

From: [Barbara Roberti](#)
To: [Pete Galotti](#); [David Barr](#); [Shailesh Shah - ZBA Member \(shahwf12590@gmail.com\)](#); [Tom DellaCorte \(tomdellacorte55@gmail.com\)](#); [John Lorenzini](#); [James Horan \(JHoran@Wallacelaw.net\)](#); [Alexander, Neil](#)
Cc: [Jon Bodendorf](#); [Malcolm Simpson](#); [Bruce Flower](#); [Beatrice Ogunti](#); [Tim Moot](#); [Brian Donato](#)
Subject: Interpretation for Alpine Commons
Date: Friday, June 9, 2023 11:49:19 AM
Attachments: [image001.gif](#)
[Interpretation for Alpine Commons - Final.rtf](#)

Good morning everyone,

Attached is the Interpretation for Alpine Commons.

Barbara Roberti
Director of Strategic Planning and Municipal Codes
NYS Code Enforcement Officer
20 Middlebush Road
Wappinger Falls, NY 12590
845-297-1373 Ext: 2
broberti@townofwappingerny.gov

TOWN OF WAPPINGER



**Director of Strategic Planning
& Municipal Codes**
Barbara Roberti - Ext. 128

Deputy Zoning Administrator
Judith Subrize – Ext 129

**PLANNING BOARD & ZONING
BOARD OF APPEALS SECRETARY**
Bea Ogunti – Ext 122

SUPERVISOR
Dr. Richard L. Thurston

TOWN BOARD
William H. Beale
Chris Phillips
Angela Bettina
Al Casella

ZONING DEPARTMENT

20 MIDDLEBUSH ROAD
WAPPINGERS FALLS, NY 12590
(845) 297-1373 Ext. 2
Fax (845) 297-0579
www.townofwappingerny.gov

MEMORANDUM

To: Peter Galotti, Chairman of the Zoning Board of Appeals
Zoning Board of Appeals Members
Mr. James Horan, Attorney to the Town
Mr. Neil Alexander, Attorney for the applicant
From: Barbara Roberti, Director of Planning & Municipal Codes
Date: June 5, 2023
Re: Interpretation of Town Zoning Code 240-81.7
Mixed Uses for the Alpine Commons Residential Project
Tax Parcel 6157-02-707773, 1404 Route 9

The Zoning Board of Appeals has requested an Interpretation of Town Zoning Code 240-81.7 as applied to the Alpine Commons, Residential Development Project currently pending before the Board. This threshold interpretation is requested to determine the quantitative extent of the variances required for residential density for the mixed use.

In pertinent part, §240-81.7 provides:

§ 240-81.7 Mixed uses.

A. Density.

- (1) 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.*

- (2) The commercial density in a mixed-use development shall not exceed the maximum floor area ratio (FAR) for the zoning district in which the development is located, based upon *the net lot area devoted to the commercial component of the mixed use*.
- (3) The residential and commercial components of the mixed use shall not, individually or in combination, exceed the maximum density standards of Subsection A(1) and (2) immediately above. *Further, the net lot area used to derive density for the residential component of the mixed use shall not be utilized to derive density for the commercial component and vice versa.*

- B. Minimum residential and commercial components. As measured by net lot area, the mixed use shall be at least 25% residential and at least 25% commercial.
(Emphasis added)

The applicant is proposing a total of 144 dwelling units for the residential component of the mixed use on the property. The gross area of the parcel is 86.817 acres, and the applicant has stated that 37.36 acres of its land is not buildable, leaving 49.457 acres of net lot area. The actual net lot area needs to be confirmed before any variance can be granted.

The residential density described in § 240-81.7(A)(1) is three dwelling units per acre of “net lot area devoted to the residential component of the mixed use.” The term net lot area is defined at §240-5 as:

NET LOT AREA

The 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.

The term “devoted to the residential component of the mixed use” is not defined in the Zoning Code so it has its ordinarily accepted meaning, or the meaning implied from the context of its usage. §240-4(Q).

