



**CITY OF BEACON  
CITY COUNCIL**

**RESOLUTION NO. 131 OF 2024**

**GRANTING FOR GOOD CAUSE SHOWN BEACON 248 HOLDINGS LLC'S REQUEST TO  
WAIVE THE REQUIREMENT OF ZONING CODE SECTION 223-41.14B THAT NON-  
RESIDENTIAL SPACE BE BUILT CONCURRENTLY WITH A RESIDENTIAL  
DEVELOPMENT AND AUTHORIZING THE BUILDING INSPECTOR TO ISSUE A  
CERTIFICATE OF OCCUPANCY FOR THE RESIDENTIAL BUILDINGS**

**WHEREAS**, Beacon 248 Holdings LLC owns the real property located at 248 Tioronda Avenue, Beacon, New York known and designated on the tax assessment map of the City as 6054-45-012574 (the "Site"), which received required land use approvals from the Planning Board as detailed herein; and

**WHEREAS**, on August 4, 2014, the City Council issued Concept Plan and Special Permit Approvals for the redevelopment of the Site for a 100-unit multifamily residential development; and

**WHEREAS**, on January 13, 2015, the Planning Board granted approvals for Subdivision (lot consolidation) and Site Plan for 100 residential units located in four residential buildings, a 1,200 SF clubhouse, and a swimming pool for use by residents only; and

**WHEREAS**, thereafter, the City Council amended the dimensional regulations for all development proposals involving a total lot area of more than three acres within an R1, RD, or Fishkill Creek Development zoning district, to require that the lot area per dwelling unit calculation shall first deduct any lot area covered by surface water, within a federal regulatory floodway, within a state or federally regulated wetland, or with existing, predevelopment very steep slopes of 25% or more as defined in § 223-63; and

**WHEREAS**, in 2017, the City Council amended the Zoning Code to, among other changes, require that development projects in the FCD include that a minimum of 25% of the total development's floor area shall be permitted nonresidential uses other than dwelling units or artist live/work spaces, which must be built out before or concurrently with the residential development of the site; and

**WHEREAS**, due to the changes to the City's Zoning Code, the Applicant was required to obtain amended site plan approval, which the Planning Board granted in April, 2020 for a reduced unit count of 64 residential units located in 2 buildings designated as Buildings 200 and 300 (of which 6 units would be workforce housing pursuant to the City's Below Market Rate ("BMR") unit zoning requirements set forth in Code Section 223.41.10) and an approximately 25,400 square foot non-residential building designated as Building 100; and

**WHEREAS**, prior to commencing constructions, the Applicant was advised by the City's Building Inspector by letter dated June 25, 2021 that its request to not build the non-residential building concurrently with the residential building was denied; and

**WHEREAS**, on June 29, 2021 the Applicant submitted an application to the ZBA seeking an area variance from the “concurrent construction” requirement of the Zoning Code, as the Applicant stated due to a change in market conditions arising from the pandemic, lenders would not provide construction financing to the Applicant for a project that had a non-residential component; and

**WHEREAS**, by letter dated August 25, 2021, the City of Beacon Building Inspector David Buckley advised the Applicant that a Certificate of Occupancy could not be issued for the residential building unless the nonresidential portion of the building has had its foundation and exterior walls constructed; and

**WHEREAS**, by letter dated September 10, 2021, the Applicant withdrew its area variance request and construction on the project proceeded; and

**WHEREAS**, on November 9, 2021 the Planning Board approved an Amended Site Plan which was sought by the Applicant to eliminate the emergency access ramp to Wolcott Avenue and replace it with an emergency turn around north of Building 300, relocate the proposed Greenway Trail from the Wolcott Avenue ramp to the MTA right-of-way, relocate parking spaces and a stormwater retention basin, and modify Building 100 to reduce the height to two stories and expand the footprint; and

**WHEREAS**, the Applicant applied for a building permit for the construction of the foundation of the non-residential building in November 2023, which was then modified and amended in April 2024 and construction of the foundation occurred in July 2024 and no further work has occurred; and

**WHEREAS**, on May 14, 2024 the Planning Board approved a Second Amended Site Plan which was sought by the Applicant to again revise the location of the Greenway Trail, revise the approved Erosion and Sediment Control Plan and Landscape Plan, add low-height lighted bollards along the front of each building, revise the site plan in relation to refuse pick-up, add 10 EV charging stations and revise the sewer collection system; and

