



445 Hamilton Avenue, 14th Floor  
White Plains, New York 10601  
T 914 761 1300  
F 914 761 5372  
[cuddyfeder.com](http://cuddyfeder.com)

June 8, 2023

Neil J. Alexander, Esq.  
[nalexander@cuddyfeder.com](mailto:nalexander@cuddyfeder.com)

Chairperson Peter Galotti and  
Members of the Zoning Board of Appeals  
Town of Wappinger  
20 Middlebush Road  
Wappingers Falls, NY 12590

RE: Dakota Partners, Inc. & DP 123 LLC  
ZBA Appeal No. 22-7772  
Application: Area Variances for Multifamily Workforce Housing  
Premises: 1404 Route 9, Town of Wappinger  
Parcel ID: 135689-6157-02-707773-0000  
Lot Area: 86.818 acres  
Property Owner: DP 123 LLC  
Zoning District: Shopping Center "SC" District

Dear Chairperson Galotti and Members of the Zoning Board of Appeals:

This letter is respectfully submitted on behalf of Dakota Partners, Inc. ("Dakota") & Diamond Properties through its business affiliate DP 123 LLC (collectively, the "Applicants") in furtherance of their application for area variances to construct a multifamily workforce housing development (the "Project") within the Alpine Commons Shopping Center ("Alpine Commons") located at 1404 Route 9 in the Town of Wappinger, consisting of approximately 86.818 acres, classified in the SC (Shopping Center) zoning district, and bearing a tax parcel identification of 135689-6157-02-707773-0000.

Since filing this Area Variance Application on or about November 14, 2022, the Applicants have appeared on several agendas before the ZBA and made numerous supplemental submissions. Further, the ZBA has circulated and ultimately established itself as the Lead Agency in the Coordinated Review of this Project classified as an Unlisted Action pursuant to the State Environmental Quality Review Act ("SEQRA").

By way of further background, for the past seven (7) months and across numerous public meetings with the Building Inspector in attendance, the ZBA has been considering the following area variances as listed consistently on ZBA agendas since December 13, 2022: (i) the Density



June 8, 2023

Page 2

standard set forth in the Supplementary Special Permit Use Regulations for Mixed Uses in Section 240-81.7 of the Town of Wappinger Zoning Code ("Zoning Code"), (ii) the Maximum building height (stories/feet) codified in the Schedule of Dimensional Regulations for Nonresidential Districts for the SC zoning district; and (iii) the Schedule of Off-Street Parking Requirements for Multifamily dwellings established in Section 240-97, in order for the Applicants to develop multifamily workforce housing along with related amenities and parking facilities within the existing Alpine Commons Shopping Center. It was only during the May 9, 2023 presentation that the ZBA questioned the precise calculation of the Density area variance per (i) above.

Now, in the absence of receiving a determination from the Building Inspector in the ensuing several weeks providing a clarification as to the calculation of the density area variance that the Applicants have redoubled their efforts and hereby modify the pending Area Variance Application as follows after the below restatement of this Project.

### **The Applicants' Proposed Workforce Housing Project<sup>1</sup>**

The Alpine Commons Shopping Center is 1 of only 3 properties in the entire Town of Wappinger classified in the SC zoning district. Based on a review of the Town Zoning Map, it appears that fewer than 125 acres in the Town are classified in the SC zoning district with Alpine Commons consisting of approximately 86.818 acres of them. See <https://townofwappingerny.gov/wp-content/uploads/2021/12/Zoning-Revised-10-26-21.pdf>.

The Applicants submitted the instant Area Variance Application seeking to develop five (5) residential buildings and related amenities within the southern, undeveloped portion of Alpine Commons. The Applicants intend to convert Alpine Commons from a retail shopping center to Mixed Uses per Town Zoning Code Section 240-81.7. The smallest of the 5 residential buildings will have 24 multifamily units and the largest will have 36 multifamily units. The proposed workforce multifamily housing will complement the existing, approximately 107,000 square foot space tenanted by BJ's Wholesale Club, and the approximately 102,000 square foot former

---

<sup>1</sup> On March 28, 2023, Dutchess County awarded this project \$1,500,000 through its new Housing Trust Fund created to address the housing access gaps identified in the County's Housing Needs Assessment completed in Calendar Year 2022. This project is 1 of only 6 affordable rental housing projects supported in the initial funding round of the County's Housing Trust Fund's Housing Creation and Preservation program. These rental units will be available to households making between 30% - 80% of the Dutchess County Area Median Income (AMI). See <https://www.dutchessny.gov/Departments/County-Executive/44215.htm>.

