

**Zoning Board of Appeals  
October 16, 2018**

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

**Regular Meeting**

Mr. Dunne outlined the format of the Board's proceedings for the benefit of the public, explaining five out of five members were present and three votes would be needed to take action on a variance request.

Mr. Haug made a motion to open the meeting, seconded by Mr. Lanier. All voted in favor. Motion carried.

**Executive Session**

Mr. Lanier made a motion to go into executive session for advice of counsel, seconded by Mr. Jensen. All voted in favor. Members went into executive session at 7:04 p.m. Members came out of executive session on a motion made by Mr. Haug, seconded by Mr. Lanier. All voted in favor. Motion carried. The regular meeting began at 7:31 p.m.

**Regular Meeting**

Mr. Dunne called for corrections/additions or a motion to approve the minutes of the September 18, 2018 meeting. Mr. Haug made a motion to approve the minutes of the September 18, 2018 meeting as presented, seconded by Mr. Lanier. All voted in favor. Motion carried.

Ms. Smith made a motion to change the order of the agenda, seconded by Mr. Jensen. All voted in favor. Motion carried.

**ITEM NO. 1 APPLICATION SUBMITTED BY ADRIENNE THOMPSON, 41 VANKLEECK AVENUE, TAX GRID NO. 30-6054-40-394652-00, R1-10 ZONING DISTRICT, SEEKING RELIEF FROM SECTION 223-17(C) FOR A 418 SQ. FT. SECOND FLOOR ADDITION OVER THE FIRST FLOOR STRUCTURE WITH A 2.6 FT. REAR YARD SETBACK (35 FT. REQUIRED) AND 3.2 FT. SIDE YARD SETBACK (15 FT. REQUIRED)**

The public hearing on the application submitted by Adrienne Thompson, 41 VanKleeck Avenue, seeking relief from Section 223-17(C) for a 418 sq. ft. second floor addition over the first floor structure with a 2.6 ft. rear yard setback and 3.2 ft. side yard setback was opened on a motion made by Mr. Lanier, seconded by Mr. Haug. All voted in favor. Motion carried.

Denis Thompson reported he and his wife Adrienne purchased this house 14½ years ago as a "starter" home but now they really like Beacon and their neighborhood and don't want to leave the property. He described their proposal to add a third bedroom to provide separate bedrooms for their children by adding a second story 475 sq. ft. addition over the existing one-

story kitchen which will not change the building footprint. He presented the property layout and explained the second story addition will add a master bedroom, full-bath and half-bath. Currently their only bathroom is located awkwardly off the kitchen and the half-bath on the second floor will be used by the children. The building setbacks are pre-existing non-conforming because the house was built in the early 1900's.

Mr. Dunne opened the floor to public comment however no one from the public wished to speak. He read the following letter of support which the applicant circulated to neighboring property owners:

This letter is to inform you that we have applied for a building permit to the City of Beacon for our home at 4 VanKleeck Avenue. We have also applied for a variance based on the property lines and the addition not meeting the zoning requirements. The attached photo helps identify the bedroom addition that we are proposing. Your support in the approval of our application for this variance would greatly be appreciated. We love this neighborhood and Beacon. We have simply just run out of space that our home currently offers. Unfortunately, if the variance is denied, we will have to move. Please provide your name, address, contact information, and approval signature below. We are excited about getting this project started and appreciate your support.

~ Denis & Adrienne Spencer

Andrea Bunker  
25 Caroline Street

G & H Property Management  
32 VanKleeck Avenue

David Brammer  
40 VanKleeck Avenue

Douglas Kearney  
35 DePuyster Avenue

Dawn Skowron  
39 DePuyster Avenue

Ms. Smith made a motion to close the public hearing, seconded by Mr. Haug. All voted in favor. Motion carried.

After a brief explanation with regard to the non-conforming condition, Ms. Smith made a motion to approve the variance as requested. Members carefully reviewed each of the five criteria established for granting area variances as they related to the request to extend the pre-existing non-conforming use with a 418 sq. ft. second floor addition with reduced existing side and rear yard setbacks. Members discussed each factor and gave careful consideration to any impacts to the character of the neighborhood, achieving the benefit by other feasible methods, whether the request was substantial, review of environmental and physical impacts, and whether the need for a variance was self-created. The applicant agreed to all the standard conditions set forth in the draft resolution. The motion to approve the variance as requested was seconded by Mr. Lanier. All voted in favor. Motion carried; 5-0.

