was not self-created is established through New York case law, as highlighted in Footnote 4 of the Applicants' May 19, 2023 submission to this Board. However, as it was a request of the Board, and for the purposes of correcting the record, we have been advised of the following timeline associated with the redevelopment, much of which was taking place pursuant to validly issued Building Permit (No. 2022-0354):

A. *Timeline Associated with Premises:*

1. 7/13/22: Applicant purchased property;
2. 7/14/22: Applicant began cleaning garbage on site;
3. 7/15/22: Tenant (who later was convicted of arson) opened asbestos complaint with New York State Health Department, which Applicant learned of 7/19/22;
4. 7/19/22: City issued Stop Work Order;
5. 7/26/22: Applicant submitted building and related permits for work to repair deck;
6. 8/18/22: After inspections and survey sampling by the New York State Health Department, the Stop Work Order was lifted;
7. On or about 8/25/22: New Permits issued by City:
8. 9/9/22: New Stop Work Order issued by City;
9. 10/24/22: Applicant met with City Staff to determine Corrective Actions;
10. 12/7/22: City Building Department issued Building Permit;
11. December 2022: Applicant began demolition work inside the building including removal of plaster; plumbing and electric systems installed; and
12. 1/3/23: After interior demolition and other work, structure destroyed by arson caused by former tenant; and Fire Department demolished entire existing non-conforming structure due to safety concerns.

Based on the above, to suggest that work being done on the structure, in particular pursuant to a properly issued Building Permit somehow constitutes a self-created hardship when a building is destroyed by an arson fire caused by another, is not the test before this Board.

THE CITY IS UPDATING ITS ZONING CODE TO INCLUDE LANGUAGE THAT CLARIFIES THE AMBIGUITIES IN THE EXISTING LANGUAGE IN THE ZONING CODE RELATED TO NONCONFORMING BUILDINGS:

In addition to the foregoing, as the clear ambiguity in the existing Zoning Code is of critical importance to this Application, as this Board may be aware, the City is currently considering the following additional/supplemental language in connection with the City Council's development of the proposed Fishkill Avenue ("FA") Zoning District in the City of Beacon:

§ 223-41.24. Applicability and boundaries.

...

All new uses of land and structures in the FA District shall comply with this article, ***with the following additional provisions****:*

1) *Existing nonconforming uses may continue as provided in § 223-10, Nonconforming uses and structures, except as may be otherwise provided in this article. Conforming residential uses existing on the effective date of this article shall be bound by the zoning of the subject property immediately prior to the enactment of the Fishkill Avenue District.* ***Any existing conforming building that is destroyed by fire or casualty to an extent of more than 50% may be rebuilt on the same footprint and with the same dimensions and may be extended at the same height along its frontage. Any existing building that does not satisfy the minimum building height requirements in the district may continue and may be expanded at the same height, provided that it is in conformity with all other dimensional requirements in the district*** (bold emphasis added).

While the City presently relies on the existing provision in Zoning Code Section 223-10.D. to the detriment of the Applicant, which section concerns nonconforming *buildings* and not nonconforming *uses*, that the City now includes this explicit, supplemental destruction of building regulation in the formation of a new zoning district – one that specifically addresses a building destroyed by *fire* and how it can be rebuilt (maintaining the use) – illustrates the City's concern with the clear ambiguities in the existing zoning regulations for nonconforming buildings and uses.

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 area 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: Memorandum from Hudson Property Advisors, LLC dated September 19, 2023;

Exhibit B: Memorandum from Hudson Property Advisors, LLC dated September 26, 2023; and

Exhibit C: Certificate of Insurance for 925 Wolcott Avenue.

The Applicant looks forward to appearing again before the Board in regard to this matter at its October 17, 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)
Hudson Property Advisors, LLC (via e-mail)
Maximillian R. Mahalek, Esq. (via e-mail)
925 Wolcott LLC (via e-mail)

Exhibit A

HUDSON PROPERTY ADVISORS, LLC
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10 SOUTH MOGER AVENUE, MOUNT KISCO, NEW YORK 10549
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TEL. 914-244-3400

M E M O

To: Taylor M. Palmer, Esq., Cuddy & Feder LLP and City of Beacon Zoning Board of Appeals

From: J. Bernz, MAI, Hudson Property Advisors, LLC ("HPA")

Date: September 19, 2023

Re: 925 Wolcott LLC (the "Applicant")
925 Wolcott Avenue, City of Beacon, Dutchess County, New York ("Project Site")
(HPA File No. 2023.04019)

This memorandum is respectfully submitted in response to comments from the City of Beacon Zoning Board of Appeals ("ZBA") at its August 15, 2023 public hearing regarding the above-referenced matter. This Memorandum has been prepared at the request of Applicant's Counsel and is a supplement HPA's May 18, 2023 Report and August 28, 2023 Memorandum.

The purpose of this Memorandum is to demonstrate, through conventional financial analysis and an evaluation of a variety of Alternatives, whether the Applicant can realize a reasonable return by using the Project Site for multi-family / SRO residential use. The following analysis confirms that the Applicant's nine (9) unit proposal is the minimum relief necessary to achieve a viable return.

For the ZBA's further consideration, HPA analyzed the following Alternatives:

	Description	GBA
Proposed Action	Three-story building with nine (9) rental apartments	3,670
Alt. 1	Three-story building with eight (8) rental apartments	3,670
Alt. 1a	Three-story smaller size building with eight (8) rental apartments	3,262
Alt. 2	Three-story same size building with seven (7) rental apartments	3,670
Alt. 2a	Three-story smaller size building with seven (7) rental apartments	2,854
Alt. 3	Three-story same size building with six (6) rental apartments	3,670
Alt. 3a	Three-story smaller size building with six (6) rental apartments	2,447
Alt. 4	Two-story same size building with four (4) rental apartments	3,670
Alt. 4a	Two-story smaller size building with four (4) rental apartments	1,631

The analysis contained herein demonstrates the feasibility viability that would be provided to the Project Site if developed with the uses summarized in the above chart. A feasibility analysis can be quantitative or qualitative, or a combination of both and the methodology used to demonstrate economic viability can vary depending on a variety of factors ranging from physical, functional and economic and market-related issues. A quantitative method of determining economic viability is to test each of the individual uses in terms of their feasibility rent; i.e., to compare a calculated feasibility rent to market rent to determine whether a particular use is financially feasible. For example, if market rent level for a particular use is above feasibility rent then that use would be expected to be financially feasible/economically viable. Conversely, if market rent level for a particular use is below feasibility rent, then that use would not be expected to be financially feasible/economically viable as it would not produce sufficient return to the property.

Determining financial feasibility using a quantitative model involves the following steps:

1. Obtain a Construction Cost Estimate. The owner provided us with construction cost based on $275.00 per sq. ft. for construction hard costs which was used in each of the alternatives. In addition to construction hard costs, an allocation for construction soft costs is also necessary. Construction soft costs typically include site planning, engineering, design, architectural and other professional input. An allocation of 15% of construction hard costs is applied under each alternative.

2. Add land acquisition costs (the acquisition cost of the site was $650,000 and the cost of demolition and removal of the improvements following a fire was $38,000 for a total cost of $688,000) to total construction costs to arrive at Total Project Cost.