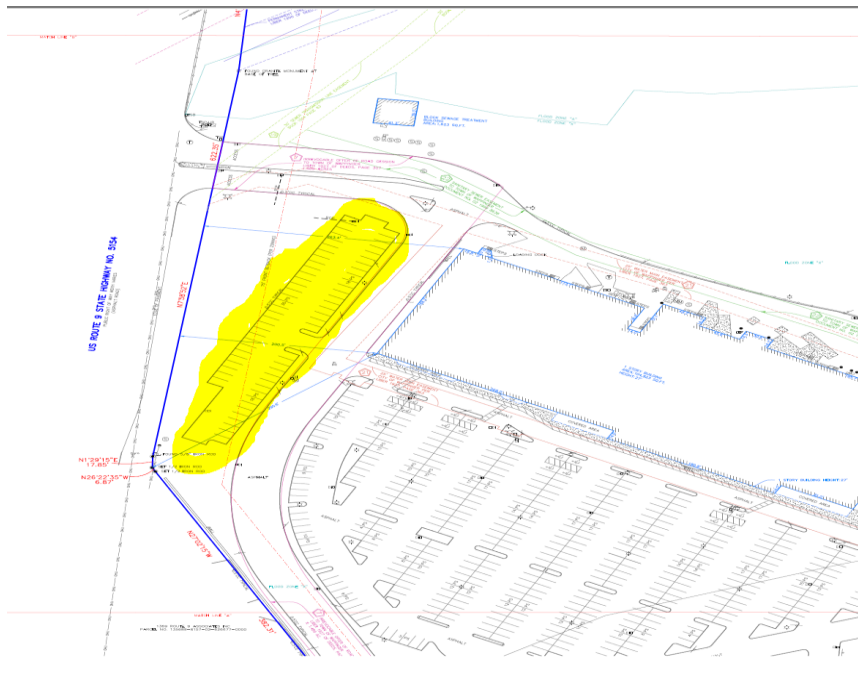


June 8, 2023

Page 3

AC Moore/Stop N Shop space currently re-tenanted by Hudson Valley Office Furniture (37,000 square feet) and Fun Max Adventure Park (65,000 square feet of Commercial Recreation Facility per Section 240-72).

The Project will be accessed *via* a spur off an existing internal road within Alpine Commons. The residential buildings are currently envisioned as three-story walk-ups. The mix of apartment units contemplated is 48 one-bedroom units, 60 two-bedroom units, and 36 three-bedroom units, for a total of 144 units. Each building will be highly energy efficient and will meet the Tier 3 NYSERDA Multifamily home requirements. There will be a total of 238 new at-grade, parking spaces (i.e., 226 standard spaces plus 12 ADA spaces, or alternatively the equivalent of 1.65 parking spaces per dwelling unit) in the immediate vicinity of the 5 residential buildings. The residential project will also have use of 64 of the existing parking to the westerly of the internal access roadway giving the residential project a total of 302 parking spaces. These 64 parking spaces are reflected here on Page 3 of the previously submitted ALTA/NSPS Land Title Survey for the Alpine Commons Shopping Center, signed and sealed by Nickolas Fusco of Republic National, dated November 22, 2019:





June 8, 2023

Page 4

In addition, the Project includes development of an approximately 2,500 square foot clubhouse, which will feature a large community room with kitchenette, a fitness facility, offices for a community manager and leasing agent, maintenance space, and outdoor patio space. It is anticipated that rents will range from \$632 to \$1889 per month. Dakota will ground lease the residential portion of the Mixed Use project from Diamond. No subdivision is contemplated.

### **The Applicants Are Still Seeking the Area Variance as to Height/Stories**

The Applicants affirm the need for the height/stories area variance. The Schedule of Dimensional Regulations – Nonresidential limits the Maximum building height (stories/feet) throughout the Town to 2.5 stories / 35 feet, including the SC zoning district in which the Property is classified. It is also worth underscoring that the Schedule of Dimensional Regulations – Residential Districts similarly limits the maximum building height to 35 feet townwide, albeit in the RMF-3 and RMF-5 zones 3 stories are allowed at that same 35-foot maximum height.<sup>2</sup>

As such, the Applicants require an area variance from the 2.5 stories / 35-foot height limit. Each of the proposed five (5) residential buildings are three stories, and every building exceeds the 35-foot height limit. Indeed, the height limit varies from building to building with a range from 42'0" feet to 49'10" based on the way height is measured in the definition of Building Height in the Zoning Code.