**ITEM NO. 2 CONTINUE PUBLIC HEARING ON APPLICATION SUBMITTED BY PIE DEVELOPERS, 53 ELIZA STREET, TAX GRID NO. 30-6054-29-031870-00, R1-5 ZONING DISTRICT, SEEKING RELIEF FROM SECTION 223-17(C) FOR A USE VARIANCE TO ALLOW A 9-UNIT MULTI-FAMILY DEVELOPMENT**

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

Attorney Taylor Palmer (Cuddy & Feder) introduced his client's development team Architect Aryeh Siegel, Bob McAlpine (McAlpine Construction), Realtor Charlotte Guernsey (Gatehouse Realty), and Traffic Engineer Richard D'Andrea (Maser Consulting). He reported 23 letters of support were submitted last month which included each of the adjoining property owners. Mr. Palmer reported the application was referred to Dutchess County Planning & Development for comment therefore asked that the public hearing be held open to allow time for their response. He explained the plans were slightly modified based on comments from an initial meeting with the Planning Board.

Aryeh Siegel explained the existing commercial site is used for the applicant's electrical contracting business, offices and storage space. The owner wants to relocate his business and change the commercial use to a multi-family 9-unit residential development. The old stone building to rear of the site would be converted into two dwelling units, a proposed new building to the side of the property will provide four new dwelling units, and the existing office/storage building on Eliza Street will be removed and replaced with a new three-unit building that will provide an entrance way to an interior courtyard. The interior of the site will be organized around a landscaped area with garages and surface parking. The new construction will simulate the look of the old stone building with the addition of modern features. The design of the Eliza Street structure was altered to include different materials and front porches per City Planner comments.

Richard D'Andrea of Maser Consulting reported their traffic evaluation included review of existing traffic flow, traffic counts, review of the Oak Street intersection and proposed site access. Mr. D'Andrea summarized the traffic report which revealed the development is not anticipated to have a significant impact on traffic operating conditions with similar traffic generation.

Robert McAlpine of McAlpine Construction outlined his experience as a developer and history of projects they've completed. He provided members with a cost analysis of the site based on the existing non-conforming commercial use, maximum build-out of three single family houses per current zoning regulations, six condominium units, and the proposed nine condominium unit development. Discussion took place with regard to the appraisal done by Valuation Consultants and marketing of the commercial site that was unsuccessful. After review, Mr. McAlpine's cost analysis concluded that a nine unit condominium development was the only scenario that realized a profitable gain on the property. Mr. Haug questioned his experience in helping other applicants and asked if the mortgages reported were solely for the property or if they included business expenses. Mr. McAlpine reported the applicant owes more on the property than it is worth.

Realtor Charlotte Guernsey reported she marketed the property for Mr. Pietrowski and showed the site to a number of client's interested in continuing the commercial use. They were unable to find a buyer due in part to its location on a residential street therefore ended up taking the property off the market. Ms. Guernsey reported neighboring houses are small and it would seem out of place to build three large single family houses in the area. In addition, the property adjoins other multi-family uses therefore this type of development would fit in accordingly. Mr. Haug asked how long the property was listed, how much it was being listed for, and whether the

listing included the business. Mr. Palmer reported additional information on the property's marketing will be provided at the next meeting. He submitted a letter from Hudson Land Design presenting information on preparation of an as-of-right plan consisting of three residential parcels and the factors that must be considered when subdividing the property. Ms. Guernsey reported the property was listed "as is" at a little over \$1 million and they did not receive any offers. Mr. Palmer reported this property is similar to 123 Rombout Avenue in that it was a pre-existing commercial use in a residential area.

Discussion took place with regard to the Comprehensive Plan, financials and other uses that would be permitted in the zone, and the current appraisal vs. the original purchase price when purchased. Mr. Palmer reported the property was in poor condition when originally purchased and the owner has contributed substantial investment to improve its condition.

Mr. Palmer reviewed and summarized their views on the five criteria that must be applied when seeking a use variance as they relate to this application:

**The alleged hardship relating to the property is unique and does not apply to a substantial portion of the district or neighborhood.**

The property is located in the R1-5 zoning district and the neighborhood is typically single-family uses. The shape of the property is unique which limits the ability to create single-family homes due to the orientation and layout of the property.

**The requested use variance, if granted, will not alter the essential character of the neighborhood.**

If a variance is granted, the development will not alter character of the neighborhood because it will require Site Plan Approval from the Planning Board. They will review the development to make certain the design maintains the character of the neighborhood and remain consistent with adjacent housing.

**The alleged hardship has not been self-created.**

This hardship is not self-created due to a gradual shift in the neighborhood since the original commercial zoning was established. A lengthy description on the history of the property's zoning was presented to show the commercial use is no longer congruent with neighboring land uses and the community which was not created by the applicant.

**This is the smallest possible variance that will overcome the economic difficulties, and preserve and protect the character of the neighborhood.**

Previous financial evidence presented shows the minimum required development is a nine-unit condominium project to overcome economic difficulties of the site. The property has been marketed commercially without success. This proposal incorporates and adaptive use of the existing building and a residential use is more conforming to the neighborhood.