3. Derivation of an appropriate Overall Capitalization Rate ("OAR," "R" or "R_O") applicable to the specific use being studied. Capitalization is the process of converting income into a present value (market value) estimate. A capitalization rate is "A ratio of one year's net operating income provided by an asset to the value of the asset; used to convert income into value in the application of the income capitalization approach."[1] Capitalization rates vary according to property use and there are several methods of determining appropriate capitalization rates. The most common methods include (1) investor surveys, (2) calculation of an OAR from other market indices and (3) abstraction of a capitalization rate from market sales/transactional data.

   Among the most prominent investor surveys is the PriceWaterhouseCoopers Real Estate Investor Survey. This survey, however, is geared toward institutional grade investments (substantially larger asset size) and is not necessarily indicative of the asset class analyzed herein. It is used as a general guide only.

   With respect to derivation of a capitalization rate using other market indices, the most common technique is known as the "band of investment" technique. This technique assumes that most properties are purchased with debt and equity capital; therefore, the overall capitalization rate must satisfy the market return requirements of both investment positions. The lender/mortgagee must anticipate a rate of return that is appropriate for the investment's perceived risk in order to make the loan; the loan principal is typically repaid through periodic amortization payments. The equity investor/mortgagor must also anticipate a rate of return that is commensurate with the investment's perceived risk or they opt for an alternative investment. "Band of Investment" is defined as "[a] technique in which the capitalization rates attributable to components of an investment are weighted and combined to derive a weighted-average rate attributable to the

[1] Appraisal Institute, ***The Dictionary of Real Estate Appraisal***, 7th ed., s.v. "capitalization rate", (Chicago: Appraisal Institute, 2022), PDF e-book.

total investment (i.e., debt and equity, land and improvements)."[2] This technique involves application of typical loan terms (mortgage rates, loan-to-value rations, term) for the particular property type being analyzed. It also requires application of an appropriate equity yield rate for the particular property type being analyzed. An "equity yield rate" is "The rate of return on the equity capital invested."[3] As real estate competes with investments in the capital markets, other rates, including bond and Treasury bill yields, are frequently considered. Characteristics that affect required rates of return for real estate versus alternative investments include risk, liquidity, management, and the possibility of value appreciation or depreciation during the holding period. Therefore, these investment vehicles are frequently considered superior to a real estate investment because they are less risky, and more liquid.

Abstraction of capitalization rates from the market involves research and analysis of an investment property transaction (or a group of investment property transactions) where the selling price is confirmed and net income (NOI) at the time of sale can be obtained. The NOI is compared to the sale price to derive an overall capitalization rate. Disadvantages of this method include (1) the scarcity of available date (i.e., the limited number of transactions such that the sample size may be statistically insignificant) and (2), the difficulty in obtaining actual net operating income at the time of sale as it is not information that is publicly available.

In the instant case, rates used herein are consistent with our understanding of this general market area for this property type (multi-family residential) and have been corroborated by the owner's expectation.

4. Once an appropriate OAR is derived, it is applied to the construction cost estimate to arrive at Net Operating Income (NOI) that could potentially be generated under each Alternative.

5. An estimate of Operating Expenses (OPEX) ratio for the specific uses being studied is also necessary. Given the property type, the fact that it would represent new construction , with individual tenants responsible for heat and utilities, a ratio of 30% is reasonable, appropriate and consistently applied under each of the Alternatives.

6. The OPEX is added to the NOI to arrive at Effective Gross income (EGI) that could potentially be generated under each Alternative.

7. An estimate of vacancy/credit loss is also required. In the economic life of a rental property, tenant turnover causes temporary vacancies. In fact, very few rental properties remain fully occupied for extended time periods. An allowance for vacancy and collection loss is therefore necessary to include primarily to reflect the rent loss attributable to these periods of vacancy and tenant turnover. Vacancy allowance of 5.0% is added to EGI to arrive at Potential Gross Income (PGI) that the use could potentially produce, otherwise known as "Feasibility Rent." This figure is shown on an annual basis.

8. An estimate of market rent for each of the Alterative uses is necessary. "Market Rent" is defined as "The most probable rent that a property should bring in a competitive and open market under

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[2] Appraisal Institute, ***The Dictionary of Real Estate Appraisal***, 7th ed., s.v. "band of investment", (Chicago: Appraisal Institute, 2022), PDF e-book.

[3] Appraisal Institute, ***The Dictionary of Real Estate Appraisal***, 7th ed., s.v. "equity yield rate", (Chicago: Appraisal Institute, 2022), PDF e-book.

all conditions requisite to a fair lease transaction, the lessee and lessor each acting prudently and knowledgeably, and assuming the rent is not affected by undue stimulus. Implicit in this definition is the execution of a lease as of a specified date under conditions whereby:

- Lessee and lessor are typically motivated;
- Both parties are well informed or well advised, and acting in what they consider their best interests;
- Payment is made in terms of cash or in terms of financial arrangements comparable thereto; and
- The rent reflects specified terms and conditions typically found in that market, such as permitted uses, use restrictions, expense obligations, duration, concessions, rental adjustments and revaluations, renewal and purchase options, frequency of payments (annual, monthly, etc.), and tenant improvements (TIs)."[4]

The owner ("Applicant") provided estimates of anticipated achievable market rent for the various Alternatives studied. These estimates are adopted within the analysis. It is noted that for Alternatives 1, 2, 3 and 4, the analysis utilizes the same size building as the proposed action (3,670 sq. ft.) - however, since the building size remains constant, the average unit size increases and the unit rent also increases). It is also noted that for Alternatives 1a, 2a, 3a and 4a, the building size is reduced correspondingly (proportionately, based on reduced number of units). Under these Alternatives, the average unit size (and the unit rent) remains constant.

9. Feasibility Rent is compared to market rent under each alternative. If market rent level for a particular use is above feasibility rent, then that use would be expected to be financially feasible/economically viable. Conversely, if market rent level for a particular use is below feasibility rent, then that use would not be expected to be financially feasible/economically viable. However, although a particular Alternative may result in a positive return, it may not result in a sufficient return. In order to test the return allocable to the Proposed Action and the various Alternatives, the Rent Differential is compared to Feasibility Rent on a percentage basis.

The chart on the following page demonstrates that the Proposed Action is financially feasible. It also shows that all of the other Alternatives are not financially feasible.

[4] The Dictionary of Real Estate Appraisal, 7th Edition, (Chicago, Il., Appraisal Institute: 2022), "market rent," PDF e-book, p. 117.