It merits reproducing verbatim here the definition in the Zoning Code of Building Height, which is the "greatest vertical distance measured from the adjoining finished grade at the front of a building to the highest point of the roof if the roof is flat or to the mean level between the eaves and the highest point of the roof if the roof is of any other type," because of its restrictive nature on anything other than a perfectly flat development site. It is also worth noting that this means of calculation for building height in combination with the overall 2.5 stories / 35 foot height limit thwarts the ability to build standalone multifamily, mixed uses, and residential over retail *per se*. If one adds in the forced use of the Net Lot Area formula discussed at length below, then the hardship on Mixed Use Development is exponential.

---

<sup>2</sup> See <https://ecode360.com/attachment/WA0691/WA0691-240a%20Sched%20of%20Use%20Reg.%20-%20Residential%20Districts.pdf> and <https://ecode360.com/attachment/WA0691/WA0691-240b%20Sched%20of%20Use%20Reg.%20-%20Nonresidential%20Districts.pdf>.



June 8, 2023

Page 5

Meanwhile, the Applicants have documented that here the granting of the requested stories / height area variance will NOT be a detriment to the health, safety and welfare of the neighborhood or community as these buildings are not readily visible to the neighborhood. Indeed, on February 3, 2023, the Applicants submitted an Exhibit A: Site Sections relative to the visibility of the Project from the surrounding neighborhoods, prepared by Thriven Design, and an Exhibit B: A Limit of Disturbance Analysis for the Project & Comparison with a Zoning Compliant Density, prepared by Thriven Design.

Reference again to the Exhibit A: Site Sections reveals that there is significant intervening topography and vegetation between the Project and publicly accessible areas. See [https://townofwappingerny.gov/wp-content/uploads/2023/02/AC\\_Visual-Impact-Study.pdf](https://townofwappingerny.gov/wp-content/uploads/2023/02/AC_Visual-Impact-Study.pdf). In the case of Route 9, the closest building is in excess of 1,100 lineal feet away (i.e., greater than 0.2 miles) and it is blocked by 2 successive ridgelines in addition to vegetation. Additionally, the Sections from Old Hopewell Road and Losee Road document a lineal distance of approximately 1,000 feet with substantial intervening vegetation. Similarly, the Sucich Place Section is approximately 750 lineal feet away with dense vegetation in between. The Tree Heights for these Sections were calculated using Global Ecosystem Dynamics Investigation (GEDI) DATA and exceed forty feet (40') in this area. Consequently, it is respectfully submitted that granting the area variances requested as to the Maximum building height (stories/feet) codified in the Schedule of Dimensional Regulations for Nonresidential Districts for the SC zoning district will not result in any significant adverse environmental impact and do not pose a detriment to the health, safety and welfare of the neighborhood or community. This evidence was also presented to the ZBA during public meetings and remains uncontroverted in the record.

#### **The Applicants No Longer Require the Area Variance as to Number of Parking Spaces**

The Applicants do not require a parking variance and are no longer seeking parking variances based on the totality of parking spaces per the ALTA Survey submitted to the ZBA in April 2023. See <https://townofwappingerny.gov/wp-content/uploads/2023/04/Alpine-Commons-ALTA-Survey.pdf>.

The ALTA/NSPS Land Title Survey for the Alpine Commons Shopping Center, signed and sealed by Nickolas Fusco of Republic National, dated November 22, 2019, expressly provides atop



June 8, 2023

Page 6

Sheet 1 of 6 of this Survey as to Parking that there are a total of 1,205 parking spaces existing with 1,185 regular parking spaces and 20 handicap spaces.<sup>3</sup>

Zoning Code Section 240-97 sets forth the Schedule of Off-Street Parking Requirements. Reference to those parking ratios in Section 240-97 here - <https://ecode360.com/11075382> - reveals that 4.5 parking spaces are required for each 1,000 square feet of gross floor area for Shopping Centers greater than 100,000 square feet of gross floor area. As such, Alpine Commons Shopping Center only requires 941 parking spaces (i.e.,  $209,000 / 1000 * 4.5 = 940.5$  - à 941 parking spaces) where its ALTA Survey certifies there are 1,205 parking spaces. Thus, there is a surplusage of 264 parking spaces (i.e.,  $1,205 - 941 = 264$ ), or alternatively stated, there are at present, existing 128% more parking spaces than the Zoning Code requires.