The ordinarily accepted meaning of “area devoted to the residential component of the mixed use” would be that contiguous portion of the property that is covered by the residential uses such as multifamily buildings, clubhouses, residential accessory buildings, together with roadways, parking, sidewalks,

landscaping, stormwater facilities and other improvements associated with the proposed multifamily housing.

Reviewing § 240-81.7(A)(1) as applied to this project, the site plan for the most recent submittal shows areas for multifamily buildings, roadways, parking, landscaping, and other improvements for the residential development to be approximately 9.9 acres. No wetlands are shown in this area, and it is not clear if there are any steep slopes to be deducted from the gross lot area. 144 dwelling units on 9.9 net lot acres yields a density of 14.54 dwelling units per acre. Under the permitted mixed use density of 3 dwelling units per acre, 9.9 acres would yield 29.7 total dwelling units where 144 is requested. § 240-81.7(A)(1) permits 3 dwelling units per acre which results in a variance of 11.54 dwelling units per acre.

At page 4 of his letter dated November 14, 2022, the attorney for the applicant suggests that the area devoted to residential development would be all land not containing commercial buildings, or approximately 31.3 acres. The applicant reaches this area by deducting 16 acres from an overall net lot area of 47.3 acres. It must be noted that § 240-81.7(A)(3) provides that “the net lot area used to derive density for the residential component of the mixed use shall not be utilized to derive density for the commercial component and vice versa.” Using the area of the property that is devoted to the commercial component of the mixed use is not permitted to derive density for the residential component. Parking areas for commercial uses as well as existing stormwater facilities and open spaces remote from the residential component of the mixed use cannot be used to derive the density for the residential component of the mixed use. The applicant’s interpretation of “net lot area devoted to the residential component of the mixed use” is not consistent with the current site plans that show approximately 9.9 acres for the residential component and a net lot area of 49.457 acres.

In the November 14, 2022, letter, the applicant notes that “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.” Mixed Use is the only use that permits new multifamily dwellings in a non-residential district so reference to other non-residential uses is not necessarily germane. The use of net lot area to establish the density of multi-family dwellings in a mixed-use development, is consistent with the RMF-3 and RMF-5 zoning districts which are the only residential districts that permit new multifamily housing and those districts also use net lot area to establish density.

§240-81.7(B) states “[a]s measured by net lot area, the mixed use shall be at least 25% residential and at least 25% commercial.” Using an overall net lot area

of 49.457 acres as shown in the most recent submission, the minimum acreage necessary for the residential development would be 12.364 acres. The current site plan shows 9.9 net acres of residential development which is 2.464 acres less than the 25% minimum required.

Conclusion

In conclusion, my interpretation is that the “area devoted to the residential component of the mixed use” as used in §240-81.7(A)(1), is that contiguous portion of the property that is covered by the residential uses such as multifamily buildings, clubhouses, residential accessory buildings, together with roadways, parking, sidewalks, landscaping, stormwater facilities and other improvements associated with the proposed multifamily housing. Parking areas for commercial uses, as well as existing stormwater facilities, and open spaces remote from the residential component of the mixed use cannot be used to derive the density for the residential component of the mixed use.

The site plan with the most recent submittal shows areas for multifamily buildings, roadways, parking, landscaping, and other improvements for the residential development to be approximately 9.9 acres. Under the permitted mixed use density of 3 dwelling units per acre, 9.9 acres would yield 29.7 total dwelling units where 144 is requested. **§ 240 81.7(A)(1) permits 3 dwelling units per acre so a variance of 11.54 dwelling units per acre is required for the construction of 144 proposed units.** This variance amount is subject to confirmation of the net lot area. The applicant is free to devote additional land to the residential component of the mixed use.

In addition, §240-81.7(B) states “[a]s measured by net lot area, the mixed use shall be at least 25% residential and at least 25% commercial.” Using an overall net lot area of 49.457 acres as shown in the most recent submission, the minimum acreage necessary for the residential development would be 12.364 acres. The current site plan shows 9.9 net acres of residential development which is 2.464 acres less than the 25% minimum required. **Under the current proposed configuration, a variance of 2.464 acres is required to comply with §240-81.7(B).**