Zoning Feasibility Analysis

FEASIBILITY RENT CALCULATIONS	Proposed Action	Alt. 1	Alt. 1a	Alt. 2	Alt. 2a	Alt. 3	Alt. 3a	Alt. 4	Alt. 4a
Program Description	**Three-story building with nine (9) rental apartments**	**Three-story same size building with eight (8) rental apartments**	**Three-story smaller size building with eight (8) rental apartments**	**Three-story same size building with seven (7) rental apartments**	**Three-story smaller size building with seven (7) rental apartments**	**Three-story same size building with six (6) rental apartments**	**Three-story smaller size building with six (6) rental apartments**	**Two-story same size building with four (4) rental apartments**	**Two-story smaller size building with four (4) rental apartments**
No. Stories	3	3	3	3	3	3	3	2	2
Potential GBA (SF)	3,670	3,670	3,262	3,670	2,854	3,670	2,447	3,670	1,631
No. Res. Units	9	8	8	7	7	6	6	4	4
Const. Hard Cost/SF	$275	$275	$275	$275	$275	$275	$275	$275	$275
Total Hard Construction Cost, Rd.	$1,009,250	$1,009,250	$897,111	$1,009,250	$784,972	$1,009,250	$672,833	$1,009,250	$448,556
Soft Costs (%)	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%
Soft Costs	$151,388	$151,388	$134,567	$151,388	$117,746	$151,388	$100,925	$151,388	$67,283
Total Construction Costs	$1,160,638	$1,160,638	$1,031,678	$1,160,638	$902,718	$1,160,638	$773,758	$1,160,638	$515,839
Land Acquisition	$688,000	$688,000	$688,000	$688,000	$688,000	$688,000	$688,000	$688,000	$688,000
Total Project Cost (incl. land)	$1,848,638	$1,848,638	$1,719,678	$1,848,638	$1,590,718	$1,848,638	$1,461,758	$1,848,638	$1,203,839
Total Project Cost, Rd.	$1,850,000	$1,850,000	$1,720,000	$1,850,000	$1,590,000	$1,850,000	$1,460,000	$1,850,000	$1,200,000
Overall Capitalization Rate (OAR)	6.75%	6.75%	6.75%	6.75%	6.75%	6.75%	6.75%	6.75%	6.75%
Net Operating Income (NOI) Required	$124,875	$124,875	$116,100	$124,875	$107,325	$124,875	$98,550	$124,875	$81,000
Operating Expense Ratio (Typ.)	30%	30%	30%	30%	30%	30%	30%	30%	30%
Operating Expenses (Expense Ratio x EGI)	$53,518	$53,518	$49,757	$53,518	$45,996	$53,518	$42,236	$53,518	$34,714
Effective Gross Income (EGI = NOI + Expenses)	$178,393	$178,393	$165,857	$178,393	$153,321	$178,393	$140,786	$178,393	$115,714
Vacancy Rate	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%
Feasibility Rent (Required Potential Gross Income)	**$187,782**	**$187,782**	**$174,586**	**$187,782**	**$161,391**	**$187,782**	**$148,195**	**$187,782**	**$121,805**
Feasibility Rent, Rd.	**$187,800**	**$187,800**	**$174,600**	**$187,800**	**$161,400**	**$187,800**	**$148,200**	**$187,800**	**$121,800**
Loss Factor	26%	26%	26%	26%	26%	26%	26%	26%	26%
Total Rentable Sq. Ft.	2,728	2,716	2,414	2,716	2,112	2,716	1,811	2,716	1,207
Average Unit Size(sq. ft.)	303	339	302	388	302	453	302	679	302
Market Rent/Sq. Ft. (owner)									
Average Unit Rent/mo. (owner)	$1,950	$2,000	$1,950	$2,150	$1,950	$2,250	$1,950	$2,550	$1,950
Potential Gross Income/Mo.	$17,550	$16,000	$15,600	$15,050	$13,650	$13,500	$11,700	$10,200	$7,800
Total Achievable Income (annual)	**$210,600**	**$192,000**	**$187,200**	**$180,600**	**$163,800**	**$162,000**	**$140,400**	**$122,400**	**$93,600**
Total Achievable Rent, Rd.	**$211,000**	**$192,000**	**$187,000**	**$181,000**	**$164,000**	**$162,000**	**$140,000**	**$122,000**	**$94,000**
Rent Differential									
Market Rent less Feasibility Rent	**$23,200**	**$4,200**	**$12,400**	**-$6,800**	**$2,600**	**-$25,800**	**-$8,200**	**-$65,800**	**-$27,800**
Use Feasibility	Feasible	Feasible	Feasible	Not Feasible	Feasible	Not Feasible	Not Feasible	Not Feasible	Not Feasible
Return (Rent Differential/Feasibility Rent)	**12.4%**	**2.2%**	**7.1%**	**-3.6%**	**1.6%**	**-13.7%**	**-5.5%**	**-35.0%**	**-22.8%**

Notes:

1. Various assumptions provided by Client
2. Feasibility Rent is “the rent necessary to justify new construction."
2. Methodology used above taken from Appraisal Institute (Feasibility Rent)

Conclusion

The above Zoning Feasibility Analysis financially demonstrates that the Applicant cannot realize a reasonable return by using the Project Site for fewer than nine (9) residential apartments (Proposed Action). The preceding analysis demonstrates the Applicant’s inability to realize a reasonable return if developed with fewer than nine (9) units. The Proposed Action results in a 12.4% positive return which is considered viable. Although Alternatives 1, 1a and 2a also result in positive returns, they are not viable as they are insufficient to warrant development (2.2%, 7.1% and 1.6% respectively). All of the other Alternatives are not feasible as they result in negative returns.

In summary, the analysis confirms that the Applicant’s nine (9) unit proposal is the minimum relief necessary to achieve a viable return.

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Exhibit B

HUDSON PROPERTY ADVISORS, LLC
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10 SOUTH MOGER AVENUE, MOUNT KISCO, NEW YORK 10549
WWW.HUDSONPROPERTYADVISORS.COM
TEL. 914-244-3400

M E M O

To: Taylor M. Palmer, Esq., Cuddy & Feder LLP and City of Beacon Zoning Board of Appeals

From: Jonathan Bernz, MAI, Hudson Property Advisors, LLC ("HPA")

Date: September 26, 2023

Re: 925 Wolcott LLC (the "Applicant")
925 Wolcott Avenue, City of Beacon, Dutchess County, New York ("Project Site")
(HPA File No. 2023.04019)

This Memorandum is respectfully submitted in response to comments from the City of Beacon Zoning Board of Appeals ("ZBA") at its September 19, 2023 Public Hearing regarding the above-referenced matter. This Memorandum has been prepared at the request of the "Applicant" (925 Wolcott, LLC) and is a supplement to HPA's Report dated May 18, 2023 and Memoranda dated August 28, 2023 and September 19, 2023.

During the September 19, 2023 ZBA public hearing, the ZBA requested certain information from the Applicant. Applicant provided the following information to HPA for analysis:

1. Purchase price: $650,000
2. Clean Up Costs: Approximately: $40,000
3. Taxes/Insurance Premiums/Mortgage Payments: Approximately $62,000
4. Acquisition Loan: $585,000
5. Construction Loan: $485,000
6. Insurance payout: $977,400 (following 10% public adjuster fee from initial payout of $1,086,000)
7. Monthly Income before work: $20,333
8. Monthly Income for 9 units: $17,550
9. Appraised value: $1,700,000 (May 2022 Appraisal Date)
10. Taxable Value of Land and Improvements: $650,000 (July 1, 2022 valuation date stated in City's Assessment Roll)
11. Taxable Value of Land: $150,000 (July 1, 2022 valuation date stated in City's Assessment Roll)

12. The Property was insured for $ 1,086,000, which is roughly the amount of the acquisition loan ($585,000) plus the amount of the construction loan ($485,000), the "Loans."

Notably, Items 1 and 2 above were previously incorporated in HPA's September 19, 2023 Memorandum. The remainder of the items (including insurance payouts) are not included in a financial feasibility analysis of a proposed use of land, as said feasibility analysis determines the rent or sale value necessary to justify new construction. Applicant reported that the insurance payout of $977,400 was $92,600 less than the total amount of the loans ($1,070,000) which the payout was used for.