Meanwhile, Zoning Code Section 240-97 provides that for multifamily dwellings, 1.5 parking spaces are required for each dwelling unit, plus 0.5 for each bedroom. Dakota's mix of apartment units contemplated is 48 one-bedroom units, 60 two-bedroom units, and 36 three-bedroom units, for a total of 144 units. This allocation of unit types requires a total of 282 parking spaces. Although the Alpine Commons Shopping Center already possess a surplus of 264 parking spaces, the Applicants are proposing that there will be a total of 238 new at-grade, parking spaces (i.e., 226 standard spaces plus 12 ADA spaces, or alternatively the equivalent of 1.65 parking spaces per dwelling unit) in the immediate vicinity of the 5 residential buildings, and the residential project will also have use of 64 of the existing parking spaces to the westerly of the internal access roadway giving the residential project a total of 302 parking spaces. This location is acceptable as the Applicants do not believe there is any need for these parking spaces based on its operation and maintenance of dozens of similar workforce housing communities in the Northeast/New England. More importantly, the Zoning Code only requires for the Mixed Use of the Shopping Center and the proposed allocation of workforce multifamily residential apartments 1,223 parking spaces (i.e., 941 parking spaces for the shopping center plus 282 parking spaces for the multifamily) where there are a total of 1,443 parking spaces existing and proposed by the Applicants (i.e., 1,205 parking spaces existing and 238 new at-grade, parking spaces proposed).<sup>4</sup> **Therefore, the 1,443 parking spaces now existing/proposed**

<sup>3</sup> See <https://townofwappingerny.gov/wp-content/uploads/2023/04/Alpine-Commons-ALTA-Survey.pdf>.

<sup>4</sup> It is also worth noting that the Applicants are not even seeking a shared/joint use credit for the Mixed Use here where Zoning Code Section 240-97B expressly allows for the Planning Board to reduce "the cumulative parking requirement in a mixed-use development, where it has been demonstrated to the Board that the proposed amount of parking will be adequate to serve the peak parking requirements of the development. In order to demonstrate this, the applicant shall provide a shared parking study prepared by an appropriate professional in



June 8, 2023

Page 7

**by the Applicants exceeds the Zoning Code required 1,223 parking spaces by 220 parking spaces or 18 percent.** Accordingly, the Applicants have substantiated through the ALTA Survey provided and the above enunciated calculations that the Area Variance as to number of parking spaces is no longer required.

**The Area Variance as to Density is Not Substantial: It Will Not Yield An Adverse Effect**

Since the outset, the Applicants have asserted that the Project required an area variance as to the Density standard set forth in the Supplementary Special Permit Use Regulations for Mixed Uses in Zoning Code Section 240-81.7, which provides in sub-section A(1) that the *“residential density in a mixed-use development shall not exceed three dwelling units per acre of net lot area devoted to the residential component of the mixed use.”* In the Applicants’ November 14, 2022 cover letter and all materials thereafter, the Applicants have asserted that pursuant to the residential density standard of three dwelling units per acre of Net Lot Area devoted to the residential component of the mixed use, Alpine Commons is limited to 93 multifamily units (i.e., 31.3 acres X 3 dwelling units/acre = 93.9 dwelling units rounded downward to 93 multifamily units), where the Project proposes 144 multifamily units.

This density calculation is based on the following analysis. Alpine Commons consists of 86.818 acres in total. Unlike every other use in the Nonresidential Districts, Mixed Uses are required to calculate density and compliance based on Net Lot Area as opposed to Gross Floor Area. Net Lot Area is defined as “gross area of a property **minus** 100% of the area of wetlands, lands within the one-hundred-year floodplain, and areas of steep slopes in excess of 25% when measured over a distance of 50 feet”. Meanwhile, Gross Floor Area is defined as the “sum of the gross horizontal area of every floor of a building or buildings, measured from the exterior faces of the outside walls of such buildings, but not to include porches, terraces, basements, cellars or unfinished floor areas having a clear head room of less than seven feet.” As such, Mixed Uses are immediately penalized under the Zoning Code because density is not calculated

---

accordance with accepted industry standards, such as that described in the latest edition of the Urban Land Institute's Shared Parking report, the Institute of Transportation Engineers' Shared Parking guidelines, or other approved procedures, which may be supplemented as appropriate by actual experience and studies of, or known to, the professional preparing the report. The study shall consider parking demand variations due to factors such as time of day, weekday versus weekend demand, monthly variations in parking demand, captive markets within the site and modal split, all of which affect when the peak accumulated parking demand would occur.” It is self-evident that based on this code provision the Applicants could substantiate a right to significantly reduce the total parking required on-site should they choose to do so.



June 8, 2023

Page 8

using the total horizontal area included within the lot lines of a lot. Net Lot Area reduces the density regardless of whether development is proposed within wetlands, floodplains or steep slopes. Rather, density is deducted merely because the property includes these attributes. Even if federal or state agencies with primary jurisdiction would issue permits for development in these areas, the Zoning Code disallows these lands from the calculation of Density for Mixed Uses in comparison to all other uses in the Schedule of Nonresidential Uses. As such, deployment of the Net Lot Area formula in and of itself for Mixed Uses is a hardship. Here, the net lot area is 47.3 acres, which represents a density deduction of 39.518 acres or 45.5%.