**WHEREAS**, the City Council adopted Local Law 9 of 2024 on September 9, 2024, which amended Section 223-41.14B of the Zoning Code to add “for good cause shown, the City Council may, upon imposition of such conditions as it deems appropriate, allow Certificates of Occupancy to be issued for dwelling units or artist live/work spaces prior to the nonresidential component being completed.”; and

**WHEREAS**, by letter dated October 11, 2024, Beacon 248 Holdings LLC submitted an application requesting the Council authorize the issuance of a Certificate of Occupancy for the residential rental units in Buildings 200 and 300 prior to the completion of the project’s nonresidential component (Building 100); and

**WHEREAS**, the City Council considered the Applicant’s request at its workshop meetings on October 15, 2024, November 12, 2024 and November 25, 2024 and received public comments during various comment sessions at the Council’s agenda meetings; and

**WHEREAS**, the City Council recognizes that while market conditions have changed since the zoning requirements for the Fishkill Creek Development District was amended in 2017 to add Section 223-41.14B, the Applicant has admittedly conceded that its marketing efforts could have been more robust and, to its credit, the Applicant has undertaken additional marketing efforts since it submitted its application to the Council, as explained in detail by its commercial real estate broker at the Council’s November 12, 2024 workshop meeting; and

**WHEREAS**, the City Council recognizes that the residential units in buildings 200 and 300 are ready to be occupied and the fact that the nonresidential building has not been constructed is solely due to the decisions and actions of the Applicant and its failure to seek such relief earlier or to comply with the Zoning Code and conditions of site plan approval to construct the nonresidential building concurrently with the residential building and as interpreted by Building Inspector Buckley, complete the foundation and exterior walls of the building prior to applying for a Certificate of Occupancy for the residential structures; and

**WHEREAS**, the City Council recognizes that the Applicant has placed Council members in the middle of a dilemma where the Council seeks adherence to its Zoning Code and conditions of the Planning Board's approval, but recognizes the change in market conditions for non-residential construction and the need for housing within the City of Beacon and the lower Hudson Valley and that 64 units of available housing, which includes 6 BMR units, should be made available for occupancy at the earliest opportunity; and

**WHEREAS**, notwithstanding that the Applicant does not come to the Council with "clean hands" the Council recognizes the greater interest of City residents in the addition of housing units and the benefit to the City tax roll by having this property placed in service and available for occupancy before the nonresidential component is constructed; and

**WHEREAS**, the City Council forewarns any other applicants in the Fishkill Creek Development District that the granting of this resolution is unique and not to be deemed as a precedent and is not to be relied on in the future.

**NOW, THEREFORE, BE IT RESOLVED**, the City Council of the City of Beacon hereby finds the following good cause exists to grant the Applicant's request: (i) the placement of housing units on the market sooner than would otherwise occur; (ii) the receipt of significant property taxes sooner than would otherwise occur if the application were not granted; (iii) the Applicant's voluntary offer of placing two additional units as BMR units in perpetuity; and (iv) the other conditions as detailed below;

**AND BE IT FURTHER RESOLVED**, that the City Council hereby grants the Applicant's request to waive the requirement of City Code Section 223-41.14B that the nonresidential building be constructed concurrently with the two residential buildings and hereby authorizes the Building Inspector to issue Certificates of Occupancy for the residential units despite the nonresidential not being constructed concurrently, when the Building Inspector determines all conditions of this Resolution have been satisfied.

**AND BE IT FURTHER RESOLVED**, this approval is granted upon the Applicant complying with the following conditions:

- 1) The Applicant submitting a letter to the Building Department within 10 calendar days of the date of this resolution identifying the one (1) additional one-bedroom unit and one (1) additional two-bedroom unit the Applicant has voluntarily offered to be designated as Below Market Rate units in perpetuity. Such letter shall also designate the other three (3) one-bedrooms and three (3) two-bedroom units which are being designated as Below Market Rate units for a total of four (4) one-bedroom units and four (4) two-bedroom units.