Conclusion

Collectively, as detailed in our Zoning Feasibility Analysis submissions to this Board to date, our analysis confirms that the Applicant cannot realize a reasonable return by using the Project Site for fewer than nine (9) units, which represents the minimum relief necessary to achieve a viable return.

###

Exhibit C

ACORD®

EVIDENCE OF COMMERCIAL PROPERTY INSURANCE

DATE (MM/DD/YYYY): 7/12/2022

THIS EVIDENCE OF COMMERCIAL PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

PRODUCER NAME, CONTACT PERSON AND ADDRESS — PHONE (A/C, No, Ext): 718-435-4502 J. KLEIN ASSOCIATES 219 DITMAS AVE BROOKLYN NY 11218	COMPANY NAME AND ADDRESS — NAIC NO: PENN AMERICA GROUP Phone
FAX (A/C, No): — E-MAIL ADDRESS: JKLEIN@JKLEIN.BIZ	IF MULTIPLE COMPANIES, COMPLETE SEPARATE FORM FOR EACH
CODE: — SUB CODE: AGENCY CUSTOMER ID #: 1256 NORTH	POLICY TYPE
NAMED INSURED AND ADDRESS 925 WOLCOTT LLC PO BOX 428 CENTRAL VALLEY NY 10917	LOAN NUMBER — POLICY NUMBER: 0 EFFECTIVE DATE: 5/30/2022 — EXPIRATION DATE: 5/30/2023 — ☐ CONTINUED UNTIL TERMINATED IF CHECKED
ADDITIONAL NAMED INSURED(S)	THIS REPLACES PRIOR EVIDENCE DATED:

PROPERTY INFORMATION (ACORD 101 may be attached if more space is required) ☐ **BUILDING OR** ☐ **BUSINESS PERSONAL PROPERTY**

LOCATION / DESCRIPTION: 925 WOLCOTT AVENUE BEACON NY 12508

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION PERILS INSURED ☐ BASIC ☐ BROAD X SPECIAL

COMMERCIAL PROPERTY COVERAGE AMOUNT OF INSURANCE: $1,086,000 DED: 5,000

	YES	NO	N/A	
☐ BUSINESS INCOME ☐ RENTAL VALUE	X			If YES, LIMIT: 108,600 ☐ Actual Loss Sustained; # of months:
BLANKET COVERAGE		X		If YES, indicate value(s) reported on property identified above: $
TERRORISM COVERAGE		X		Attach Disclosure Notice / DEC
IS THERE A TERRORISM-SPECIFIC EXCLUSION?	X			
IS DOMESTIC TERRORISM EXCLUDED?	X			
LIMITED FUNGUS COVERAGE		X		If YES, LIMIT: DED:
FUNGUS EXCLUSION (If "YES", specify organization's form used)	X			
REPLACEMENT COST	X			
AGREED VALUE		X		
COINSURANCE	X			If YES, 100 %
EQUIPMENT BREAKDOWN (If Applicable)		X		If YES, LIMIT: DED:
ORDINANCE OR LAW - Coverage for loss to undamaged portion of bldg		X		If YES, LIMIT: DED:
- Demolition Costs		X		If YES, LIMIT: DED:
- Incr. Cost of Construction		X		If YES, LIMIT: DED:
EARTH MOVEMENT (If Applicable)		X		If YES, LIMIT: DED:
FLOOD (If Applicable)		X		If YES, LIMIT: DED:
WIND / HAIL INCL ☒ YES ☐ NO Subject to Different Provisions:				If YES, LIMIT: DED: 5,000
NAMED STORM INCL ☐ YES ☒ NO Subject to Different Provisions:				If YES, LIMIT: DED:
PERMISSION TO WAIVE SUBROGATION IN FAVOR OF MORTGAGE HOLDER PRIOR TO LOSS	X			

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

ADDITIONAL INTEREST

☐ CONTRACT OF SALE ☒ LENDER'S LOSS PAYABLE ☐ LOSS PAYEE ☒ MORTGAGEE ☐	LENDER SERVICING AGENT NAME AND ADDRESS
NAME AND ADDRESS WISDOM FUNDING USA LLC ISAOA/ATIMA 277 NORTHERN BLVD SUITE 200 GREAT NECK NY 11021	AUTHORIZED REPRESENTATIVE sample

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From:	Naomi Canaan
To:	Mercedes Perez
Cc:	Dan Aymar-Blair; Justice McCray; Molly Rhodes; wren longno; Wren Longno; George Mansfield; Paloma Wake; Lee Kyriacou
Subject:	Variance applied for route 9d and 52
Date:	Monday, September 25, 2023 4:22:09 PM

To the Variance Board

on September 9, 2023 at 7pm you were asked to approve a variance for the burnt down property on the corner of 9D and 52.

I was not able to attend, but I would like to register my disapproval for any variances for developers, especially those who need a variance to put up a short term rental or any other non conforming structure - in direct contradiction to the
str law , or other regs, which our city council spent a great deal of time and effort putting together and passing. Developers need to know that they must follow our rules and regs and not think they can always wiggle out of following them.

thank you

N Canaan
123 East Main ST
Beacon

Brittany Mustakas
80 Sargent Avenue
brittany.mustakas@gmail.com

October 16, 2023

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

The impact this proposed building would pose to the character of the neighborhood is reason enough to deny the variances in regards to both the area and use variances. Before it burned this house was a historic 3600 ft. single family home and therefore a **conforming** building with a nonconforming use. It could have easily been converted back to a single family residence. To allow a change to a nonconforming building with multifamily use would be a very significant change.

This boardinghouse has been operating beyond its definition for many years, further violating Zoning Code 223-10 section C. This home was grandfathered into a single family zone and was identified by the City of Beacon as a boardinghouse. A boardinghouse is defined in the City Code of the City of Beacon as:

> "a dwelling occupied by one family with no more than two boarders, roomers or lodgers in the same household, who are lodged with or without meals, and in which there are provided such services as are incidental to its use as a temporary residence for part of the occupants." (City Code)

When this building burned down it was a house that had no family and 16 rooms for roomers. Not only is this an increase in nonconforming use (which violates our City Code), but the nature of the use that has been operating when compared to the one that is defined has facilitated a significantly more amount of crime that has greatly impacted the safety, character, and welfare of this neighborhood.

This property was recently purchased and the new owners were permitted to alter this home from a boardinghouse to a multifamily apartment building without going through the Planning Board, without going through the Zoning Board of Appeals, without public display or knowledge of the permit, and therefore without the opportunity to challenge the permit within the window of time allowed. This is classified as an alteration to a multifamily apartment building and not a continuation of a SRO building because of the definition of SRO in Beacon's City Code as:

> "A multiple-tenant building that provides tenants with separate sleeping areas. SRO tenants may typically share bathrooms and/or kitchens, while **some** SRO

rooms may include **kitchenettes**, bathrooms or half baths. SROs are primarily rented as a long-term residence.” (City Code, emphasis added).

Some does not mean *all*. This previous permit/proposed variance has **each** unit containing kitchens (not kitchenettes), and full bathrooms (no half bathrooms). Again, this change is not a reduction, it's an alteration to the building, an increase in use, a significant increase in value, and poses significant impact to the neighborhood. This is our home and these decisions directly impact our everyday lives.