Section 240-81.7 calculates density separately for commercial uses and residential uses, and then provides that the residential and commercial components of the mixed use shall not, individually or in combination, exceed the maximum density standards. By allocating 16 of the 47.3 Net Lot Area acres, Alpine Commons meets the commercial density standard for its 209,000 square feet of commercial area per the SC zone's FAR of 0.3 (i.e.,  $43,560 \text{ s/f} \times 0.3 \text{ FAR} = 13,068 \text{ s/f}$  or 16 acres). This leaves a remaining Net Lot Area of 31.3 acres for the residential area, which complies with Section 240-81.7B's standard that the mixed use shall be at least 25% residential and at least 25% commercial (i.e., approximately 1/3 commercial, 2/3 residential). Pursuant to the residential density standard of three dwelling units per acre of Net Lot Area devoted to the residential component of the mixed use, Alpine Commons is limited to 93 multifamily units (i.e.,  $31.3 \text{ acres} \times 3 \text{ dwelling units/acre} = 93.9 \text{ dwelling units}$  rounded downward to 93 multifamily units), where the Project proposes 144 multifamily units.

It is important to note that the Gross Commercial FAR for the Property is 1,134,537.624 square feet (i.e.,  $43,560 \text{ s/f} \times 0.3 \text{ FAR} \times 86.818 \text{ acres} = 1,134,537.62 \text{ s/f}$ ). Further, if the Applicants were allowed to use Gross Floor Area instead of the anomalous Net Lot Area, the proposed 144 multifamily units would conform if only 48 acres were allocated leaving 48.818 acres and a FAR of 637,953.624 square feet for commercial uses. Similarly, 144 multifamily units would comply if the Applicants could deploy 5 dwelling units per acre under the Net Floor Area formula (i.e.,  $31.3 \text{ acres} \times 5 \text{ dwelling units/acre} = 156.5 \text{ dwelling units} > 144 \text{ multifamily units proposed}$ ), which is consistent with the calculation for the RMF-5 multifamily zoning district in the Town.

The Applicants also have consistently enunciated that the goals of this project are fully consistent with the Town Comprehensive Plan, dated September 27, 2010, including but not limited to the Recommendation to "[e]ncourage higher commercial density and mixed commercial land use in existing commercial areas that support transit, reduce traffic, improve local identity, provide opportunities for public spaces, and promote pedestrian activity."



June 8, 2023

Page 9

Further, the Town's Rental Housing need has long been recognized and documented in the April 2009 Three-County Regional Housing Needs Assessment: Ulster, Orange and Dutchess Counties From 2006 to 2020, and the March 2022 Dutchess County Housing Needs Assessment.

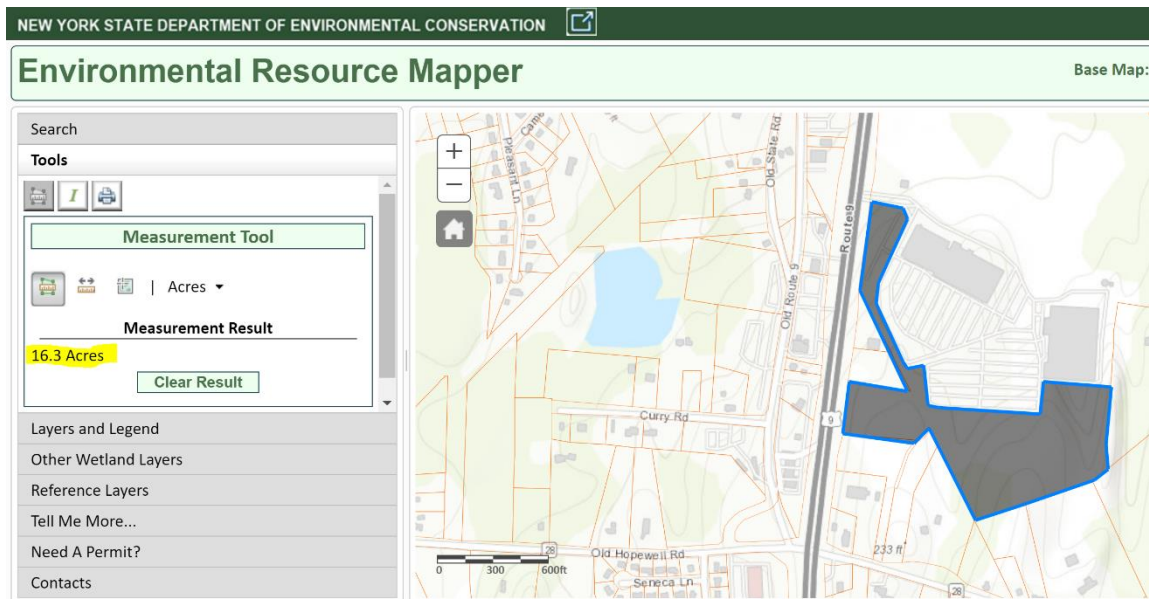
Notwithstanding the above, the ZBA for the first time challenged this computation during the ZBA's May 9, 2023 meeting even though each and every agenda the ZBA has issued since December 13, 2022 has noted a maximum of 93 dwelling units is allowed where the Applicants are proposing 144 dwelling units. This listing as to a variance of 51 additional dwelling units being sought appeared on no fewer than 5 ZBA agendas over 7 months inclusive of meetings cancelled due to snow and/or a lack of quorum. It is also important to note that under New York State Town Law that the power of original jurisdiction to interpret the Zoning Code rests solely with the Town Code Enforcement Officer/Building Inspector, who in this case is Barbara Roberti, Director of Strategic Planning and Municipal Codes, and to whom all materials before the ZBA have been submitted *ab initio*. As such, one would argue that any questions the ZBA had as to the calculation of density for the Building Inspector were only ripe for 60 days at most from the first listing on a ZBA agenda (i.e., 60 days from December 13, 2022, which was February 11, 2023). For the ZBA to raise density calculation issues 90 days later certainly raises questions of propriety and the legal concepts of laches and mootness, not to mention the constitutional doctrines of fundamental fairness, due process, equal protection and the civil rights of the Applicants.