- 2) Within 21 calendar days of the adoption of this resolution, the Applicant shall provide to Hudson River Housing, the agency that administers the City's BMR program, with the following (a) the Applicant's rental parameters; (b) a flyer or other advertising material containing representative pictures of the BMR units and descriptions including square footage, project amenities and other information required by HRH to assist in the marketing of the BMR units, subject to HRH's right to edit the flyer in its sole discretion; (c) draft letter to be sent by the applicant, subject to HRH's right to edit the letter in its sole discretion, to the City of Beacon School District Superintendent, the Police Chief, the Fire Chief, the Volunteer Ambulance Corps. and the City of Beacon's Human Resource Officer containing such flyer and the required BMR application and marketing materials so these individuals can provide such information to their employees advertising the availability of the 8 BMR units; (d) the two dates and times upon which the Applicant and HRH have mutually agreed that the Applicant will hold an open house exclusively for the BMR units and upon which individuals must register for the open house with HRH in advance; (e) a marketing plan detailing the marketing efforts the Applicant will undertake to advertise the BMR units, to be coordinated with HRH to avoid duplication; (f) within 45 days, appear with HRH at a community segment portion of a City Council meeting to explain the BMR application process and the BMR units available for rental at the Site; and (g) a letter to HRH confirming that any application submitted by HRH for rental of a BMR unit will be prioritized and processed in advance of any other units and an update provided to HRH as to the status of the processing of the application on a weekly basis with a decision being made within 5 business days of submission of a complete BMR application.
- 3) The Applicant shall continue to market with due diligence and in good faith the nonresidential component of the project and provide written status updates by January 31, 2025 and March 31, 2025 and be prepared to attend a Council meeting in May 2025, or a later month, if requested by the City Administrator, to present a status update. The status reports shall identify efforts undertaken during the time period to market the unit including how many individuals expressed interest, proposed occupancy and the reason why such tenancy was not pursued.
- 4) Prior to the issuance of Certificates of Occupancy and continuing thereafter, the erection and maintenance of (i) erosion and sediment control measures for Building 100 and (ii) fencing around the Building 100 project site.
- 5) Prior to the issuance of Certificates of Occupancy for the residential buildings 200 and 300, the Applicant shall address to the satisfaction of the Building Inspector all items set forth in his October 25, 2024 Pre-Certificate of Occupancy Site walk through compliance "punch list" items.
- 6) Prior to the issuance of Certificates of Occupancy for the residential buildings 200 and 300, the Applicant shall establish to the satisfaction of the Building Inspector that it has complied with the approved site plan with respect to Buildings 200 and 300 and those areas leading up to and related to Buildings 200 and 300.
- 7) Within 14 days of the adoption of this Resolution, the Applicant shall provide a letter detailing all work required by the approved Site Plan associated with Building 100, which has not been completed and which is being held in abeyance while it markets Building 100.

**AND BE IT FURTHER RESOLVED**, that in granting the Applicant’s request to waive the requirement to construct Building 100 concurrently with the construction of Buildings 200 and 300 and to allow the Building Inspector to have the authority to issue, when deemed appropriate to issue, a Certificate of Occupancy for Buildings 200 and 300, the City Council expressly reserves the right for itself or the Building Inspector, after June 1, 2025, to require that Building 100 be completed in compliance with Building Inspector’s Buckley’s August 25, 2021 letter. Should the Applicant make a request to eliminate the non-residential building component of the project, as permitted by City Code Section 223-41.14(B), compliance with this condition

will be held in abeyance pending a determination by the City Council on the Applicant’s request.

**BE IT FURTHER RESOLVED**, that the City Attorney and Building Inspector shall provide updates to the Council as each milestone is achieved.

<b>Resolution No. 131 of 2024</b>								
<i>Amending the resolution to include resolved language that reads: “BE IT FURTHER RESOLVED, that the City Attorney and Building Inspector shall provide updates to the Council as each milestone is achieved.”</i>								
<b>Date: December 16, 2024</b>								
<input checked="" type="checkbox"/> Amendments								<input type="checkbox"/> 2/3 Required
<input type="checkbox"/> On roll call								<input type="checkbox"/> 3/4 Required
Motion	Second	Council Member	Yes	No	Abstain	Reason	Absent	
		<b>Paloma Wake</b>	x					
x		<b>Amber Grant</b>	x					
	x	<b>Molly Rhodes</b>	x					
		<b>Jeffrey Domanski</b>	x					
		<b>Pam Wetherbee</b>	x					
		<b>Dan Aymar-Blair</b>	x					
		<b>Mayor Lee Kyriacou</b>	x					
		<b>Motion Carried</b>	x					

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x		<b>Molly Rhodes</b>	x					
		<b>Jeffrey Domanski</b>	x					
		<b>Pam Wetherbee</b>		x				
		<b>Dan Aymar-Blair</b>		x				
		<b>Mayor Lee Kyriacou</b>	x					
		<b>Motion Carried</b>	x					