The surrounding neighbors of 925 Wolcott Avenue intend to register a complaint pursuant to Zoning Code 223-10 Section H that provides the Zoning Board of Appeals the opportunity for determining the necessity of the termination of nonconforming use for this property. The nonconforming use in this single family home has been a general nuisance and hazard to the health, safety, welfare and morals of the surrounding neighbors for many years. This complaint is not applicable at this exact moment in time because the building is gone, and the Zoning Board of Appeals has determined that this property has reverted back to single family zone. However, this complaint is relevant now for a few reasons:

1. Because although it is unjustified, the threatened lawsuit against the city regarding 223-10 section D offers the potential for the nonconforming use to be continued.
2. Nonconforming use is at risk of continuing due to variance approval, in which case this complaint would become applicable.
3. Because our homes could have been caught on fire and we have reached our limit of the amount of crime that we will accept from this property.
4. Because many in the city's administration and city's departments are new, and fresh eyes on a problem can be a reason to extinguish something that has been harmful and unlawful for years.

The use of this property has slowly morphed from a home with a family and two borders to a SRO building to a multifamily apartment building. All of this has been done in a beautiful historic single family home in a single family zone. We are asking that this city's laws be upheld and this property be maintained as a single family residence.

Thank you
Brittany Mustakas

Meg & Steven Oakes
913 Wolcott Avenue
Beacon, NY 12508

October 16, 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

We are submitting these comments in response to the request by the owner of the lot at 925 Wolcott Avenue to obtain a variance to construct a multi-unit apartment building on a parcel zoned single family.

The developer and his attorneys have submitted a convoluted argument with irrelevant material and straw-man arguments. The ultimate request is for an Area Variance or a Use Variance. Turning the clock back to an SRO is not legal by the building code, and a boardinghouse or rooming house may have no more than two unrelated residents. The developer is thus asking for a multi-family residence, clearly a more intensive use than the now-gone SRO residence.

An Area Variance is not applicable to creating a new nonconforming use.

The applicant's request for an Area Variance as in order to achieve the effect of a Use Variance is wholly lacking in merit. State law makes clear that an Area Variance is 'the authorization by the zoning board of appeals for the use of land in a manner that is not allowed by *the dimensional or physical requirements* of the applicable zoning regulations." [NY General City Law 81-b(1)(b)] The applicant says that when a multifamily use is permitted on a lot, the number of units in question is an area variance. In this instance, however, the use is for a single family structure and making it larger won't make it a multi-family building. The petitioner cites Amzalak v. Incorporated Village of Valley Stream. That case was about the *placement of buildings on a lot* and *not about the number of units in a building*. In this instance, the building failed to comply with the dimensional (area) requirements of the zone, not the use requirements, yet the Village terminated the *use*. When the court decided to let the use continue, it said: "...it is the building and not the use thereof which does not conform to the ordinance..." This ruling by no means demonstrates that an area variance equals a use variance. And of course, in the case of 925 Wolcott, only a single-family use is permitted, whereas in Valley Stream, the use was permitted, the sole issue was dimensional, not involving a change in use. An Area Variance is for dimensional or physical requirements, and not for use and hence is inapplicable. Valley Stream does nothing to make that case.

Use Variances have a higher threshold for approval, and the developer does not meet all of the required thresholds. For instance, The applicant continues to fail to make the case that a reasonable rate of return cannot be made on the property.

The applicant's attorneys continue to argue that the owner will suffer a financial hardship if he is not permitted to build precisely what he had hoped to construct on the lot. The hardship is not demonstrated by the information provided. Furthermore, the data presented in the Hudson Property Advisers memo of September 26 fails to demonstrate a hardship of any kind. Many questions must be asked: for example, for how many months was the rental income of over $20K collected? How much of the $485K construction loan was expended? But lots of superfluous information is provided, such as the hypothetical income that could come from a 9-unit building and its appraised value. None of this information speaks to financial hardship. The developer's attorneys state that because insurance payouts are not specifically mentioned in case law, that one cannot include the nearly one million dollars the developer received in the feasibility studies they provide. Without that payout included the developer is providing insufficient evidence of a hardship and one cannot simply *assume* a hardship. And even if it is included, the documents from his attorneys provide no actual information about the acquisition loan and the construction loan encumbrances except to say that such payouts "...would in no way allow the Applicant to realize a reasonable return..." but without evidence. "Competent financial evidence" of a hardship is a *requirement* for a Use Variance, and time and time again the threshold has not been met by the owner. It is time to decline this claim.

By any standard, the Applicant's hardship is self-created.

The Applicant purchased a nonconforming building fully knowing that it was nonconforming and its value could be dramatically reduced should it be damaged more than 50%. The developer cannot possibly argue that the property's nonconforming nature was kept from him: even today, various real estate websites show the old building and state, as Trulia currently does, "Buyer must do their due diligence for use and zoning." Damage of more than 50% could happen by many methods, and the zoning code tellingly makes *no exception for any cause of damage whatsoever*. If the nature of the damage or destruction were relevant to the issue, the code would have made note of an exception, but instead there is no ambiguity. As we all know by heart, the code under Nonconforming Use and Structures states (223-10): "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." No exception for accidental damage is provided—the code simply states that the nonconformity ends, period. An investor takes a risk in this case.

To state that a potential loss relating to the destruction of a nonconforming building was created by other than the applicant's risky investment behavior defies logic. His hardship is clearly self-created under any standard of responsibility, and it is inappropriate for the City or its residents to make his investment a winner.

The applicant's incomplete accounting of his case for hardship is a red flag. Vagueness seems to be a hallmark of this claim. In the first ZBA hearings, the purchase price was not known or deemed to be amorphous due to the nature of the transaction. An appraisal continues to be introduced even though it has no bearing on the issue. Whether there was insurance on the building was unknown to the attorneys or financial advisers and had to be drawn out by ZBA members. The Environmental Assessment Form submitted claims that the proposed use is Permitted under the zoning regulations and than the use is consistent with the Master Plan, which it is demonstrably not. The city's Comprehensive Plan does not favor apartment buildings in this 'Residential Medium-Density' area. [It states quite clearly: "The purpose of this land use category is to preserve the existing settlement pattern of these neighborhoods, which provide the privacy of a private home on a separate lot at an affordable scale with minimal environmental impact and at a density that allows residents to walk to local parks, businesses, and other destinations."] And in the March 17, 2023 Affidavit of Property Owner, six Yes or No questions are asked and three of them are answered N/A. Hudson Property Advisers provides a figure for new construction of $275/sq. ft. And their authoritative source? The property owner—with no documentation. The law says that he owner must provide dollars and cents documentation demonstrating hardship. *Given the lack of clarity and forthrightness throughout this process, any claim of hardship is suspect and should not be entertained.*

Other issues, such as whether the request will create an undesirable change in the neighborhood, have been dealt with exhaustively in the past.

The nonconforming use was it existed before the fire was clearly a negative influence in the neighborhood. Only the developer's other nonconforming building at 916 Wolcott Avenue presented the same level of trouble, discord, and property devaluation as did 925. The police calls, fights in the street, gunshots, and other intrusions into what otherwise is a quiet neighborhood explain the opposition made universally to a continuance or an increase in intensity of the use by neighbors in the area.