Beyond the referenced rules of statutory interpretation and the laws of jurisprudence, certain members of the ZBA sought to assert for the first time on May 9, 2023 that the net lot area devoted to the residential component of this Mixed Use was solely the area shown under the Full EAF as being disturbed, which was noted as 7.5 acres, as opposed to the 31.3 acres calculated above. The Applicants remain steadfast to the correct calculation being the 31.3 acres they have deployed for 7 months without incident. It is also important to note that 7.5 acres does not reflect the scope of the ingress/egress, parking areas and land disturbance for the Dakota portion of the Mixed Use which is closer to approximately 16.3 acres:



June 8, 2023

Page 10



All of these attempts to re-interpret the Zoning Code as to Density of Mixed Uses smack of a desire to further reduce the number of workforce housing units in the project. It appears that the Zoning Code seeks to punish multifamily development in comparison to commercial development. It is important to reiterate that the Gross Commercial FAR for the Property is 1,134,537.624 square feet (i.e., 43,560 s/f X 0.3 FAR x 86.818 acres = 1,134,537.62 s/f). Yet, multifamily dwelling units are neither permitted by right nor by Special Permit as a standalone use, and only as part of a Mixed Use in the SC zoning district. And, in comparison to commercial uses, which uses a Gross Area formula, the residential aspect of a Mixed Use must deploy a Net Lot Area. Then, the residential density is three dwelling units per acre of net lot area devoted to the residential component. **So, here, the Applicants would be allowed ostensibly to add 925,537.62 commercial square feet to the existing 209,000 square feet. But, the Applicants need an area variance for 51 additional dwelling units for a total of 144 multifamily dwelling units over the 93 dwelling units permitted, which 144 workforce multifamily dwelling units together would represent less than 175,000 residential square feet.** It is evident that the goal of the Zoning Code is not to minimize land disturbance / environmental impact.

Moreover, reducing the Project's density from the proposed 144 workforce multifamily dwelling units to 93 zoning compliant, market rate multifamily units (or some other lower



June 8, 2023

Page 11

number of dwelling units) will not necessarily reduce the limits of land disturbance. The reduction in Density requires modifications as to the Type of multifamily units, including the introduction of some townhouses, and the increase in dwelling unit Size in total square footage and total numbers of bedrooms as well as an associated increase in the number of parking spaces per unit given the larger dwelling units with more square footage and bedrooms. Indeed, it is reasonable to anticipate that market rate units here would be 10-25 percent larger and would not appreciably reduce the total number of bedrooms given the need to favor three-bedroom dwelling units over one-bedroom and two-bedroom dwelling units.