**The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.**

This proposal will not have an adverse effect on physical or environmental conditions of the neighborhood because multi-family units are consistent with the surrounding area. It will be less intense than the existing commercial use.

A lengthy discussion took place and the applicant was asked to provide information on several items: what variances would be needed if the property were to be subdivided into four or five residential lots; would any previous zoning of the property allowed a total of nine units; provide examples of how the character of the area has shifted based on surrounding property uses and zoning; was an appraisal done on the value of the property based on uses other than residential that are permitted in the existing zoning district; would letters of support be similar for single-family houses rather than multi-family dwellings; and has the applicant considered petitioning the City Council for a zoning change to allow multi-family housing. Mr. Dunne read the following letter into the record:

Dear Beacon Planning Board,

Thank you for taking the time to review this letter. It is from myself and my neighbor. We are unable to attend tomorrow's planning board meeting evening so kindly consider our thoughts and deep concerns laid out in this letter. Just an important thought, and to maintain our compass in this discussion, The city ordinances sets the standards and all residents are expected to adhere to them for the common good. We attended the last meeting and voiced our objection to the granting of a variance allowing a 9 unit apartment building planned for 53 Eliza Street to go forward. We ask, why put the Comprehensive Plan in place if you aren't going to enforce and maintain the zones? We question this move. We strongly feel that the City of Beacon should strive to hold true to its Comprehensive plan regarding this area, not dilute the character of Eliza Street any further and abide by the good zoning maps of the new comprehensive plan instead of urbanizing Eliza Street any more than it is already. It is well known that the 53 Eliza Street property owner has already profited for many years from the previous generous deal the city granted him and like every other owner he should accept the termination of the deal as previously agreed in the contract between himself and the city. If he doesn't sell, he should consider investing in the residential character of the area not attempt to profit from further urbanization. The wave of urbanizing developers are setting a very bad precedent for opportunistic builders. Whether they are from Beacon or outside of Beacon, this trend must be brought under control as soon as possible. As previously agreed, the property owner of 53 Eliza Street should seek to conform to the new plan which was the deal and past agreement he made with the city years ago after the grandfathered/commercial use expired, and if necessary, divide his lot into several attractive one or two family homes as he is now required to do under current zoning and the old deal is expired, and not pressure the city in granting more favors. By abiding by the current zoning as he is now by law required to default to he should instead be building to enhance and preserve our local neighborhood residential character. And of course this is what he agreed to years ago when the city graciously grandfathered his commercial status into the new residential zone. Just as everyone who makes a contract and benefits by a good deal we expect him to also keep his word, build residential and rightfully we expect the city to abide by the new and improved (Beacon's own) comprehensive plan. We look forward to the planning board's decision to stick to enforcing the Comprehensive Plan and to preserve our beautiful community for years to come (an inheritance for future generations of Beaconites). Because of these facts, we strongly urge you to not grant this variance or other opportunistic applicants who will see how easy it is to go around our zoning which is primarily a protection for the neighborhood and homeowner/families investors. We as citizens of Beacon have come to expect this protection. We also understand and respect that the city sets the standards and all residents are expected to adhere to them for the common good. We all hope that by conscientiously enforcing your own zoning ordinances especially on this street and in this instance, it would somewhat make up for the ugly mess of 344

Main Street. The home owners of the surrounding neighborhood do not want to endure another avoidable blemish on Eliza Street or any other adjacent property. It is obvious that granting this variance will only intensify and accelerate urbanization. We are all aware that we have too many multifamily dwellings peppering our community. We ask and expect that you apply common sense here is to preserve and enhance the residential character the whole R1-5 area not just Eliza Street. Thank you for your patience with some redundancy in this letter and most importantly, Thank you very much for your time.

Ray Clary	Ahmet Albra
27 Eliza Street	36 Eliza Street
(17 years and 30 years plus residents)	

Attorney Drew Gamils responded to comments outlined in the above letter. She explained the City adopts a zoning code but is required by the state to provide the ability to appeal the code which is why there is a Zoning Board of Appeals. She explained the Comprehensive Plan is only a guide put into place for future zoning changes however the zoning code governs permitted uses. Attorney Drew Gamils made clear that the current use of the property is “legal non-conforming” and the City is not allowing an illegal operation – there are no deals and no special agreements. The property can be operated as is under the legal non-conforming situation ruled by a set of standards established in zoning regulations.

There were no further comments and Mr. Haug made a motion to continue the public hearing at the November meeting, seconded by Mr. Lanier. All voted in favor. Motion carried.

There was no further business to discuss and Mr. Haug made a motion to adjourn the meeting, seconded by Mr. Lanier. All voted in favor. The meeting was adjourned at 8:56 p.m.