To make that nonconforming use permanent is to create an even greater level of nonconformity, as is increasing the level of use from an SRO building to a multi-family structure, which has the potential to increase the number of residents in the building and will involve parking, access, health, safety and other issues. This is the *last* thing the neighbors desire. This is otherwise a neighborhood of single-family homes, owned and occupied by people who desire the same things that other residents of similar neighborhoods desire and indeed has the potential to provide sort of features that have made Beacon attractive to families from near and far: to own a home in a neighborhood with a variety of often different people who ultimately want to live in much the same way. To inject into it a permanent, intense use of a 9-unit multifamily dwelling owned by an out-of-town investor, is without question an undesirable change. Neighbors of 925 cannot be faulted if they want the opportunity for the area to flourish into what it was designed to be and what the zoning code says it should be: a neighborhood, with people who know one another and who share basic understandings and aspirations about themselves and the city in which they have chosen to live. Saddling it with a forevermore, permanent incongruous blight at its heart is something that should not be permitted to occur.

Again, we respectfully urge the Board to deny these requests.

Sincerely,

Meg Oakes and Steven Oakes

CUDDY
+FEDER
LLP

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White Plains, New York 10601
T 914 761 1300
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Taylor M. Palmer, Esq.
tpalmer@cuddyfeder.com

October 17, 2023

VIA 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
Request for Adjournment
Area Variance Request, and in the Alternative, Use Variance Request
Premises: 925 Wolcott Avenue, Beacon, New York (Tax Parcel ID: 5954-44-922633)

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

On behalf of 925 Wolcott LLC (the "Applicant"), the owner of the above-referenced Premises, we respectfully request that the above-referenced matter be adjourned from the Board's October 17, 2023 regular meeting Agenda to the Board's November 21, 2023 regular meeting Agenda for continued review.

On October 13, 2023, two (2) business days before the Board's October 17, 2023 regular meeting, the Applicant received a *third* determination from the City's Building Department in this matter, which new determination the Applicant will be appealing to this Board seeking an interpretation. As was previously cited by the Applicant in its prior submissions, the requested relief in the first instance is properly deemed to be an Area Variance, as is supported under New York case law on this very issue.[1] This will be expanded upon in a forthcoming supplemental submission by the Applicant in response to the newest determination, which determination comes nearly one (1) year after the original determination was issued in this matter.

In addition to the forgoing, we also understand that the City has still not retained a consultant to review the Applicant's financial analysis, despite having been authorized to do so at the ZBA's August 2023 meeting. The Applicant has regularly inquired about the status of the City's consultant and their respective review, and in an effort to assist the Board's consultant (once retained) to review the Applicant's materials in advance of the ZBA's November 21 meeting Agenda – such that

[1] *See* Bobandal Realties, 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')." *See also* Warner v. Town of Kent Zoning Bd. of Appeals, 144 A.D.3d 814 (2d Dep't 2016) (holding that an applicant should have first 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).

the Applicant will have sufficient time to respond to same for the Board's consideration at that meeting – enclosed at **Exhibit A** please find additional copies of its September 26, 2023 and September 19, 2023 Memoranda prepared by the Applicant's financial consultant, Hudson Property Advisors, LLC. Furthermore, to ensure that this matter can proceed accordingly at the Board's November 21st meeting Agenda, the Applicant respectfully requests confirmation from the City regarding when the Applicant can anticipate a response from the City's consultant regarding the financial analysis.

Thank you in advance for your consideration. If you have any questions regarding the foregoing, please do not hesitate to contact me.

Very truly yours,

Taylor M. Palmer

Enclosures

cc: Keane & Beane, P.C. – ZBA Attorney (via e-mail)
Hudson Property Advisors, LLC (via e-mail)
Maximillian R. Mahalek, Esq. (via e-mail)

Exhibit A

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

M E M O

To: Taylor M. Palmer, Esq., Cuddy & Feder LLP and City of Beacon Zoning Board of Appeals

From: J. Bernz, MAI, Hudson Property Advisors, LLC ("HPA")

Date: September 19, 2023

Re: 925 Wolcott LLC (the "Applicant")
925 Wolcott Avenue, City of Beacon, Dutchess County, New York ("Project Site")
(HPA File No. 2023.04019)

This memorandum is respectfully submitted in response to comments from the City of Beacon Zoning Board of Appeals ("ZBA") at its August 15, 2023 public hearing regarding the above-referenced matter. This Memorandum has been prepared at the request of Applicant's Counsel and is a supplement HPA's May 18, 2023 Report and August 28, 2023 Memorandum.

The purpose of this Memorandum is to demonstrate, through conventional financial analysis and an evaluation of a variety of Alternatives, whether the Applicant can realize a reasonable return by using the Project Site for multi-family / SRO residential use. The following analysis confirms that the Applicant's nine (9) unit proposal is the minimum relief necessary to achieve a viable return.

For the ZBA's further consideration, HPA analyzed the following Alternatives:

	Description	GBA
Proposed Action	Three-story building with nine (9) rental apartments	3,670
Alt. 1	Three-story building with eight (8) rental apartments	3,670
Alt. 1a	Three-story smaller size building with eight (8) rental apartments	3,262
Alt. 2	Three-story same size building with seven (7) rental apartments	3,670
Alt. 2a	Three-story smaller size building with seven (7) rental apartments	2,854
Alt. 3	Three-story same size building with six (6) rental apartments	3,670
Alt. 3a	Three-story smaller size building with six (6) rental apartments	2,447
Alt. 4	Two-story same size building with four (4) rental apartments	3,670
Alt. 4a	Two-story smaller size building with four (4) rental apartments	1,631

The analysis contained herein demonstrates the feasibility viability that would be provided to the Project Site if developed with the uses summarized in the above chart. A feasibility analysis can be quantitative or qualitative, or a combination of both and the methodology used to demonstrate economic viability can vary depending on a variety of factors ranging from physical, functional and economic and market-related issues. A quantitative method of determining economic viability is to test each of the individual uses in terms of their feasibility rent; i.e., to compare a calculated feasibility rent to market rent to determine whether a particular use is financially feasible. For example, if market rent level for a particular use is above feasibility rent then that use would be expected to be financially feasible/economically viable. Conversely, if market rent level for a particular use is below feasibility rent, then that use would not be expected to be financially feasible/economically viable as it would not produce sufficient return to the property.

Determining financial feasibility using a quantitative model involves the following steps:

1. Obtain a Construction Cost Estimate. The owner provided us with construction cost based on $275.00 per sq. ft. for construction hard costs which was used in each of the alternatives. In addition to construction hard costs, an allocation for construction soft costs is also necessary. Construction soft costs typically include site planning, engineering, design, architectural and other professional input. An allocation of 15% of construction hard costs is applied under each alternative.

2. Add land acquisition costs (the acquisition cost of the site was $650,000 and the cost of demolition and removal of the improvements following a fire was $38,000 for a total cost of $688,000) to total construction costs to arrive at Total Project Cost.