Further, the Density the Applicants are proposing here is not greater than most of the projects in the Town and the nearby Village of Wappinger Falls. Indeed, proof of this conclusion was submitted as part of the Applicants' April 11, 2023 supplemental submission and was part of the Applicants' May 9, 2023 presentation. In particular, the Applicants analyzed ten (10) townhouse/condominium/multifamily projects with six (6) in the Village and four (4) in the Town. These projects ranged from 5.75 dwelling units per acre to 22.12 dwelling units per acre and a height of two (2) to six (6) stories. Three (3) of the four (4) projects in the Town were built on or before 1971 with only the Olde Hopewell Commons project being built in this century – circa 2020. More importantly, all 4 of the Town projects had a density of 8.32 to 8.82 dwelling units per acre with the Olde Hopewell Commons project being the most dense at 8.82 dwelling units per acre and with it representing the only rental housing project built in the Town since 1963 – sixty (60) years ago. Meanwhile, the proposed density here for Alpine Commons is either less or similar than that identified density range depending on whether you use the entire 86.817 acres of Alpine Commons, which yields 1.66 dwelling unit per acre or 31.3 acres (4.6 dwelling units per acre) or [even 16.3 acres (8.83 dwelling units per acre)]. Thus, this analysis of comparable properties substantiates that the density proposed by the Applicants is consistent with the character of the community.

It is also noteworthy that the requested density will not affect traffic along State Route 9. As the ZBA is already aware the entrance to Alpine Commons currently is signalized with two (2) left hand southbound dedicated turn lanes and one (1) right hand northbound dedicated turn lane into the Premises at this traffic signal. Further, the New York State Department of Transportation ("NYS DOT") has installed a median in the center of State Route 9 for a significant lineal distance to the north and south of the traffic signalized entrance to Alpine Commons. Plus, there is already a traffic signal along State Route 9 at the intersection to the north with Route 93/Myers Corners Road/Middlebush Road and to the south with County 28/Old Hopewell Road. In other words, this segment of State Route 9, which possesses an



June 8, 2023

Page 12

AADT of 38,256 according to the New York State Traffic Data Viewer has three (3) traffic lights within approximately 3500 lineal feet / 0.66 miles. See <https://gisportalny.dot.ny.gov/portalny/apps/webappviewer/index.html?id=28537cbc8b5941e19cf8e959b16797b4>. Additionally, the Alpine Commons driveway consists of three (3) lanes in the form of a two (2) left turn lanes and a separate right turn lane. Moreover, the May 13, 2022 Colliers Engineering & Design Reports submitted by the Applicants analyzing a more robust Mixed Use redevelopment of Alpine Commons including all that is contemplated here plus additional restaurant and housing substantiated that there were no trip generation (i.e., traffic) concerns for either State Route 9 or the Alpine Commons driveway.

Additionally, public school enrollment across the Hudson Valley is down 45,597 students or 12% from its peak in 2003, and every school district in Dutchess County has seen its respective enrollments decline since 2007 as noted in “The Great People Shortage and its Effect on the Hudson Valley” published in April 2023 by Hudson Valley Pattern for Progress. See <https://www.pattern-for-progress.org/wp-content/uploads/2023/05/Q1-The-Great-People-Shortage-5.10F.pdf>. Yet, as noted in the Fact Check section of that Report, “[w]e cannot afford to have more kids in the schools. This is a statement we hear dozens of times each year across the Hudson Valley. It is wrong.” In fact, that Report concluded that ***“[t]oo many kids in the schools is a false argument that is often used to oppose economic development projects, including new housing. The data do not support this argument, and neither should our labor regional leaders.”*** Such is the case here and with the Town of Wappinger and the Wappingers Central School District. According to the Enrollment Projection 2017-2026 prepared by FACTS for the Wappingers Central School District, dated December 2016, the school district anticipates a 12.46% decrease overall and a 17.23% decrease in high school enrollment between 2016 and 2026/27, which calculations do not even take into consideration the approximately 10% enrollment decrease overall between 2011/12 and 2016/17. See <https://www.wappingersschools.org/cms/lib/NY01001463/Centricity/Domain/29/Enrollment%20Projection%202017-2026.pdf>. Beyond these projections, actual enrollment data as filed with the New York State Education Department has documented the decreasing enrollment. See <https://data.nysed.gov/enrollment.php?year=2022&instid=800000053180>. Indeed, actual K-12 enrollment for 2021/22 was 10,176 where historic enrollment for 2011/12 was 11,964 students and 2026/27 enrollment is projected as 9,572 (i.e., a decrease of 2392 student or 20%). Thus, the requested density variance will not produce an undesirable change in the character of the neighborhood, nor acts as a detriment to nearby properties, nor will it have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.