3. Derivation of an appropriate Overall Capitalization Rate ("OAR," "R" or "R_O") applicable to the specific use being studied. Capitalization is the process of converting income into a present value (market value) estimate. A capitalization rate is "A ratio of one year's net operating income provided by an asset to the value of the asset; used to convert income into value in the application of the income capitalization approach."[1] Capitalization rates vary according to property use and there are several methods of determining appropriate capitalization rates. The most common methods include (1) investor surveys, (2) calculation of an OAR from other market indices and (3) abstraction of a capitalization rate from market sales/transactional data.

   Among the most prominent investor surveys is the PriceWaterhouseCoopers Real Estate Investor Survey. This survey, however, is geared toward institutional grade investments (substantially larger asset size) and is not necessarily indicative of the asset class analyzed herein. It is used as a general guide only.

   With respect to derivation of a capitalization rate using other market indices, the most common technique is known as the "band of investment" technique. This technique assumes that most properties are purchased with debt and equity capital; therefore, the overall capitalization rate must satisfy the market return requirements of both investment positions. The lender/mortgagee must anticipate a rate of return that is appropriate for the investment's perceived risk in order to make the loan; the loan principal is typically repaid through periodic amortization payments. The equity investor/mortgagor must also anticipate a rate of return that is commensurate with the investment's perceived risk or they opt for an alternative investment. "Band of Investment" is defined as "[a] technique in which the capitalization rates attributable to components of an investment are weighted and combined to derive a weighted-average rate attributable to the

[1] Appraisal Institute, *The Dictionary of Real Estate Appraisal*, 7th ed., s.v. "capitalization rate", (Chicago: Appraisal Institute, 2022), PDF e-book.

total investment (i.e., debt and equity, land and improvements)."[2] This technique involves application of typical loan terms (mortgage rates, loan-to-value rations, term) for the particular property type being analyzed. It also requires application of an appropriate equity yield rate for the particular property type being analyzed. An "equity yield rate" is "The rate of return on the equity capital invested."[3] As real estate competes with investments in the capital markets, other rates, including bond and Treasury bill yields, are frequently considered. Characteristics that affect required rates of return for real estate versus alternative investments include risk, liquidity, management, and the possibility of value appreciation or depreciation during the holding period. Therefore, these investment vehicles are frequently considered superior to a real estate investment because they are less risky, and more liquid.

Abstraction of capitalization rates from the market involves research and analysis of an investment property transaction (or a group of investment property transactions) where the selling price is confirmed and net income (NOI) at the time of sale can be obtained. The NOI is compared to the sale price to derive an overall capitalization rate. Disadvantages of this method include (1) the scarcity of available date (i.e., the limited number of transactions such that the sample size may be statistically insignificant) and (2), the difficulty in obtaining actual net operating income at the time of sale as it is not information that is publicly available.

In the instant case, rates used herein are consistent with our understanding of this general market area for this property type (multi-family residential) and have been corroborated by the owner's expectation.

4. Once an appropriate OAR is derived, it is applied to the construction cost estimate to arrive at Net Operating Income (NOI) that could potentially be generated under each Alternative.

5. An estimate of Operating Expenses (OPEX) ratio for the specific uses being studied is also necessary. Given the property type, the fact that it would represent new construction , with individual tenants responsible for heat and utilities, a ratio of 30% is reasonable, appropriate and consistently applied under each of the Alternatives.

6. The OPEX is added to the NOI to arrive at Effective Gross income (EGI) that could potentially be generated under each Alternative.

7. An estimate of vacancy/credit loss is also required. In the economic life of a rental property, tenant turnover causes temporary vacancies. In fact, very few rental properties remain fully occupied for extended time periods. An allowance for vacancy and collection loss is therefore necessary to include primarily to reflect the rent loss attributable to these periods of vacancy and tenant turnover. Vacancy allowance of 5.0% is added to EGI to arrive at Potential Gross Income (PGI) that the use could potentially produce, otherwise known as "Feasibility Rent." This figure is shown on an annual basis.

8. An estimate of market rent for each of the Alterative uses is necessary. "Market Rent" is defined as "The most probable rent that a property should bring in a competitive and open market under

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[2] Appraisal Institute, ***The Dictionary of Real Estate Appraisal***, 7th ed., s.v. "band of investment", (Chicago: Appraisal Institute, 2022), PDF e-book.

[3] Appraisal Institute, ***The Dictionary of Real Estate Appraisal***, 7th ed., s.v. "equity yield rate", (Chicago: Appraisal Institute, 2022), PDF e-book.

all conditions requisite to a fair lease transaction, the lessee and lessor each acting prudently and knowledgeably, and assuming the rent is not affected by undue stimulus. Implicit in this definition is the execution of a lease as of a specified date under conditions whereby:

- Lessee and lessor are typically motivated;
- Both parties are well informed or well advised, and acting in what they consider their best interests;
- Payment is made in terms of cash or in terms of financial arrangements comparable thereto; and
- The rent reflects specified terms and conditions typically found in that market, such as permitted uses, use restrictions, expense obligations, duration, concessions, rental adjustments and revaluations, renewal and purchase options, frequency of payments (annual, monthly, etc.), and tenant improvements (TIs)."[4]

The owner ("Applicant") provided estimates of anticipated achievable market rent for the various Alternatives studied. These estimates are adopted within the analysis. It is noted that for Alternatives 1, 2, 3 and 4, the analysis utilizes the same size building as the proposed action (3,670 sq. ft.) - however, since the building size remains constant, the average unit size increases and the unit rent also increases). It is also noted that for Alternatives 1a, 2a, 3a and 4a, the building size is reduced correspondingly (proportionately, based on reduced number of units). Under these Alternatives, the average unit size (and the unit rent) remains constant.

9. Feasibility Rent is compared to market rent under each alternative. If market rent level for a particular use is above feasibility rent, then that use would be expected to be financially feasible/economically viable. Conversely, if market rent level for a particular use is below feasibility rent, then that use would not be expected to be financially feasible/economically viable. However, although a particular Alternative may result in a positive return, it may not result in a sufficient return. In order to test the return allocable to the Proposed Action and the various Alternatives, the Rent Differential is compared to Feasibility Rent on a percentage basis.

The chart on the following page demonstrates that the Proposed Action is financially feasible. It also shows that all of the other Alternatives are not financially feasible.

[4] The Dictionary of Real Estate Appraisal, 7th Edition, (Chicago, Il., Appraisal Institute: 2022), "market rent," PDF e-book, p. 117.