June 8, 2023

Page 13

And, to those who might assert that the percentage increase in density from 93 workforce multifamily dwelling units to 144 workforce multifamily dwelling units is mathematically significant, New York State case law is instructive and further supportive of approval for the Applicants' requested variances. Statistics and percentages are not the appropriate measure for determining whether the requested area variance is substantial. Rather, the correct approach is to view the totality of the circumstance and the overall effect relative to granting the relief. New York Courts have determined that "substantial" is "relative" and cannot be gauged in the abstract. The variance as to its deviation from the standard only becomes relevant if it relates to an **adverse** effect in the neighborhood. The effect of the variance on the neighborhood, its true impact, and the necessity for compliance with a regulation's mandate all are highly significant considerations in undertaking such an analysis. See Kleinhaus v. Zoning Board of Appeals of the Town of Cortlandt, NYLJ March 26, 1996, p. 37, col 7 (Sup. Ct. Westchester Co. 1996); Raubvogel v. Board of Zoning Appeals of the Village of Brookville, NYLJ, Dec. 27, 1995, p. 33 col. 2 (Sup. Ct. Nassau Co. 1995); and WWA Realty Holding II LLC v. Board of Zoning Appeals of the Village of Lynbrook, NYLJ Feb. 17, 2004, p. 22, col. 1 (Sup Ct. Nassau Co. 2004)(citing Sexton v. Zoning Board of Appeals of the Town of Oyster Bay, 300 A.D.2d 494, 497 751 NYS2d 595, 598 (2d Dept. 2002)).

In fact, in Ayedelott v. Town of Bedford Zoning Board of Appeals, NYLJ June 25, 2003, p. 21, col. 4 (Sup. Ct. Westchester Co. 2003), the Court chastised the ZBA's analysis and concluded that the "ZBA's consideration of this percentage deviation alone, taken in a vacuum, is not an adequate indicator of the substantiality of the Petitioner's Variance Application. See also CUPON v. Town of Ramapo (Supreme Court, Rockland County, slip op. April 13, 2023, Index No. 031155/2022, J. Sherri L. Eisenpress)(upholding the SEQRA Negative Declaration and the use variance for multifamily housing as well as the numerous area variances for lot width, front setback, front yard, side setback, total side setback, rear setback, rear setback to deck, street frontage, side yard, permitted FAR, permitted developmental coverage, and parking). Consequently, here, the Applicants have substantiated in the above paragraphs along with the referenced evidence that the requested area variance as to density is comparable to other residential communities existing in the Town and the Village of Wappinger Falls, and that the Project will not have an adverse impact as to traffic or schools. Knight v. Amelkin, 68 N.Y.2d 975 (NY 1986), 510 N.Y.S.2d 550.

Lastly, it is worth reiterating in advance the answer to another hackneyed opposition trope that the aforementioned Hudson Valley Pattern for Progress report addresses in its Fact Check section, namely that the US Census data indicates that the size of families is shrinking as people



June 8, 2023

Page 14

have fewer kids “*which means we need more housing to meet the needs of more individual families*” in the Hudson Valley. This represents the “why” behind the need for more housing even though we have fewer people.

Accordingly, **it is respectfully submitted that approving these area variances relative to the Maximum building height (stories/feet) codified in the Schedule of Dimensional Regulations for Nonresidential Districts for the SC zoning district and the Density standard set forth in the Supplementary Special Permit Use Regulations for Mixed Uses in Section 240-81.7 of the Zoning Code will not result in any significant adverse environmental impacts and do not pose a detriment to the health, safety and welfare of the neighborhood or community**, particularly given the documented and pronounced need for workforce housing in the State of New York, County of Dutchess, and Town of Wappinger per numerous housing needs assessments.

### **Conclusion**

The Applicants look forward to appearing before the Zoning Board of Appeals on June 27, 2023, and respectfully submit that adoption of a SEQRA Negative Declaration and approval of this area variance application as amended, after a public hearing in July 2023, is warranted pursuant to Zoning Code Section 240-107B(2)(b)[2] and New York State Town Law Section 267-b(3). Should the Zoning Board of Appeals, its consultants, or Town Staff have any questions or comments in the interim, please feel free to contact me. Thank you in advance for your cooperation and consideration in this matter.

Very truly yours,

A handwritten signature in blue ink, reading 'Neil J. Alexander'. The signature is fluid and cursive, with the first name 'Neil' being particularly prominent and stylized.

Neil J. Alexander

### Enclosures

cc: Barbara Roberti, CEO  
James Horan, Esq., Town Attorney  
Malcolm Simpson, Town Planner  
Timothy Moot, PG, and Jon Bodendorf, PE, Town Engineer  
Ronald Roth, Senior VP of Acquisitions and Finance, Diamond Properties  
Brian Donato, Vice President of Real Estate Development, Dakota Partners



June 8, 2023

Page 15

Brenden Lloyd, Project Manager, Dakota Partners  
Steve Schoch, AIA, LEED AP, Principal, Kitchen & Associates  
Will Walter, PE, Civil/Site Group Manager, Benesch