Zoning Feasibility Analysis

FEASIBILITY RENT CALCULATIONS	Proposed Action	Alt. 1	Alt. 1a	Alt. 2	Alt. 2a	Alt. 3	Alt. 3a	Alt. 4	Alt. 4a
Program Description	**Three-story building with nine (9) rental apartments**	**Three-story same size building with eight (8) rental apartments**	**Three-story smaller size building with eight (8) rental apartments**	**Three-story same size building with seven (7) rental apartments**	**Three-story smaller size building with seven (7) rental apartments**	**Three-story same size building with six (6) rental apartments**	**Three-story smaller size building with six (6) rental apartments**	**Two-story same size building with four (4) rental apartments**	**Two-story smaller size building with four (4) rental apartments**
No. Stories	3	3	3	3	3	3	3	2	2
Potential GBA (SF)	3,670	3,670	3,262	3,670	2,854	3,670	2,447	3,670	1,631
No. Res. Units	9	8	8	7	7	6	6	4	4
Const. Hard Cost/SF	$275	$275	$275	$275	$275	$275	$275	$275	$275
Total Hard Construction Cost, Rd.	$1,009,250	$1,009,250	$897,111	$1,009,250	$784,972	$1,009,250	$672,833	$1,009,250	$448,556
Soft Costs (%)	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%
Soft Costs	$151,388	$151,388	$134,567	$151,388	$117,746	$151,388	$100,925	$151,388	$67,283
Total Construction Costs	$1,160,638	$1,160,638	$1,031,678	$1,160,638	$902,718	$1,160,638	$773,758	$1,160,638	$515,839
Land Acquisition	$688,000	$688,000	$688,000	$688,000	$688,000	$688,000	$688,000	$688,000	$688,000
Total Project Cost (incl. land)	$1,848,638	$1,848,638	$1,719,678	$1,848,638	$1,590,718	$1,848,638	$1,461,758	$1,848,638	$1,203,839
Total Project Cost, Rd.	$1,850,000	$1,850,000	$1,720,000	$1,850,000	$1,590,000	$1,850,000	$1,460,000	$1,850,000	$1,200,000
Overall Capitalization Rate (OAR)	6.75%	6.75%	6.75%	6.75%	6.75%	6.75%	6.75%	6.75%	6.75%
Net Operating Income (NOI) Required	$124,875	$124,875	$116,100	$124,875	$107,325	$124,875	$98,550	$124,875	$81,000
Operating Expense Ratio (Typ.)	30%	30%	30%	30%	30%	30%	30%	30%	30%
Operating Expenses (Expense Ratio x EGI)	$53,518	$53,518	$49,757	$53,518	$45,996	$53,518	$42,236	$53,518	$34,714
Effective Gross Income (EGI = NOI + Expenses)	$178,393	$178,393	$165,857	$178,393	$153,321	$178,393	$140,786	$178,393	$115,714
Vacancy Rate	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%
Feasibility Rent (Required Potential Gross Income)	**$187,782**	**$187,782**	**$174,586**	**$187,782**	**$161,391**	**$187,782**	**$148,195**	**$187,782**	**$121,805**
Feasibility Rent, Rd.	**$187,800**	**$187,800**	**$174,600**	**$187,800**	**$161,400**	**$187,800**	**$148,200**	**$187,800**	**$121,800**
Loss Factor	26%	26%	26%	26%	26%	26%	26%	26%	26%
Total Rentable Sq. Ft.	2,728	2,716	2,414	2,716	2,112	2,716	1,811	2,716	1,207
Average Unit Size(sq. ft.)	303	339	302	388	302	453	302	679	302
Market Rent/Sq. Ft. (owner)									
Average Unit Rent/mo. (owner)	$1,950	$2,000	$1,950	$2,150	$1,950	$2,250	$1,950	$2,550	$1,950
Potential Gross Income/Mo.	$17,550	$16,000	$15,600	$15,050	$13,650	$13,500	$11,700	$10,200	$7,800
Total Achievable Income (annual)	**$210,600**	**$192,000**	**$187,200**	**$180,600**	**$163,800**	**$162,000**	**$140,400**	**$122,400**	**$93,600**
Total Achievable Rent, Rd.	**$211,000**	**$192,000**	**$187,000**	**$181,000**	**$164,000**	**$162,000**	**$140,000**	**$122,000**	**$94,000**
Rent Differential									
Market Rent less Feasibility Rent	**$23,200**	**$4,200**	**$12,400**	**-$6,800**	**$2,600**	**-$25,800**	**-$8,200**	**-$65,800**	**-$27,800**
Use Feasibility	Feasible	Feasible	Feasible	Not Feasible	Feasible	Not Feasible	Not Feasible	Not Feasible	Not Feasible
Return (Rent Differential/Feasibility Rent)	**12.4%**	**2.2%**	**7.1%**	**-3.6%**	**1.6%**	**-13.7%**	**-5.5%**	**-35.0%**	**-22.8%**

Notes:
1. Various assumptions provided by Client
2. Feasibility Rent is "the rent necessary to justify new construction."
2. Methodology used above taken from Appraisal Institute (Feasibility Rent)

Conclusion

The above Zoning Feasibility Analysis financially demonstrates that the Applicant cannot realize a reasonable return by using the Project Site for fewer than nine (9) residential apartments (Proposed Action). The preceding analysis demonstrates the Applicant's inability to realize a reasonable return if developed with fewer than nine (9) units. The Proposed Action results in a 12.4% positive return which is considered viable. Although Alternatives 1, 1a and 2a also result in positive returns, they are not viable as they are insufficient to warrant development (2.2%, 7.1% and 1.6% respectively). All of the other Alternatives are not feasible as they result in negative returns.

In summary, the analysis confirms that the Applicant's nine (9) unit proposal is the minimum relief necessary to achieve a viable return.

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M E M O

To: Taylor M. Palmer, Esq., Cuddy & Feder LLP and City of Beacon Zoning Board of Appeals

From: Jonathan Bernz, MAI, Hudson Property Advisors, LLC ("HPA")

Date: September 26, 2023

Re: 925 Wolcott LLC (the "Applicant")
925 Wolcott Avenue, City of Beacon, Dutchess County, New York ("Project Site")
(HPA File No. 2023.04019)

This Memorandum is respectfully submitted in response to comments from the City of Beacon Zoning Board of Appeals ("ZBA") at its September 19, 2023 Public Hearing regarding the above-referenced matter. This Memorandum has been prepared at the request of the "Applicant" (925 Wolcott, LLC) and is a supplement to HPA's Report dated May 18, 2023 and Memoranda dated August 28, 2023 and September 19, 2023.

During the September 19, 2023 ZBA public hearing, the ZBA requested certain information from the Applicant. Applicant provided the following information to HPA for analysis:

1. Purchase price: $650,000
2. Clean Up Costs: Approximately: $40,000
3. Taxes/Insurance Premiums/Mortgage Payments: Approximately $62,000
4. Acquisition Loan: $585,000
5. Construction Loan: $485,000
6. Insurance payout: $977,400 (following 10% public adjuster fee from initial payout of $1,086,000)
7. Monthly Income before work: $20,333
8. Monthly Income for 9 units: $17,550
9. Appraised value: $1,700,000 (May 2022 Appraisal Date)
10. Taxable Value of Land and Improvements: $650,000 (July 1, 2022 valuation date stated in City's Assessment Roll)
11. Taxable Value of Land: $150,000 (July 1, 2022 valuation date stated in City's Assessment Roll)

12. The Property was insured for $ 1,086,000, which is roughly the amount of the acquisition loan ($585,000) plus the amount of the construction loan ($485,000), the "Loans."

Notably, Items 1 and 2 above were previously incorporated in HPA's September 19, 2023 Memorandum. The remainder of the items (including insurance payouts) are not included in a financial feasibility analysis of a proposed use of land, as said feasibility analysis determines the rent or sale value necessary to justify new construction. Applicant reported that the insurance payout of $977,400 was $92,600 less than the total amount of the loans ($1,070,000) which the payout was used for.

Conclusion

Collectively, as detailed in our Zoning Feasibility Analysis submissions to this Board to date, our analysis confirms that the Applicant cannot realize a reasonable return by using the Project Site for fewer than nine (9) units, which represents the minimum relief necessary to achieve a viable return.

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